ORDINANCE NO. 18000-03-2008

AN ORDINANCE AMENDING SECTION 23-19, "CURFEW HOURS FOR MINORS," OF THE CODE OF THE CITY OF FORT WORTH, AS AMENDED, BY REVISING THE EFFECTIVE DATE AND BY ADDING AN AMENDED SUNSET PROVISION; PROVIDING A PENALTY NOT TO EXCEED $500; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; PROVIDING A SEVERABILITY CLAUSE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Fort Worth City Council held public hearings on February 26, 2008 and March 4, 2008, on the need for continuation of this ordinance ("the Section"), at which time they considered the Report of the City Manager and the public's comments concerning said need, reviewed the Section's effects on the community and on the problems the Section was intended to remedy; and

WHEREAS, the Fort Worth City Council has determined the continuation of the ordinance, as amended, is sound public policy and in the best interests of the citizens of Fort Worth, and

WHEREAS, Texas Local Government Code §370.002 requires the ordinance be reviewed and public hearings conducted every third year.

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

SECTION 1.

That Section 23-19, "Curfew Hours for Minors", of the Code of the City of Fort Worth, is hereby amended herein and after said amendment shall read as follows:

"Sec. 23-19. 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) **Date of the Adoption of this Section** means March 4, 2008.

(3) **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.

(4) **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.

(5) **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.

(6) **Minor** means any person under 17 years of age.

(7) **Officer** means a police officer, city marshal or deputy city marshal.

(8) **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.

(9) **Parent** means a person who is:

(a) a natural person, 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.

(10) **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.

(11) **Remain** means to:

(a) linger or stay; or

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

(12) **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.

(13) **This Section** means Section 23-19 of the Fort Worth City Code.

(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 next-door neighbor if the neighbor did

not complain to the police department or marshal's office about the minor's presence;

(g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Fort Worth, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Fort Worth, 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 or marshal's office 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, an 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 section 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 five hundred dollars ($500.00).

(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.

(F) City Manager's Report. Before the third anniversary of the date of the adoption of this section, the city manager shall review this section, report to the city council,

and make recommendations concerning the effectiveness of and need for this section. The city manager's report shall specifically include the following information:

(1) The practicality of enforcing this section and any problems with enforcement identified by the police department and city marshal's office;

(2) The impact of this section on crime statistics;

(3) The number of persons successfully prosecuted for a violation of this section; and

(4) The City's net cost of enforcing this section.

(G) City Council review. Before the third anniversary of the date of the adoption of this section, and every third year thereafter, the City Council shall:

(1) review the Section's effects on the community and on the problems the Section was intended to remedy;

(2) conduct public hearings on the need to continue the Section; and

(3) abolish, continue or modify the Section.

(H) Sunset provision. Failure by the city council to act in accordance with paragraphs (G) (1)--(3) shall cause this Section to expire at 12:01 a.m. March 4, 2011.

SECTION 2.

That Chapter 23 of the Code of the City of Fort Worth, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3.

That the terms and provisions of this ordinance are severable and are governed by Section 1-5 of Chapter 1 of the Code of the City of Fort Worth, as amended.

SECTION 4.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended in Section 1 hereof, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption and Sections 1 and 6 of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 6.

That this ordinance shall take effect after its passage and publication as required by law, and it is accordingly so ordained.

APPROVED AS TO FORM AND LEGALITY:

Karen Anderson
Assistant City Attorney

Date: _____

ADOPTED: March 4, 2008

EFFECITVE: March 30, 2008

City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 3/4/2008 - Ord. No. # 18000-03-2008

CONTINUED FROM A PREVIOUS WEEK

DATE: Tuesday, February 26, 2008
LOG NAME: 35CURFEW **REFERENCE NO.: G-16067**

SUBJECT:
Conduct Public Hearings and Review and Reinstatement of Curfew Ordinance for Minors; Adoption of Curfew Ordinance for Three Years

RECOMMENDATION:
It is recommended that the City Council:

1. Hold public hearings on February 26, 2008, and March 4, 2008, on the curfew ordinance;

2. Review the effect of the Curfew Ordinance for Minors on the community and on the problems the ordinance was intended to remedy, and make a determination that the purposes of the ordinances are met; and

3. Adopt the attached ordinance that reinstates the lapsed curfew ordinance for Minors for three more years.

DISCUSSION:
In 1994, the City Council adopted an ordinance establishing curfew hours for minors. With limited exceptions, persons under 17 years of age are prohibited from remaining in public places, or on the premises of an establishment from 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day and from 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

In 1995, the Texas Legislature enacted provisions that address a City's authority to enact juvenile curfew ordinances. This legislation requires a city to conduct periodic reviews of its curfew ordinance. A city must review its curfew ordinance at least every three years, addressing:

1. The ordinance's effect on the community and on problems the ordinance was intended to remedy; and

2. Whether the purposes of the ordinance are met.

After the review, the City Council must conduct public hearings and decide whether to abolish, continue or modify its ordinance. If a city fails to conduct the required review and public hearings, the ordinance automatically expires. Public hearings were held on March 30 and April 6, 2004, and the ordinance was renewed on April 6, 2004.

The ordinance automatically expired on April 6, 2007. Public hearings are scheduled for February 26, 2008, and March 4, 2008 with a view to re-enacting the curfew ordinance.

The attached ordinance the City Council is being asked to adopt is identical to the one enacted April 6, 2004.

An article has been placed in the Fort Worth Star-Telegram inviting public feedback on the ordinance at both of the regularly scheduled meetings of the Fort Worth City Council for February 26, 2008, and March 4, 2008.

FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that this action will have no material effect on City funds.

TO Fund/Account/Centers	FROM Fund/Account/Centers

Submitted for City Manager's Office by:	Joe Paniagua (6575)
Originating Department Head:	Patricia Kneblick (6191)
Additional Information Contact:	Karen Anderson (6799)