



## MEMORANDUM

**To:** Rick Menchaca, City Manager  
**From:** Howard E. Williams, Chief of Police  
**Date:** March 12, 2009  
**Subject:** Discussion Item Regarding Reinstating Juvenile Curfew

As you are aware, the Local Government Code requires cities with a juvenile curfew ordinance to reconsider and reapprove those ordinances every three years. Failure to do so causes the ordinance to expire.

The Code of the City of San Marcos contains a juvenile curfew ordinance, but that ordinance was last reapproved in May 2004. Consequently, the ordinance has expired. We need to bring forth for the Council's consideration a discussion item on whether the reinstate the ordinance.

The ordinance was originally passed primarily to deal with a problem that no longer exists. Juveniles congregated downtown on the square to patronize arcades that stayed open very late. The juveniles, who often remained in the area after the arcades closed, were involved in many fights, thefts and incidents of vandalism. That problem no longer exists. However, the problem might resurrect with 2:00 a.m. bar closing.

We were not aware of the ordinance having expired until recently. We have ordered our officers not to write any more citations for violation of curfew, and we notified the City Attorney's Office. We did write some citations in the past two years, but we averaged only about one citation every five days for violation of the ordinance. The number of citations written does not seem to have a significant effect on the number of juvenile detentions for other violations.

<b>Year</b>	<b>Daytime Curfew Violations</b>	<b>Juvenile Curfew Violations</b>	<b>Juvenile Detentions</b>
2007	28	57	221
2008	8	60	186

## TEXAS LOCAL GOVERNMENT CODE

### Sec. 370.002. REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE.

(a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

- (1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
- (2) conduct public hearings on the need to continue the ordinance or order; and
- (3) abolish, continue, or modify the ordinance or order.

(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

## CODE OF THE CITY OF SAN MARCOS

### ARTICLE 3. CURFEW\*

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\*Editor's note: Ord. No. 2004-21, adopted May 10, 2004, readopts and continues Article 3, Curfew, of Chapter 54, Miscellaneous Offenses of the City Code.

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DIVISION 1. GENERALLY  
Secs. 54.051--54.075. Reserved.

### DIVISION 2. MINORS

Sec. 54.076. Definitions.

In this division:

*Chief of police* means the city chief of police.

*Curfew hours* means:

(1) Eleven p.m. until 12:00 midnight on any Sunday, Monday, Tuesday, Wednesday or Thursday;

(2) Midnight until 6:00 a.m. on any day; and

(3) Nine a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday.

*Direct route* means the shortest path of travel through a public place to reach a final destination without any detour or stop along the way.

*Emergency* means 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.

*Establishment* means any privately owned place of business operated for a profit to which the public is invited, including but not limited to retail stores, restaurants and places of amusement or entertainment.

*Juvenile processing office* means a place designated by the juvenile court judge to which a minor in custody for a violation of this division will be taken to await pickup by a parent or juvenile authorities.

*Minor* means any person under 17 years of age.

*Operator* means any person who owns, operates, manages or is in control of any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

*Parent* means a person who is:

- (1) A natural or adoptive parent of a minor;
- (2) A court-appointed guardian of a minor; or
- (3) At least 21 years of age and authorized by a parent or court-appointed guardian to have the care and custody of a minor.

*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, alleys, sidewalks, playgrounds, parks, plazas, public buildings and establishments. Public place does not include schools, however, during the curfew hours described in this section.

*Remain* means to:

- (1) Linger or stay unnecessarily; or
- (2) Fail to leave premises when requested to do so by a peace officer or the owner, operator or other person in control of the premises.

(Ord. No. 1994-68, § 1 (16-80), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01)

Cross references: Definitions and rules of construction generally, §§ 1.002, 1.003.

Sec. 54.077. Reserved.

Sec. 54.078. Curfew offenses.

- (a) A minor commits an offense if the minor remains in any public place within the city during curfew hours.
- (b) A parent of a minor commits an offense if the parent knowingly permits or by insufficient control allows the minor to remain in any public place within the city during curfew hours.
- (c) An operator commits an offense if the operator's establishment has normal business hours during the curfew hours described in subsections (1) and (2) of the definition of curfew hours in section 54.076 and the operator fails to post a sign at each entrance to the establishment containing the following or similar language:

NOTICE OF CURFEW HOURS

San Marcos City Ordinance

Persons under 17 years of age are not to remain in this business during the following hours:

1. Between 11:00 p.m. and 12:00 midnight on any Sunday, Monday, Tuesday, Wednesday or Thursday.
2. Between 12:00 midnight and 6:00 a.m. of any day.

Violations may be reported to the San Marcos Police Department.

(Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01)

Sec. 54.079. Defenses.

- (a) It is a defense to prosecution under section 54.078 that the minor was:
- (1) Accompanied by the minor's parent;
  - (2) On an errand that was reasonably necessary, in that an adult was unable or unavailable to perform the errand; the errand could not be postponed until after curfew hours; the errand was at the direction of the minor's parent; and the minor was using a direct route;
  - (3) In a motor vehicle involved in interstate travel;
  - (4) Engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;
  - (5) Involved in an emergency;
  - (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to a peace officer about the minor's presence;
  - (7) Attending an official school or religious activity or returning home by a direct route from an official school or religious activity;
  - (8) Exercising First Amendment rights protected by the United States Constitution, the free exercise of religion, freedom of speech and the right of assembly;
  - (9) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code, Ch. 31; or
  - (10) Carrying a valid college identification card identifying the minor as a college student.
- (b) It is a defense to prosecution under section 54.078 with respect to the curfew hours described in subsection (3) of the definition of curfew hours in section 54.076 that:
- (1) The minor was a high school graduate or has equivalent certification;
  - (2) The minor was on an excused absence from his place of schooling; or
  - (3) The minor's school was not in session.
- (Ord. No. 1994-68, § 1 (16-82), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01)

Sec. 54.080. Enforcement.

- (a) A peace officer, upon finding a minor in violation of subsection 54.078(a) will:
- (1) Ascertain the name and address of the minor;
  - (2) Have the authority to issue a citation to the minor; and
  - (3) Order the minor to go promptly home by a direct route.
- (b) A peace officer, upon finding a minor in violation of subsection 54.078(a), may take the minor into custody and deliver the minor to a juvenile processing office if reasonable grounds exist to believe the minor has engaged in delinquent conduct or conduct indicating a need for supervision as described in V.T.C.A., Family Code, § 51.03.
- (c) The parents of a minor may be cited for violation of subsection 54.078(b) upon the minor receiving a second citation for violation of subsection 54.078(a).
- (Ord. No. 1994-68, § 1 (16-83), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01)

Sec. 54.081. Penalty; referral to juvenile authorities.

Any minor who violates subsection 54.078(a) is subject to the penalty provided in section 1.015 and is also subject to referral to juvenile authorities under V.T.C.A., Family Code, Tit. 3.

(Ord. No. 1994-68, § 1 (16-84), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01)