

**CITY OF NOLANVILLE**

**ORDINANCE NO. 5004-B-2012-05**

**AN ORDINANCE OF THE CITY OF NOLANVILLE, TEXAS AMENDING ORDINANCE NO. 5004-B, BY AMENDING THE REGULATION OF THE MINOR CURFEW; PROVIDING FINDINGS AND PURPOSE; PROVIDING FOR DEFINITIONS; OFFENSES; EXCEPTIONS AND DEFENSES; ENFORCEMENT PROCEDURE AND ADMINISTRATIVE APPEALS; VIOLATIONS AND PENALTIES; SEVERABILITY CLAUSE; ESTABLISHING A PENALTY OF A FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200); REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR EFFECTIVE DATE; AND OTHER PROVISIONS:**

**I. FINDINGS AND PURPOSE:**

The City Council has determined that there is a significant amount of juvenile violence and crime committed by persons under the age of 17 in the City; and that due to their lack of maturity and experience persons under the age of 17 are particularly susceptible during curfew hours to participating in gang-related and other unlawful activities, and to being victims of adult perpetrators of crime; and the City has an obligation to provide for the protection of persons under the age of 17 from each other and from other persons, for the enforcement of parental control of and responsibility for their children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and the City Council has determined that a curfew for those under 17 years-of-age will serve the interest of public health, safety, and general welfare, and will help to attain the foregoing objectives and to diminish the undesirable impacts of such conduct on the citizens of the City. This Ordinance shall be commonly cited as the "Curfew Ordinance."

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Nolanville:**

**SECTION 1 – DEFINITIONS**

For the purpose of this Ordinance, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***City:***

Shall mean the City of Nolanville, an Incorporated Municipality located in Bell County, Texas.

***Curfew Hours:***

- 1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. on the following day; and
- 2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

***Emergency:***

Shall include, but not be limited to, fire, natural disaster, an automobile accident or seeking immediate medical treatment for any person.

***Interstate Transportation:***

Shall mean transportation between states of the United States or between a state of the United States and a foreign country, to which any travel through the City is merely incidental.

***Intrastate Transportation:***

Shall mean transportation between locations within the State of Texas, to which any travel through the city is merely incidental.

***Minor:***

Any person under 17 years-of-age.

***Parent:***

A person who is the natural or adoptive parent, a court appointed guardian, or other person 21 years-of-age or older who has been authorized by a parent, by a court order, or by law to have the care and physical control of a minor.

***Public Place:***

Any place to which the public or a substantial group of the public has access, including without limitation public rights-of-way and thoroughfares, streets, highways, and the common areas of schools, apartment houses, office buildings, transportation facilities, restaurants, and shops.

**SECTION 2 – OFFENSES**

a) It shall be unlawful for any minor to intentionally or knowingly remain, walk, run, stand, drive, or ride about in or upon any public place in the City during curfew hours.

b) It shall be unlawful for a parent of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in subsection (a) of this section. The term “knowingly” includes knowledge which such parent should reasonably be expected to have concerning the whereabouts of a minor in the parent’s care. It shall be prima facie evidence of violation of this

section if a responsible parent has no knowledge of a minor's whereabouts during the hours of curfew established by this Ordinance.

c) It shall be unlawful for any owner, operator, or employee of any privately owned place of business operated for a profit to which the public is invited, to knowingly allow a minor to remain upon the premises of said place of business during curfew hours.

### **SECTION 3 – EXCEPTIONS AND DEFENSES**

No officer shall detain a minor where an exception to the application hereof is apparent. It is a defense to prosecution under SECTION 2 that, at the time of the act that otherwise would constitute an offense:

- 1) The minor was accompanied by his or her parent; or
- 2) The minor was accompanied by an adult twenty-one (21) years-of-age or older approved by the parent; or
- 3) The minor was on an emergency errand; or
- 4) The minor was attending a school, religious or government-sponsored activity, or going to or coming from a school, religious or government-sponsored activity; or
- 5) The minor was engaged in a lawful employment activity or labor organization meeting; or
- 6) The minor was on the premises of the place where such minor resides or on the premises of a next-door neighbor and such neighbor was not communicating an objection to a peace officer regarding the presence of said minor; or
- 7) The minor was upon an errand directed by his or her parent; or
- 8) The minor was in an aircraft or motor vehicle involved in intrastate or interstate transportation, or was awaiting transportation by such means; or
- 9) The Minor was exercising his or her First and Fourteenth Amendment rights protected by the United States Constitution, including but not limited to, the free exercise of religion, freedom of speech, and the right of assembly; or
- 10) The minor was married or had been married or had disabilities of minority removed on accordance with the Texas Family Code; or
- 11) The minor was on a direct route to his or her place of residence from an activity which he or she left within the lawful curfew time; or
- 12) In a prosecution under SECTION 2(c), the owner, operator or employee of the place of business promptly notified the police department that a minor was present on the premises of the business during curfew hours and refused to leave.

### **SECTION 4 – ENFORCEMENT PROCEDURE AND ADMINISTRATIVE APPEALS**

a) Any Peace Officer, upon finding a minor in violation of SECTION 2, shall determine the name and address of the minor, and the name and address of his or her parent(s) or guardian(s). A warning notice shall be issued to the minor, who shall be ordered to go home by

the most direct means and route. A copy of the notice shall be forwarded to the City Police Department, which shall send a letter to the parent(s) or guardian(s) of the minor advising that the minor was found in violation of this article, and soliciting cooperation in the future.

b) Any Peace Officer, upon finding a minor in violation of SECTION 2 when said minor has once previously been so found and warned as in subsection (a) above, the officer shall record the name and address of the minor and his or her parent(s) or guardian(s), and shall issue a citation to the minor for the violation of this ordinance. The minor shall be ordered by the officer to go home by the most direct means and route. A copy of the citation shall be forwarded to the City Police Department, which shall send a letter to the parent(s) or guardian(s) of the minor who was found in violation of this article a second time, and advising of the consequences of a third violation of this article and addressing the City's expectation and requirements of parental control of the minor.

c) Any Peace Office, upon finding a minor in violation of SECTION 2 when said minor has at least twice previously been found in violation and issued a warning and citation as provided in subsection (a) and subsection (b) above, shall order said minor to go home by the most direct means and route, and thereafter shall file a complaint against the minor and his or her parent(s) or guardian(s) in Municipal Court for violation of SECTION 2. The City Police Department shall file all necessary documentation and provide necessary testimony required for pursuing prosecution of this violation by the minor and/or the parent(s) or guardian(s).

d) If after receiving a warning notice or letter as provided in subsection (a) and (b) above, a person believes that said document was issued without justification, the person shall have ten (10) days from receipt of said document to present an appeal in writing to the Chief of Police. The appeal shall state the facts and circumstances which the appellant believes make the issuance of the document in question unjustified. The Chief of Police or his designated representative shall respond in writing to the appellant not later than twenty (20) days after receipt of the appeal, stating whether the issuance of the document or documents in question will be upheld or rescinded, and stating the reasons for said decision. All decisions shall be final with the ruling of the Chief of Police or his representative. If a document is ordered rescinded after issuance, the status of the minor and parent(s) in question thereafter shall be the same as if the document ordered rescinded had never been issued, and all City records shall be corrected accordingly.

## **SECTION 5 – VIOLATIONS AND PENALTIES**

a) Any minor violating the provisions of this article shall be guilty of a Class C misdemeanor as defined in the Texas Penal Code and shall be dealt with in accordance with the provisions of Title 3 of the Texas Family Code and Texas Code of Criminal Procedure.

b) Any parent who violates SECTION 2 (b) or a person who violates SECTION 2 (c) shall be guilty of a misdemeanor, which shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

c) In assessing punishment for either a parent or a minor, the Municipal Court Judge may consider a community service.

## II. EFFECTIVE DATE

This Ordinance shall be and become effective immediately upon its passage and publication as required by law.

## III. CONFLICTS

This Ordinance shall be cumulative of all provisions of Ordinances of the City except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event the conflicting provisions of such Ordinances are hereby repealed. Nothing contained in this Ordinance generally or this Ordinance specifically shall be construed to allow the violation of any residential deed restriction.

## IV. REPEALER

All Ordinances or parts of Ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

## V. SEVERABILITY

Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

PASSED AND APPROVED this the 5<sup>th</sup> day of July 2012, by a vote of  
of 4 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City  
of Nolanville, Texas.

APPROVED:



Charlie L. Stewart, Mayor

ATTEST:



Ginger Metcalf, City Secretary