

ORDINANCE NO. _____
AN ORDINANCE AMENDING TITLE 12 OF THE GREENVILLE
CITY CODE ESTABLISHING A YOUTH PROTECTION ORDINANCE
IMPOSING CERTAIN RESTRICTIONS UPON JUVENILES
DURING SPECIFIED HOURS.

WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity and crime by persons under the age of 16 years in the City of Greenville; and

WHEREAS, persons under the age of 16 years are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

WHEREAS, the offensive activities of juveniles are not easily controlled by existing laws and ordinances; and

WHEREAS, a curfew for those under the age of 16 years will be in the interest of the public health, safety, and general welfare and will help attain the forgoing objectives and to diminish the undesirable impact of such conduct on the citizens of Greenville and will promote the public health, safety and welfare; and

WHEREAS, North Carolina General Statute §160A-198 authorizes the City of Greenville by an appropriate ordinance to impose a curfew on persons under the age of 16 years.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA:

Section 1: That Title 12 of the Code of Ordinances, City of Greenville, North Carolina is hereby amended by the addition of Chapter 7, to read as follows:

CHAPTER 7. YOUTH PROTECTION.

Sec. 12-7-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings:

CURFEW HOURS means:

- (a) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- (b) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

DIRECT ROUTE means the shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

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, natural disaster, or 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, entertainment, or eating place.

GUARDIAN means:

- (a) a person who, under court order, is the guardian of the person of a minor, or
- (b) a public or private agency with whom a minor has been placed by a court.

JUVENILE OR MINOR means any person under the age of 16 years.

OPERATOR means any individual, firm, association, partnership, or corporation operating, managing or conducting any establishment, including the members or partners of an association or partnership and the officers of a corporation.

PARENT means:

- (a) a natural parent, adoptive parent, or step-parent of another person, or
- (b) a person 18 years of age or older who has written authorization by a parent, guardian or the courts to have the care and custody of a minor.

PUBLIC PLACE means any place to which the public has access, including but not limited to, streets, highways, alleys, rights-of-way, schools and school grounds, hospitals, apartment houses, office buildings, transport facilities, shops, theaters, bowling alleys, arcades, playgrounds, parks and eating places, the common areas of any of the above-mentioned locations, and other establishments open to the public for the conduct of business.

REMAIN means to linger or stay or to fail to leave the premises when requested to do so by a police officer or the operator of the premises.

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.

Sec. 12-7-2. Curfew for Juveniles.

It shall be unlawful for a juvenile to be present in or remain in any public place within the city or on the premises of any establishment within the city during curfew hours.

Sec. 12-7-3. Exceptions

The following shall constitute valid exceptions to the operation of the provisions of this chapter:

- (a) When a juvenile is accompanied by a parent or guardian of such juvenile.
- (b) When a juvenile is accompanied by an adult 18 years of age or older who has written authorization by a parent or guardian of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- (c) When a juvenile is 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.
- (d) When a juvenile is on the property where the juvenile resides or on the sidewalk immediately adjacent to the property where the juvenile resides.
- (e) When a juvenile is returning home by direct route (without any unnecessary detour or stop) from and within one (1) hour of the termination of an activity conducted or sponsored by a public or private school, such as a sporting event, play, concert, or dance.
- (f) When the juvenile is engaged in a lawful employment activity or using a direct route to and from a place of employment.
- (g) When the juvenile is, with parental consent, engaged in normal interstate travel through the city or originating or terminating in the city.
- (h) When the juvenile is married or emancipated.
- (i) When the juvenile is reacting or responding to an emergency.
- (j) When authorized, by special permit from the Chief of Police carried on the person of the juvenile thus authorized, as hereinafter provided. When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this chapter, then recourse may be had to the Chief of Police, either for a regulation as provided in subsection (k) or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile and by a parent or guardian of the juvenile, if feasible, stating (1) the name, age and address

of the juvenile; (2) the name, address, and telephone number of a parent or guardian thereof; (3) the height, weight, sex, color of eyes and hair and other physical characteristics of the juvenile; (4) the necessity that requires the juvenile to remain upon a public place during the curfew hours otherwise applicable; (5) the public place; and (6) the beginning and ending of the period of time involved by date and hour, the Chief of Police may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the Chief of Police may reasonably be necessary and consistent with the purposes of this chapter. In an emergency this may be handled by telephone or other effective communication, with a corresponding record being made contemporaneously to the Chief of Police or to the person designated by the Chief of Police to receive such record.

(k) When authorized, by regulation issued by the Chief of Police in other similar cases of reasonable necessity, similarly handled but adapted to reasonably necessary night time activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved not to extend more than one (1) hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this chapter.

Sec. 12-7-4. Parental Responsibility.

(a). It shall be unlawful for a parent or guardian having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any public place within the city or on the premises of any establishment within the city under circumstances not constituting an exception to, or otherwise beyond the scope of, this chapter. The term "knowingly" includes knowledge that a parent or guardian should reasonably be expected to have concerning the whereabouts of a juvenile in that parent or guardian's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

(b). It shall be unlawful for any parent or guardian to refuse to take custody when requested by a police officer during the curfew hours of a juvenile for whom the parent or guardian is responsible.

Sec. 12-7-5. Operator Responsibility.

It shall be unlawful for any operator of an establishment to knowingly permit a juvenile to remain at the establishment under circumstances not constituting an exception to this chapter unless the operator has notified the police that a juvenile was present on the premises of the establishment during curfew hours and refused to leave. The term "knowingly" includes knowledge that an operator should reasonably be expected to have concerning the patrons of

the establishment. The standard for “knowingly” shall be applied through an objective test: whether a reasonable person in the operator’s position should have known that the patron was a juvenile in violation of this chapter.

Sec. 12-7-6. Aiding and Abetting.

It shall be unlawful for any person 16 years of age or older to aid or abet a juvenile in the violation of this chapter.

Sec. 12-7-7. Enforcement.

Before taking any enforcement action for curfew violations under this chapter, a police officer shall ask the apparent juvenile offender’s age and reason for being in the public place or establishment during curfew hours. The officer shall notify the parent or guardian that there has been a curfew violation, and request the parent or guardian to take custody of the juvenile. The officer shall document this accordingly. If the parent or guardian is not available or refuses to take custody of the juvenile, then, the officer, consistent with the provisions of Chapter 7B of the North Carolina General Statutes, may proceed to place the juvenile in temporary custody and initiate such actions that may be necessary for placement of the juvenile.

Sec. 12-7-8 Penalties.

(a) A juvenile who violates any provision of this chapter shall be guilty of a misdemeanor as provided in North Carolina General Statute §14-4 and is subject to being adjudicated delinquent. The court may, in its discretion, impose any dispositional alternatives that are provided in the North Carolina General Statutes for a juvenile who is delinquent.

(b) Any person other than a juvenile who violates any provision of this chapter shall be guilty of a misdemeanor as provided in North Carolina General Statute §14-4.

(c) In addition to any other penalty provided by this section, the parent or guardian having custody of a juvenile subject to this chapter shall be liable and responsible for all costs incurred by the City of Greenville for providing personnel to remain in the company of the juvenile who has been detained as a curfew violator where the parent or guardian does not pick up the juvenile within one (1) hour after receiving notice from the City of Greenville that the City of Greenville is detaining the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be based on the hourly wage of the City of Greenville employee who is assigned to remain with the juvenile plus the costs of the benefits for that employee. The City of Greenville may collect the amounts due by any manner provided by law, including initiation of litigation to recover such amounts due and owing, plus reasonable attorneys fees and costs incurred.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 4. This ordinance will become effective on the 1st day of September, 2008.

This the 14th day of August, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk