

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Police Department

AGENDA DATE: August 1, 2023

PUBLIC HEARING DATE: August 15, 2023

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Interim Assistant Chief Julie Inciriaga, (915) 212-4308

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.1 – Maintain designation as one of the Nation's top safest cities

SUBJECT:

H.B. 1819 of the 88th Texas Legislative session which prohibits a political subdivision from adopting or enforcing an ordinance that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age, except for purposes of emergency management. The City of El Paso wishes to amend Title 10, Chapter 10.20 to delete the City's Juvenile Curfew Ordinance, located in sections 10.20.010 through 10.20.054.

BACKGROUND / DISCUSSION:

On or about August 1991, City Council adopted a "Curfew Ordinance." The Local Government Code 370.002 mandates that, every third year, City Council review the ordinance's effects on the community and on the problems the ordinance was intended to remedy; conducts public hearing on the need to continue the ordinance; and abolishes, continues, or modifies the ordinance. On August 22, 2017 City Council reviewed and accepted the continuance of the ordinance. On August 18, 2020, City Council reviewed and accepted the continuance of the ordinance.

PRIOR COUNCIL ACTION:

August 18, 2020


AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:


Peter Pachas #1515

Peter Pachas, Interim Chief, Police Department

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.20 (OFFENSES BY OR AGAINST MINORS) OF THE EL PASO CITY CODE TO REMOVE CURFEW ORDINANCE PROVISIONS LOCATED IN SECTIONS 10.20.010 THROUGH 10.20.054.

WHEREAS, the City Council originally adopted a juvenile curfew ordinance on or about August 31, 1991 (“Curfew Ordinance”); and

WHEREAS, the City Council most recently updated the Curfew Ordinance on August 18, 2020; and

WHEREAS, the Curfew Ordinance presently enforced is found in Title 10, Sections 10.20.010 through 10.20.054 of the El Paso City Code; and

WHEREAS, H.B. 1819 of the 88th Texas Legislative session prohibits a political subdivision from adopting or enforcing an ordinance that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age, except for purposes of emergency management; and

WHEREAS, the City of El Paso wishes to amend Title 10, Chapter 10.20 to match and reflect changes to various state statutes, including the Texas Family Code and Local Government Code, made by H.B. 1819 of the 88th Texas Legislative session, to go into effect on September 1, 2023.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.010 is hereby amended in its entirety as follows:

10.20.010 Reserved.

SECTION 2. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.020 is hereby amended in its entirety as follows:

10.20.020 Reserved.

SECTION 3. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.030 is hereby amended in its entirety as follows:

10.20.030 Reserved.

SECTION 4. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.040 is hereby amended in its entirety as follows:

10.20.040 Reserved.

SECTION 5. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.050 is hereby amended in its entirety as follows:

10.20.050 Reserved.

SECTION 6. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.052 is hereby amended in its entirety as follows:

10.20.052 Reserved.

SECTION 7. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.054 is hereby amended in its entirety as follows:

10.20.054 Reserved.

SECTION 8. Except as herein amended, Title 10 of the El Paso City Code shall remain in full force and effect.

SECTION 9. Title 10 Chapter 20 amendments shall take effect on August 15, 2023.

(Signatures begin on following page)

ADOPTED this ____ day of _____, 2023.

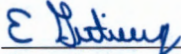
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

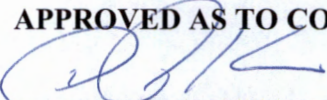
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:



Peter Pacillas, Interim Chief
El Paso Police Department

ORDINANCE NO. _____

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WHEREAS, the City Council originally adopted a juvenile curfew ordinance on or about August 31, 1991 ("Curfew Ordinance"); and

WHEREAS, the City Council most recently updated the Curfew Ordinance on August 18, 2020; and

WHEREAS, the Curfew Ordinance presently enforced is found in Title 10, Sections 10.20.010 through 10.20.054 of the El Paso City Code; and

WHEREAS, H.B. 1819 of the 88th Texas Legislative session prohibits a political subdivision from adopting or enforcing an ordinance that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age, except for purposes of emergency management; and

WHEREAS, the City of El Paso wishes to amend Title 10, Chapter 10.20 to match and reflect changes to various state statutes, including the Texas Family Code and Local Government Code, made by H.B. 1819 of the 88th-Texas Legislative session, to go into effect on September 1, 2023.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.010 is hereby amended in its entirety as follows:

10.20.010 Reserved.

~~10.20.010 Curfew Definitions. RESERVED~~

~~**In this chapter:**~~

~~**"Chief of police" means the chief of police of the city or a designated representative.**~~

~~**"Curfew hours" means the period beginning at eleven p.m. and ending at six a.m. of the following day. The time shall be determined by the prevailing standard of time, whether Mountain Standard Time or Mountain Daylight Savings Time, generally observed at that hour by the public in El Paso. The time then observed in the El Paso Police Department's communications divisions shall be prima facie evidence of the true and correct time.**~~

~~**"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.**~~

HQ#:23-1005-Police Dept. | TRAN469157 | Amendment to Chapter 10.20 (Offenses by or Against Minors) (red-line) | EG

"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 any place of amusement or entertainment.

"Minor" means a person who is under the age of seventeen years of age.

"Parent" means a person who is:

1. A natural or adoptive parent or step-parent of the minor;
2. A court-appointed guardian of the minor or the public or private agency with whom the minor has been placed by a court; or
3. A custodian, at least eighteen years of age, and with whom the minor resides.

"Public place" means any street, alley, highway, sidewalk, driveway, yard, playground, park, plaza, building or other place used by or open to the public. The term "street" includes the legal right-of-way, including but not limited to the traffic lanes, curb, sidewalk, whether paved or unpaved, parkway and any grass plots or other grounds found within the legal right-of-way of a street.

"Remain" means to:

1. Linger, stop, or stay for any length of time, or to travel or move upon a street; or
2. 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.

SECTION 2. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.020 is hereby amended in its entirety as follows:

10.20.020 Curfew—Offenses, _____ ~~Reserved.ESERVED~~

A. _____ A minor commits an offense if he remains in any public place or on the premises of any establishment within the city limits during curfew hours.

B. _____ A parent of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place within the city limits during curfew hours.

C. _____ A parent of a minor commits an offense if he knowingly fails to respond within two hours of receipt of any notification by a law enforcement officer to take custody of a minor taken into custody for violation of this section, unless reasonably hindered from doing so.

SECTION 3. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.030 is hereby amended in its entirety as follows:

10.20.030 Curfew—Affirmative defenses: ~~Reserved. **ESERVED**~~

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A. ~~It is a defense to prosecution under Section 10.20.020 that the minor was:~~

~~1. Accompanied by the minor's parent;~~

~~2. On an errand at the direction of the minor's parent, was using a direct route, and was carrying a written communication signed by the parent stating a brief description of the errand and that the named minor has consent to perform such errand;~~

~~3. In a motor vehicle engaged in interstate travel, beginning, ending or passing through El Paso;~~

~~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 driveway or yard of the minor's residence or on the sidewalk abutting the minor's residence;~~

~~7. On the sidewalk abutting the residence of a next-door neighbor if the neighbor did not complain to the police officer about the minor's presence;~~

~~8. Attending an official school, civic or religious activity or returning home by a direct route from an official school, civic or religious activity;~~

~~9. Attending or traveling directly to or from an activity involving the exercise of First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and 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; or~~

~~11. Accompanied by a person at least twenty-one years of age, and the minor was carrying a written communication signed by the parent stating the name of the person who is at least twenty-one years of age and accompanying the minor and that the named minor has consent to be in the company of that named person.~~

~~B. Each of the foregoing defenses, and their several limitations, are severable, as hereinafter provided but reemphasized here.~~

~~10.20.040 Curfew—Enforcement.~~

~~SECTION 4. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.040 is hereby amended in its entirety as follows:~~

10.20.040 ~~Reserved. **ESERVED**~~

~~A. A police officer, upon finding a minor in violation of Section 10.20.020 shall take the necessary steps to determine whether the minor is remaining in a public place in the city limits in violation of Section 10.20.020 and whether any defenses under Section 10.20.030 may apply to the actions or activities of the minor. If the officer has probable cause to believe that the minor is in violation of Section 10.20.020, the officer may take appropriate~~

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~~enforcement action against the minor in accordance with the applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this chapter.~~

~~B. If a minor is taken into custody under this section, the officer shall, without unnecessary delay:~~

- ~~1. Release the minor to the minor's parent, guardian or custodian;~~
- ~~2. Take the minor before a municipal court to answer the charge; or~~
- ~~3. Take the minor to a place designated by the chief of police as a juvenile curfew processing office.~~

~~C. When a minor is issued a citation or taken into custody for a violation of Section 10.20.020, the police department may, by certified mail return receipt requested, notify a parent of the minor that the minor has violated Section 10.20.020 and include a warning that any subsequent violation may result in prosecution of the minor and the parent under this section.~~

SECTION 5. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.050 is hereby amended in its entirety as follows:

~~10.20.050 Curfew Violation Penalty: 10.20.050 Reserved.~~

SECTION 6. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.052 is hereby amended in its entirety as follows:

10.20.052 **RESERVED.**

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~~A. Any minor who violates Section 10.20.020 of this code shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 and may be subject to appropriate action by a juvenile court in accordance with applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this chapter.~~

~~B. A parent of a minor who violates any provision of Section 10.20.020 shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 of this code.~~

~~10.20.052 Curfew Construction: Reserved.~~

SECTION 7. That Title 10 (Public Peace, Morals and Welfare), Chapter 10.20 (Offenses by or Against Minors), Section 10.20.054 is hereby amended in its entirety as follows:

RESERVED

~~A. Severability is intended throughout and within the provisions of the curfew ordinance. If any provision, including inter alia any exception, defense, subsection, part, phrase, term or word, or the application thereof to any person or circumstance is held invalid or~~

~~unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance codified in this chapter, and such remaining portions shall remain in full force and effect.~~

~~B. — It is intended that the curfew ordinance be held inapplicable in any cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. The city council does not intend to violate the Constitution of the state or the Constitution of the United States of America, and does not intend an interpretation of the ordinance or an application thereof which is absurd, impossible or unreasonable.~~

~~10.20.054 Curfew—Review of ordinance. **10.20.054 Reserved. ESERVED**~~

~~The city council finds that the review of this chapter done by the city immediately prior to and in conjunction with the passage of the readoption and amendments made herein satisfies the requirements set forth in Section 370.002, Texas Local Govt Code, for certain required reviews of curfew ordinances by home rule municipalities. The dates for the statutorily required ordinance review every third year thereafter shall be based upon this readoption.~~

SECTION 8. Except as herein amended, Title 10 of the El Paso City Code shall remain in full force and effect.

SECTION 9. ~~These changes go into effect August 15, 2023.~~

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(Signatures begin on following page)

ADOPTED this ____ day of _____, 2023.

CITY OF EL PASO:

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Eric Gutierrez
Assistant City Attorney

APPROVED AS TO CONTENT:

Peter Pacillas, Interim Chief
El Paso Police Department

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