

ORDINANCE NO. 1970-9-94

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING CHAPTER 8, ARTICLE II. CURFEW, OF THE CODE OF ORDINANCES OF THE CITY OF LEWISVILLE, TEXAS BY CHANGING VARIOUS PROVISIONS RELATING THERETO; PROVIDING A PENALTY CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lewisville has determined that for the health, welfare and safety of its citizens, certain amendments to Chapter 8, Article II. Curfew, of the Code of Ordinances of the City of Lewisville, Texas are necessary to conform with recent Court decisions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS:

SECTION I.

AMENDMENTS

Chapter 8, Article II. Curfew, of the Code of Ordinances of the City of Lewisville is hereby amended by deleting the current language of Sections 8-26 through 8-34 in its entirety and in its place inserting a new Section 8-26 as follows:

"Sec. 8-26. Curfew Hours for Minors.

(a) Definitions. In this section:

(1) CURFEW HOURS means:

- (A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- (B) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

- (2) EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (3) ESTABLISHMENT means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- (4) GUARDIAN means:
 - (A) a person who, under court order, is the guardian of the person of a minor; or
 - (B) a public or private agency with whom a minor has been placed by a court.
- (5) MINOR means any person under 17 years of age.
- (6) OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
- (7) PARENT means a person who is:
 - (A) a natural parent, adoptive parent, or step-parent of another person; or
 - (B) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
- (8) PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (9) REMAIN means to:
 - (A) linger or stay; or

(B) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(10) SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(b) Offenses.

- (1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) Defenses.

- (1) It is a defense to prosecution under Subsection (b) that the minor was:
 - (A) accompanied by the minor's parent or guardian;
 - (B) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (C) in a motor vehicle involved in interstate travel;
 - (D) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (E) involved in an emergency;

- (F) on the sidewalk abutting the minor's residence or abutting the residence of a nextdoor neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (G) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lewisville, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lewisville, a civic organization, or another similar entity that takes responsibility for the minor;
 - (H) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
 - (I) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- (2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.

(e) Penalties.

- (1) A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is

committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.

- (2) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Subsection (b)(1) of this section and shall refer the minor to juvenile court."

SECTION II.

REPEALER

Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III.

SEVERABILITY

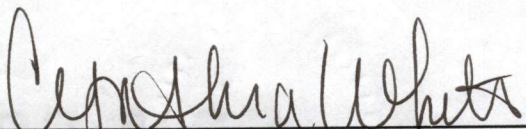
If any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect.

SECTION IV.

EFFECTIVE DATE

This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication as required by law.

PASSED AND APPROVED by a vote of 3 to 2 on this
15TH day of AUGUST, 1994.

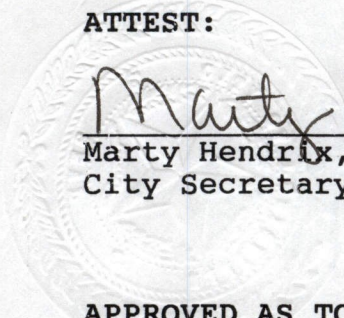


CYNTHIA WHITE, MAYOR PRO TEM
CITY OF LEWISVILLE, TEXAS

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ATTEST:


Marty Hendrix
Marty Hendrix, CMC/AEE
City Secretary

APPROVED AS TO FORM:

Ronald J. Neiman
Ronald J. Neiman
City Attorney

FIRST READING:	<u>AUGUST 15, 1994</u>
SECOND READING:	<u>SEPTEMBER 12, 1994</u>
EFFECTIVE DATE:	<u>SEPTEMBER 19, 1994</u>