



ORDINANCE NO. 2007-122

AN ORDINANCE ESTABLISHING A CURFEW FOR PERSONS UNDER THE AGE OF 17 WITHIN THE CITY OF MAGNOLIA, TEXAS, BETWEEN THE HOURS OF 12 MIDNIGHT AND 6 AM. AS WELL AS AT ALL TIMES DURING THE DAY DURING WHICH SCHOOL IS IN SESSION; ALSO CONTAINING DEFINITIONS AND PROVIDING FOR A PENALTY FOR PERSONS IN VIOLATION OF THE CURFEW AS A CLASS C MISDEMEANOR; PROVIDING THAT IT IS UNLAWFUL FOR ANY PARENT OR GUARDIAN OF A PERSON SUBJECT TO CURFEW TO KNOWINGLY PERMIT, OR BY SUFFICIENT CONTROL ALLOW SUCH PERSON TO VIOLATE THIS ORDINANCE; PROVIDING THAT ANY OWNER OR EMPLOYER OF AN ESTABLISHMENT VIOLATES THIS ORDINANCE BY ALLOWING A MINOR TO REMAIN AT SUCH ESTABLISHMENT DURING CURFEW HOURS; AND ESTABLISHING A FINE IN AN AMOUNT NOT TO EXCEED \$500 PER OCCURRENCE AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE.

WHEREAS, the City Council recognizes that minors would be benefited generally by the imposition of a municipal curfew; and

WHEREAS, the City Council finds that an imposition of a municipal curfew will promote the health, safety and welfare of minors; and

WHEREAS, the City Council recognizes that, without a curfew ordinance, minors from other jurisdictions may be inclined to come to the City of Magnolia for the purpose of avoiding curfew in such other jurisdictions; and

WHEREAS, the City Council, considers that the adoption of a curfew ordinance within the City of Magnolia, Texas, will result in an increase in the public safety for minors and the public in general; and

WHEREAS, the City Council finds that public hearings were conducted on this ordinance;

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed. This ordinance is adopted as Ordinance No. 2007-122;

Section 2. Repeal of Prior Ordinances and Conflict.

- (a) Ordinances No. 247 and 247A are repealed.
- (b) Ordinance No. 2004-357 is repealed as it is expired pursuant to the provisions of Tex. Loc. Gov't Code § 370.001.
- (c) When the requirements of this Ordinance conflict with requirements of other ordinances, this Ordinance shall prevail.

Section 3. Definitions.

For purposes of this Ordinance, the following words or terms shall have the meanings given below:

“Curfew hours” shall mean the hours between 12:00 0’clock midnight on any day of the week until 6:00 a.m., and for purposes of this Ordinance, for a minor who is required by law to be enrolled in a secondary or elementary school, “curfew hours” shall also mean all times during the day that such minor is required to attend school during the school’s regular session.

“Emergency” shall mean and include, but shall not be limited to, a fire, natural disaster, automobile accident, or any unforeseen situation requiring immediate action to prevent serious illness, bodily injury, loss of life, or for the preservation of property.

“Establishment” shall mean any privately owned place of business to which the public has access or is invited, including, but not limited to, any place of amusement, recreation, or entertainment.

“Guardian” shall mean a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom a minor has been placed by a court.

“Minor” shall mean any person under 18 years of age.

“Affected minor” shall mean any person who is under 17 years of age.

“Operator” shall mean any individual, firm, association, partnership, entity, or corporation operating, managing, or conducting the operation of any establishment. The term includes the members or partners of an association, entity, or partnership and the officers of a corporation.

“Parent” shall mean a person who is a natural parent, adoptive parent, or any person who has had the parent-child relationship established with an affected minor by court order, or any person at least 18 years of age who is authorized by the parent, guardian, or by court order to have the care, custody and control of such affected minor. The term also includes any biological parent of such affected minor from whom the parent-child relationship has not been terminated by court order.

“Police Department” shall mean the Magnolia Police Department and shall include any law enforcement agency working with the City of Magnolia, through any inter-agency agreement.

“Public Place” shall mean any place to which the public or a substantial group of the public has access and shall include, but shall not be limited to, streets, highways, and the common areas of schools, hospitals, office buildings, transportation facilities, restaurants, theaters, game rooms, shops, stores, shopping centers, or any other place that offers for sale services, merchandise, or entertainment.

“Remain” shall mean to linger or stay, or fail to leave premises, when requested to do so by a police officer or by the owner, operator, or by other person in control of such premises.

“Vehicle” shall mean any device or contrivance used, or intended for use, as a transportation device, and the term shall include, but shall not be limited to: motor vehicles, automobiles, trucks, bicycles, skateboards, roller skates, and any other wheeled vehicle.

Section 4. Offenses.

- (a) It shall be unlawful for any affected minor to knowingly remain, walk, run, or stand, or to operate or ride about in any vehicle, in or upon public place or on the premise of any establishment within the City of Magnolia during curfew hours, except that an affected minor may be present on secondary school or elementary school property if the affected minor is within the scope and course of his or her attendance at said school.
- (b) It shall be unlawful for any parent or guardian of an affected minor to knowingly permit, or by insufficient control, allow an affected minor to remain in or upon any public place or on the premises of any establishment within the City of Magnolia during curfew hours.
- (c) It shall be unlawful for the owner, operator, or any employee of an establishment to knowingly allow an affected minor to remain upon the premises of the establishment during curfew hours.

Section 5. Defenses.

- (a) It shall be an affirmative defense to prosecution of an affected minor under this Ordinance that the affected minor was:
 - (1) accompanied by the affected minor’s parents or guardian;
 - (2) on an errand at the direction of the affected minor’s parent or guardian;
 - (3) in a motor vehicle involved in intrastate or interstate travel, and traveling through the City of Magnolia by a direct route between the points of departure and destination;
 - (4) engaged in lawful employment activity, or going directly to the employment activity, or returning directly to the affected minor’s residence or school, from the employment activity;
 - (5) involved in an emergency;
 - (6) on an errand made necessary by a verifiable illness, injury, or emergency;
 - (7) on the sidewalk abutting the affected minor’s permanent residence or abutting the residence of a next-door neighbor or the affected minor’s permanent residence, if

- the affected minor's presence at the neighbor's residence was with the prior consent of the neighbor if the neighbor giving consent is over 18 years of age;
- (8) attending school, religious or government-sponsored or other civic activity supervised by an adult and sponsored by an educational, religious, or governmental institution, civic organization, or other similar entity, or traveling directly to, or returning from any such activity;
 - (9) engaged, participating in, or traveling to or from any event, function, or activity for which the application of any other provision of this Ordinance would contravene the affected minor's rights protected by the United States Constitution including, but not limited to, First Amendment rights such as the free exercise of religion, freedom of speech, or the right of assembly;
 - (10) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code;
 - (11) for curfew hours other than those between 12:00 midnight and 6:00 a.m., the affected minor has graduated from an accredited secondary school, or received a high school equivalency degree or certificate, or is being home schooled; or has prior permission from school officials to be absent, provided, however, that the affected minor has not exceeded the limits of permission from school officials.
- (b) It shall be an affirmative defense to prosecution of any owner, operator, or any employee of an establishment cited for violation of Section 3(c), above, that such owner, operator, or employee has promptly notified any law enforcement agency that an affected minor was present on the premises of the establishment during curfew hours and the affected minor refused to leave; or that no reasonable opportunity existed for the owner, operator or employee to notify a law enforcement agency of the affected minor's violation of this ordinance and the owner, operator or employee requested that the affected minor leave the premises and the affected minor refused.

Section 6. Penalties.

- (a) Any person who shall violate any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.
- (b) Any parent or guardian who shall violate any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined, for each affected minor, an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

Section 7. Compliance Clause, Publication and Effective Date.

The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code which publication shall be sufficient if it contains the caption of this Ordinance and at which time this Ordinance takes effect.

The City Secretary of the City of Magnolia, Texas, is hereby directed to publish this Ordinance in the official newspaper of the City of Magnolia, Texas, which publication shall be sufficient if it contains the caption of this Ordinance.

Section 8. Severability.

In the event that any clause, phrase, section, subsection, paragraph, provision or sentence, or other part of this Ordinance--or the application of this Ordinance to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof, other than the part or provision declared invalid, unconstitutional, or unenforceable.

PASSED AND ADOPTED by the City Council for the City of Magnolia, Texas,
on this 13th day of November, 2007.

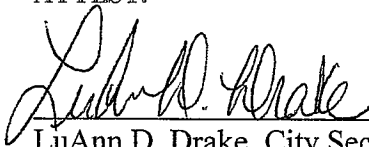
Sammie Scott
Todd Kana
David Sutherland
John Bramlett
Patsy Williams

Aye
Absent
Aye
Aye
Aye



Jimmy Thornton, Mayor
City of Magnolia, Texas

ATTEST:



LuAnn D. Drake, City Secretary