



## **ORDINANCE NO. 3388**

**AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, CONTINUING AND READOPTING THE CURFEW FOR MINORS, ARTICLE II OF CHAPTER 46 OF THE CODE OF ORDINANCES OF THE CITY OF FARMERS BRANCH, TEXAS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council for the City of Farmers Branch, Texas (“City Council”) adopted Ordinance No. 3102 on October 4, 2010, pertaining to a curfew for juveniles or minors under seventeen (17) years of age, codified at Chapter 46, Article II, Curfew for Minors, of the Code of Ordinances of the City of Farmers Branch, Texas, and adopted Ordinance No. 3244 on October 2, 2013 continuing and re-adopting the curfew for juveniles or minors under seventeen (17) years of age, codified at Chapter 46, Article II, Curfew for Minors, of the Code of Ordinances of the City of Farmers Branch, Texas ( the “Ordinance”); and

**WHEREAS**, Section 370.002 of the Texas Local Government Code requires the City Council, before the third anniversary of the date of adoption of the Ordinance, and every third year thereafter, to review said Ordinance’s effects on the community and on problems the Ordinance was intended to remedy, to conduct a public hearing on the need to continue the Ordinance, and to abolish, continue, or modify the Ordinance; and

**WHEREAS**, the Chief of Police briefed the City Council regarding the Ordinance’s effects on the community and on problems the Ordinance was intended to remedy; and

**WHEREAS**, the City Council has conducted a public hearing on the need to continue the Ordinance; and

**WHEREAS**, based upon the Ordinance’s effects on the community and on the problems the Ordinance was intended to remedy, and after conducting a public hearing, the City Council finds that it is in the best interest, health, safety and welfare of the City to continue the Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:**

**SECTION 1:** That, in accordance with Section 370.002 of the Texas Local Government Code, the City Council has reviewed Article II of Chapter 46 of the Code of Ordinances, and its effects on the community and on the problems the Ordinance was intended to remedy; and after conducting public hearings on the need to continue the Ordinance, finds that it is in the best interest of the health, safety and welfare of the City of Farmers Branch, Texas, to continue the Juvenile Curfew Ordinance, Article II of Chapter 46 of the Code of Ordinances.

**SECTION 2:** That regulations governing Curfew for Minors, Article II, Chapter 46 of the Code of Ordinances of the City of Farmers Branch, Texas be, and the same is hereby re-adopted to read as follows:

**“ARTICLE II- CURFEW FOR MINORS**

**Sec. 46-31. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Curfew hours* means:
  - (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following date; and
  - (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
- (b) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, 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.
- (c) *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.
- (d) *Guardian* means:
  - (1) A person who under court order is the guardian of the person of a minor; or
  - (2) A public or private agency with whom a minor has been placed by a court.
- (e) *Minor* means any person under seventeen (17) years of age.
- (f) *Operator* means any individual, firm, association, partnership, or corporation operating, managing or conducting any establishment. The term includes the members or partner of an association or partnership and the officers of a corporation.
- (g) *Parent* means a person who is:
  - (1) A natural parent, adoptive parent, or step-parent of another person.
  - (2) At least 18 years of age and with written authorization from a parent or guardian to have the care and custody of a minor.

- (h) *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, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (i) *Remain* means to:
  - (1) Linger or play; 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.
- (j) *Serious bodily injury* means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protected loss or impairment of the function of any bodily member or organ.

**Sec. 46-32. - Reserved.**

**Sec. 46-33. - Penalties for violation of Article.**

- (a) A person who violates a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense upon conviction is punishable as provided in Section 1-14.
- (b) When required by Texas Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection 46-34(a) and shall refer the minor to juvenile court.

**Sec. 46-34. - Commission of offenses.**

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control, allows the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

**Sec. 46-35. - Defenses to prosecution.**

It is a defense to prosecution that the minor was:

- (1) Accompanied by the minor's parent or guardian;

- (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop provided they possess a signed note from their parent or guardian;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity without any detour or stop;
- (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 the police department about the minor's presence;
- (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Farmers Branch, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from without any detour or stop, an official school, religious, or another recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the minor;
- (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; or
- (9) Married, or had been married, or had disabilities of minority removed in accordance with Texas Family Code Chapter 31, as amended.

**Sec. 46-36. - Parental responsibility.**

- (a) *Contributing to the neglect or delinquency of minors.* A parent, guardian or other person having the care, custody or control of a minor commits an offense if, by any act or omission, or by lack of supervision and control over such minor, he encourages, contributes toward, causes or tends to cause the minor to become neglected or delinquent.
- (b) *Defenses.* It is a defense to prosecution under Subsection (a) of this Section that the minor is married, or had been married, or had disabilities of minority removed in accordance with Texas Family Chapter 31, as amended.
- (c) *Penalty for violation of Section.* A person who violates a provision of this Section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense is punishable by a fine not to exceed \$500.00.

**Sec. 46-37. - Enforcement.**

- (a) Before taking any enforcement action under this Section, a peace officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and any other circumstances, no defense in Section 46-35 is present.
- (b) A peace officer taking into custody a person younger than seventeen (17) years of age for violation of Section 46-34 shall, without unnecessary delay:
  - (1) Release the minor to the minor's parent, guardian, or custodian;
  - (2) Take the minor before a justice or municipal court to answer the charge; or
  - (3) Take the minor to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the minor.
- (c) A "juvenile curfew processing office" must comply with Texas Code of Criminal Procedures, Article 45.059, as amended."

**SECTION 3.** That all provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Ordinances of the City of Farmers Branch, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 5.** That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part thereof decided to be unconstitutional, illegal, or invalid.

**SECTION 6.** That any person, firm, or corporation violating any of the provision or terms of this Ordinance, upon conviction in Municipal Court, shall be punishable by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense.

**SECTION 7.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH,  
TEXAS, ON THIS THE 16<sup>th</sup> DAY OF AUGUST, 2016.**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Amy Piukana, City Secretary

\_\_\_\_\_  
Bob Phelps, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney  
(PGS: 7-25-16:TM 77987)