

ORDINANCE NO. 99-18

AN ORDINANCE TO ENACT A CURFEW FOR THE CITY OF GARDENDALE, ALABAMA, AND TO PROVIDE FOR THE ENFORCEMENT AND ESTABLISH PENALTIES FOR VIOLATIONS OF THE CURFEW HOURS

BE IT ORDAINED by the City Council of the City of Gardendale, Alabama, while in regular session on the 15th day of November, 1999, at 6:00 P.M. as follows:

SECTION 1. DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not consistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular include the plural. Words denoting masculine gender shall include the feminine gender. The word **!shall!** is always mandatory and not directory. The word **!may!** is always directory and not mandatory.

- (1) **!Custodian!** includes a parent as defined herein or an adult to whom the care or supervision of a minor has been temporarily delegated or assigned by the minor's custodial parent(s) or legal guardian.
- (2) **!Emergency!** means an unforeseen combination of circumstances or the resulting state that demands for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (3) **!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. The term also includes the employees of an establishment.
- (4) **!Minor!** means any person under eighteen (18) years of age, who has not been emancipated under Alabama law.
- (5) **!Operator!** means any individual, firm, association, partnership, or corporation owning, operating, managing, or conducting any establishment. The term includes the members and partners of an association or partnership, the officers of a corporation, and its employees.
- (6) **!Parent!** means a natural person having legal custody of a minor (a) as a natural or an adoptive parent, (b) as a legal guardian, (c) as a person who stands in loco parentis, or (d) as a person to whom legal custody has been given by court order.
- (7) **!Public place!** means any public place to which the public or a substantial group of the public has access and includes, but is not limited to, roads, streets, highways, sidewalks, alleys, parks, playgrounds, public buildings, common areas of schools, apartment houses, office buildings, transport facilities, shops, and appurtenant open spaces or vacant lots.
- (8) **!Reasonable errand!** means the activity of a minor in a public place or establishment pursuant to a parent's or custodian's direction in order to accomplish an emergency mission or a legitimate function in a normal and customary fashion considering the time of day, or going to or returning home from such an activity without any detour or stop.
- (9) **!Remain!** means to linger or stay or to fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- (10) **!Serious bodily injury!** means bodily injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or

impairment of the function of any bodily member or organ.

- (12) **!Violator! shall be the minor child together with the parent.**
- (13) **!Years of age! continues from one birthday to, but not including the day of, the next birthday.**

SECTION 2. OFFENSES

- (1) **It shall be unlawful for a minor to remain in a public place or in or upon the premises of an establishment:**
 - a. **during the scheduled school hours of the Jefferson County Board of Education;**
 - b. **from 10:00 P.M. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 A.M. of the following day;**
 - c. **from 12:01 A.M. until 6:00 A.M. on any Saturday, Sunday, or official City holiday(s) as declared by the Mayor.**
- (2) **It shall be unlawful for a parent or custodian to permit or by insufficient control to allow a minor under the parent!s or custodian!s care or custody to violate this ordinance.**
- (3) **It shall be unlawful for an operator or establishment or an operator!s or establishment!s agents or employees to knowingly permit a minor to remain in or upon the premises over which the operator has supervision, custody, or control, in violation of this ordinance, and such operator or establishment shall be subject to the penalties described in Section 4 of this ordinance.**
- (4) **An operator or establishment within the Gardendale city limits or police jurisdiction of Gardendale shall conspicuously post or maintain on the business premises a current copy of the Gardendale curfew hours.**
- (5) **The provisions of this ordinance shall apply to minors who are suspended or expelled from school.**
- (6) **A separate offense shall be deemed committed for each violation of this ordinance.**

SECTION 3. DEFENSES

- (1) **It shall be a defense to a prosecution for violation of this ordinance if a minor is:**
 - a. **accompanied by his parent or custodian;**
 - b. **on a reasonable errand as directed by his parent or custodian;**
 - c. **in a motor vehicle involved in travel to or from one state to another state**
 - d. **engaged in a lawful employment activity pursuant to his parent!s or custodian!s direction, or going to or returning home from such employment activity by a direct route without any unnecessary detour or stop and within one (1) hour of the termination of the employment activity;**
 - e. **involved in an emergency;**
 - f. **on the sidewalk, right-of-way, or property where he resides, or on private property on either side of or across the street from the place where the minor resides and the adult owner or resident of that property has given permission for him to be there;**
 - g. **Attending and going to and from school, an official school, religious, or other recreational activity supervised by adults or sponsored by the City of Gardendale or another public body, a**

civic organization, or other similar entity that takes responsibility for him, or going to or returning home from such an activity, by a direct route without any unnecessary detour or stop and within one (1) hour of the termination of the activity sponsored by the City, other public body, or civic organization or similar entity;

- h. Exercising any First Amendment rights protected by the United States or Alabama Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;**
 - i. Emancipated, except those legally enrolled in school;**
 - j. Attending a bona fide work-study program, or going to or returning home from such a program by a direct route without any unnecessary detour or stop and within one (1) hour of the beginning or termination of the work-study program.**
- (2) It shall be a defense to a prosecution for a violation of this ordinance if an operator or an establishment's agents or employees promptly notified a law enforcement agency that a minor was present in or upon the premises of an establishment in violation of this ordinance and refused to leave.**

SECTION 4. PENALTIES

- (1) When a police officer or other law enforcement officer observes or has probable cause to believe that a violation of this ordinance has occurred, the parent, custodian, operator, and/or establishment may be issued a warning citation for the first offense.**
- (2) Upon a first conviction of a violation of this ordinance, the parent, custodian, operator, and/or establishment shall be punished by a fine of Twenty-Five Dollars (\$25.00).**
- (3) Upon a second conviction of a violation of this ordinance within any twelve (12) - month period, the parent, custodian, operator, and/or establishment shall be punished by a fine of Fifty Dollars (\$50.00).**
- (4) Upon receiving a citation for a third or subsequent violation of this ordinance within any twelve (12) - month period, a court appearance shall be required and the parent, custodian, operator, and/or establishment shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the city jail at hard labor upon the streets and public works for a period not exceeding six (6) months, or by both such fine and imprisonment.**
- (5) The Court may suspend or probate the sentence upon a conviction. As a condition of such suspension or probation, the Court may order or require the performance of community service as part of or in lieu of any penalty that may be imposed under this section. A violator may be required by the Court to obtain counseling or attend classes or programs to improve parenting and child-raising skills.**

SECTION 5. NIGHTTIME VIOLATIONS

If a police officer or other law enforcement officer observes or has probable cause to believe that a minor is violating any provision of this ordinance during the nighttime curfew hours as herein established, the parent or custodian shall be issued a citation and the officer shall:

- (a) ascertain the identification of the minor's parent(s), make reasonable efforts to notify the minor's parent(s) that the minor is in violation of this ordinance, and make reasonable efforts to take the minor home to his parent(s) who reside within the City limits or police jurisdiction of the City of Gardendale;**
- (b) in the event that custody of the minor cannot be delivered to the minor's parent(s) due to the absence of the parent(s), or abuse is alleged or is reasonably suspected, or said parent(s) reside outside the jurisdiction of the Municipal Court, or the parent(s) refuse to**

take custody of said minor, the officer shall transport said minor to the Jefferson County Family Court in accordance with Alabama law;

- (c) if a minor remains in law enforcement custody more than two (2) hours and reasonable efforts have been made to notify his parent(s) of his detention, the minor shall be delivered to the Jefferson County Family Court in accordance with Alabama law;
- (d) if the officer observes or has probable cause to believe that the minor has also committed a criminal offense, the officer shall take the minor into law enforcement custody in accordance with Alabama law.

SECTION 6. DAYTIME VIOLATIONS

If a police officer or other law enforcement officer observes or has probable cause to believe that a minor is violating any provision of this ordinance during the daytime curfew hours as herein established, the parent or custodian shall be issued a citation and the officer shall:

- (a) ascertain the identification of the minor's parent(s) and transport the minor to the appropriate school to determine if the minor is lawfully enrolled in the Jefferson County school system. If said minor is lawfully enrolled, the officer shall deliver custody of said minor to the appropriate school official. If the minor is lawfully enrolled in a school system outside the City limits of Gardendale, the officer shall make reasonable efforts to deliver the minor to the appropriate school authorities;
- (b) if the said minor is not lawfully enrolled in school, or the school system is outside the City limits of Gardendale and the minor cannot reasonably be transported to the school authorities, the officer shall transport said minor to the Jefferson County Family Court;
- (c) if the officer observes or has probable cause to believe that the minor has also committed a criminal offense, the officer shall take the minor into law enforcement custody in accordance with Alabama law.

SECTION 7. ENFORCEMENT AGAINST ADULTS

If a police officer or other law enforcement officer observes or has probable cause to believe an adult is violating any provision of this ordinance, the officer shall issue a written citation. If the minor's parent(s) is not available to be cited, the officer shall swear to a complaint. The magistrate, upon determining cause, shall issue a summons. A non-custodial arrest shall be attempted. However, if the adult violator refuses to sign the citation, a custodial arrest shall be effected.

SECTION 8. SEVERABILITY OF PARTS OF ORDINANCE

The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgement or decree of any court of competent jurisdiction, the unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the Council without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

SECTION 9. EFFECTIVE DATE

This ordinance shall become effective December 15, 1999, or its otherwise becoming a law.

SECTION 10. COUNCIL REVIEW

Ninety (90) days after the enactment of this ordinance, the Council shall review the effectiveness of, and the continuing need for, this ordinance at the next regular council meeting following such ninety (90) days.

SECTION 11. INCLUSION IN THE CODE OF ORDINANCES

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Gardendale, Alabama, as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

ADOPTED and APPROVED on this the 15th day of November, 1999.