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ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 9-3 OF THE CITY CODE RELATING TO NON-EMERGENCY CURFEWS; AND CONTINUING AND READOPTING THE PROVISIONS OF CHAPTER 9-3.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 9-3 of the City Code, (*Non-Emergency Curfews*), is amended to read as follows:

CHAPTER 9-3. NON-EMERGENCY CURFEWS.

§ 9-3-1 DEFINITIONS.

In this chapter:

~~[(1) CURFEW AREA NO. 1 means that area bounded by the south curb of Tenth Street, the east curb of the IH-35 West Frontage Road, the south curb of Fourth Street, the east curb of Congress Avenue starting at Fourth Street, south to the south curb of Second Street (West), the west curb of San Antonio Street, the north curb of Seventh Street (West), and the west curb of Congress Avenue.]~~

~~[(2) CURFEW AREA NO. 2 means that area bounded by the south curb of Fourth Street (West), the west curb of Rio Grande Avenue, the north curb of Seventh Street (West) and the west curb of San Antonio Street.]~~

~~[(3) CURFEW AREA NO. 3 means that area bounded by the east curb of the IH-35 East Frontage Road, the south curb of Ben White Boulevard (East), the west curb of U.S. Highway 183, the north curb of Scenic Loop and the north curb of the proposed extension of Slaughter Lane.]~~

~~(1)~~[(4)] **DIRECT ROUTE** means the shortest path a person may travel through a public place to reach the person's destination without a detour or additional stop at any other destination along the way.

(2) **DOWNTOWN ENTERTAINMENT DISTRICT CURFEW AREA** means that area bounded by the south curb of Tenth Street, the east curb of the IH-35 West Frontage Road, the south curb of Fourth Street, the east curb of Congress Avenue starting at Fourth Street, south to the south curb of Second Street (West), the west curb of San Antonio Street, north to the south curb of Fourth Street (West), west to the west curb of Nueces Street, the north curb of Seventh Street (West), and the west curb of Congress Avenue.

(3)[(5)] EMERGENCY means an unforeseen circumstance including a fire, natural disaster, automobile accident, or the need to obtain immediate medical care for another person.

(4)[(6)] ESTABLISHMENT means a privately owned place of business operated for a profit to which the public is invited, including a place of amusement or entertainment.

(5)[(7)] JUVENILE [MINOR] means a person under 17 years of age.

(6)[(8)] OPERATOR means an individual, firm, association, partnership, or corporation operating, managing, or conducting an establishment, including a member or partner of an association or partnership and an officer of a corporation.

(7)[(9)] PARENT means a person who is the natural or adoptive parent of a juvenile [minor], including a court-appointed guardian or other person 21 years of age or older, authorized by a parent, court order, or court-appointed guardian to have the care and custody of a juvenile [minor].

(8)[(40)] PUBLIC PLACE means a public street, alley, highway, sidewalk, playground, park, plaza, building, or place used or open to a member of the public; or a building, business, or amusement or entertainment establishment.

(9)[(44)] RELIGIOUS ACTIVITY means a function or event sponsored by a religious organization that has received tax exemption under Section 501(C)(3) of U.S.C.

§ 9-3-2 OFFENSES.

(A) A juvenile [minor] commits an offense if the juvenile [minor] is in a public place in the Downtown Entertainment District Curfew Area [No. 1 or Curfew Area No. 2] between 11:00 [10:00] p.m. and 6:00 a.m. on any day.

(B) [A minor commits an offense if the minor is in a public place or is on the premises of an establishment in Curfew Area No. 3 between 11:00 p.m. and 6:00 a.m. on Sunday through Thursday or between midnight on Saturday and 6:00 a.m. on Sunday.]

[(C)] Except as provided in Subsections (C)[(D)] and (D)[(E)], a juvenile [minor] commits an offense if the juvenile [minor] is in a public place or is on the premises of an establishment between 11:00 [11:30] p.m. and 6:00 a.m. on Sunday through Thursday or between midnight [12:30 a.m.] and 6:00 a.m. on Saturday and Sunday.

(C)[(D)] Except as provided in Subsection (D)[(E)], if the following day is an Austin Independent School District holiday, curfew hours are the same as on Saturday

1 and Sunday. During the regular Austin Independent School District summer recess,
2 curfew hours are the same as an Austin Independent School District holiday.

3 (D) [(E)] Subsections (B)[(C)] and (C)[(D)] do not affect the curfew[s] established
4 under Subsection[s] (A) [and (B)].

5 (E)[(F)] While school is in session, a juvenile [minor] commits an offense if the
6 juvenile [minor] remains, walks, runs, idles, wanders, strolls, or aimlessly drives or rides
7 about in or on a public place between 9:00 a.m. and 2:30 p.m. on Monday, Tuesday,
8 Wednesday, Thursday or Friday.

9 (F)[(G)] A parent having custody of a juvenile [minor] commits a violation if the
10 person knowingly allows the juvenile [minor] to be in violation of this chapter. A parent
11 is presumed to knowingly allow or permit the juvenile [minor] to be in violation of this
12 chapter if the juvenile [minor] has two previous convictions for violations of this
13 chapter. For the purpose of this section a deferred adjudication is a conviction.

14 (G) [(H)] The owner, operator, or employee of an establishment commits an offense
15 if the person knowingly allows a juvenile [minor] to remain on the premises of the
16 establishment during curfew hours.

17 § 9-3-3 DEFENSES.

18 (A) It is a defense to prosecution under Section 9-3-2 (*Offenses*) that:

19 (1) the juvenile [minor] is accompanied by the juvenile's [minor's] parent or
20 spouse;

21 (2) the juvenile [minor] is on an errand authorized by the juvenile's [minor's]
22 parent or spouse or made necessary by an emergency;

23 (3) except as provided in Subsection (C), the juvenile [minor] is traveling by a
24 direct route through a curfew area or to the juvenile's [minor's] home in a curfew area;

25 (4) the juvenile [minor] is in a vehicle involved in transportation for which
26 passage through a curfew area is the most direct route;

27 (5) the presence of the juvenile [minor] is connected with or required by a
28 religious activity, educational activity, or a business, trade, profession, or occupation in
29 which the juvenile [minor] is lawfully engaged;

30 (6) except as provided in Subsection (C), the juvenile [minor] is on the sidewalk
31 in front of the juvenile's [minor's] residence or on the sidewalk of either adjacent

neighbor who is not communicating an objection to the presence of the juvenile [~~minor~~] to a police officer; or

(7) the juvenile [~~minor~~] is exercising First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly.

(B) It is a defense to a violation of Subsection 9-3-2 (E) [~~(F)~~] (*Offenses*) that:

(1) the school that the juvenile [~~minor~~] attends is not in session;

(2) the juvenile [~~minor~~] is a high school graduate or has an equivalent certification; or

(3) the juvenile [~~minor~~] is on an excused absence from the juvenile's [~~minor's~~] school.

(C) Subsections (A)(3) and (A)(6) are not defenses to a violation of Subsection 9-3-2 (E) [~~(F)~~] (*Offenses*).

(D) It is a defense to prosecution under Subsection 9-3-2 (G) [~~(F)~~] (*Offenses*) that the owner, operator, or employee of an establishment promptly notified the Police Department that a juvenile [~~minor~~] was present on the premises of the establishment during curfew hours and refused to leave after being requested to do so by the owner, operator, or employee.

§ 9-3-4 ENFORCEMENT PROCEDURE.

The Police Department shall adopt enforcement procedures in compliance with Chapter 52 (*Proceedings Before and Including Referral to Juvenile Court*) of the Texas Family Code.

§ 9-3-5 PENALTY.

(A) A juvenile [~~minor~~] who violates this chapter commits a Class C misdemeanor.

(B) A person not a juvenile [~~minor~~] who violates this chapter commits a Class C misdemeanor, punishable by a fine of not less than \$50.

§ 9-3-6 EXPIRATION.

This chapter shall expire if it is not reviewed and readopted every three years as prescribed by Chapter 370 (*Miscellaneous Provisions Relating to Municipal and County Health and Public Safety*) of the Texas Local Government Code.

PART 2. Austin City Code Chapter 9-3, (*Non-Emergency Curfews*), as amended, is readopted and continued in effect.

PART 3. This ordinance takes effect on June 28, 2008.

PASSED AND APPROVED

_____, 2008 § _____
 § _____

Will Wynn
Mayor

APPROVED: _____

David Allan Smith
City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk