

**Antonio Araujo**  
Mayor

**Leticia Miranda**  
Alderson Place 1

**David Cantu**  
Alderson Place 2



**Miguel Najera Jr.**  
Alderson Place 3

**Maria Covernali**  
Alderson Place 4

**George Almanzar**  
Alderson Place 5

## ORDINANCE NO. 1807.07

### **CURFEW FOR MINORS ORDINANCE**

**AN ORDINANCE OF THE CITY OF SAN ELIZARIO TO ESTABLISH A CURFEW FOR MINORS; TO PROVIDE FOR A CURFEW FOR MINORS AND PARENTAL RESPONSIBILITY; SETTING THE HOURS OF CURFEW FOR MINORS; PROVIDING FOR AFFIRMATIVE DEFENSES TO PROSECUTION; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, ADOPTION, ENACTMENT, REPEALER, SEVERABILITY, EFFECTIVE DATE; DECLARING A VIOLATION OF THE ORDINANCE AS A MISDEMEANOR OFFENSE WITH A MAXIMUM PENALTY OF \$500 FOR EACH OFFENSE.**

### **RECITALS**

**WHEREAS,** persons under the age of seventeen (17) years are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime; and

**WHEREAS,** the City of San Elizario considers it an obligation to promote the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

**WHEREAS,** since the City of San Elizario has established its Marshal's Office, it has experienced many incidents of vandalism, minors in possession of alcohol, and disturbances of the peace during the evening and night time hours generally after 11:00 p.m. There is also shown a need for an ordinance whereby juvenile crime can

be prevented and punished more effectively, particularly in regard to violations that do not warrant transportation expense and utilization of the city's limited law enforcement resources when dealing with minor problems, disturbances, or violations; and

**WHEREAS,** statistics from other municipalities that have adopted juvenile curfew ordinances reflect a decrease in violent offenses committed against juveniles during curfew hours; and

**WHEREAS,** the City Council of the City of San Elizario has deliberated the issues regarding the activity and safety of minors in the City of San Elizario during curfew hours defined herein; and

**WHEREAS,** the City Council has considered the effect that a curfew might have on the community and on problems such as criminal activity and mischief caused by minors during the curfew hours that this ordinance is intended to remedy; and

**WHEREAS,** the City Council finds that parents are in the best position to control their child's behavior and should exercise reasonable control over their child, and accordingly should have responsibility for ensuring curfew compliance by their child; and

**WHEREAS,** by establishing duties and liability under this Ordinance for a parent, the City Council declares such that the purpose of such provisions are to require neglectful or careless parents to meet the community standard of parental responsibility; and

**WHEREAS,** the City Council finds that adoption of this Curfew for Minors Ordinance is in the best interest of the City and that this ordinance will promote and provide for the health, safety and welfare of the City;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of San Elizario:

**ORDINANCE I. FINDINGS OF FACT**

The foregoing recitals are adopted as facts and are incorporated fully herein.

**ORDINANCE II. ADOPTION AND ENACTMENT**

The City Council hereby adopts and enacts the Ordinance "Curfew for Minors Ordinance," attached hereto as "Attachment A" and incorporated fully herein this Ordinance for all intents and purposes.

**ORDINANCE III. REPEALER AND SEVERABILITY**

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

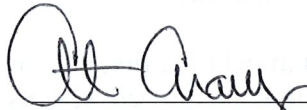
SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not construed to affect any other valid portion of this Ordinance.

**ORDINANCE IV. EFFECTIVE DATE**

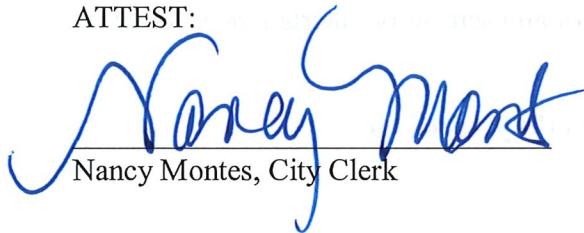
This Ordinance shall be effective immediately upon passage and publication.

**PASSED AND APPROVED** this, the 14 day of August, 2018, by a vote of 4 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS

  
\_\_\_\_\_  
Antonio Araujo, Mayor

ATTEST:

  
\_\_\_\_\_  
Nancy Montes, City Clerk

## Attachment A

### SAN ELIZARIO CURFEW ORDINANCE

#### Section 1. Definitions

Marshal means the marshal of the city or his deputies or other designated representatives.

Curfew hours means the period beginning at 11:00 p.m. and ending at 5:30 a.m. of the following day during the period beginning at 11:00 p.m., Sunday through 5:30 a.m. Friday of each week; and the period beginning at 12:00 a.m. (midnight) and ending at 5:30 a.m. during the period beginning at 12:00 a.m. Saturday through 5:30 a.m. Sunday of each week. 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 the city. The time then observed by an emergency communications center or the city marshal's office, as applicable, shall be prima facie evidence of the true and correct time.

Direct route means the shortest path to 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 any place of amusement or entertainment to which the public is invited.

Minor means a person who is under the age of seventeen (17) years of age.

Parent means a person who is:

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

Public place means any street, alley, highway, sidewalk, driveway, yard, vacant lot, playground, park, plaza, building, or other places used by or open to the public. The term "street" includes the legal right-of-way, including but not limited to the traffic lanes, curbs, sidewalks, whether paved or unpaved, parkways, 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 public place; or

- (2) Fail to leave premises including, but not limited to the premises of an establishment when requested to do so by a marshal or the owner, operator, or other person in control of the premises.

## **Section 2. Offenses**

(a) A minor commits an offense if he remains in any public place or establishment within the city limits during curfew hours.

(b) A parent of a minor commits an offense if he/she knowingly permits, or by insufficient control allows, the minor to remain in any public place or establishment within the city limits during curfew hours. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in such parent's custody.

(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 Ordinance, unless reasonably hindered from doing so.

(d) 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.

## **Section 3. Affirmative defenses**

It is a defense to prosecution under this Ordinance when 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 an errand;
- (3) In a motor vehicle engaged in interstate travel, beginning, ending or passing through the city;
- (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 the marshal about the minor's presence;
- (7) Attending an official school, civic or religious activity or returning home by a direct route from an official school, civic or religious activity;
- (8) 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;
- (9) Married or had been married or had disabilities of minority removed in accordance with the Texas Family Code; or
- (10) 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.

## **Section 4. Enforcement**

(a) A marshal, upon finding a minor in violation of this Ordinance shall take the necessary steps to determine whether the minor is remaining in a public place in the city limits in violation of this ordinance and whether any defenses/exceptions under section 3 of this Ordinance apply to the actions or activities of the minor. If the marshal has probable cause to believe that the minor is in violation of this Ordinance, the marshal may take appropriate enforcement action against the minor in accordance with the laws of the state and normal police procedures.

(b) If a minor is taken into custody under this section, the marshal may issue a citation to the minor and shall take the necessary steps to release the minor to a parent or other reasonable adult.

(c) When a minor is issued a citation and/or taken into custody for a violation of this Ordinance, the marshal's office may, by certified mail, return receipt requested, notify a parent of the minor that the minor violated this Ordinance and include a warning that any subsequent violation may result in prosecution of the parent under this Ordinance.

### **Section 5. Penalty**

(a) Any minor who violates this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 and may be subject to appropriate action by a juvenile court in accordance with applicable provisions of the Juvenile Justice Code and the Texas Penal Code.

(b) A parent of a minor who violates any provision of this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine not exceed \$500.00 per occurrence, and each occurrence may be deemed a separate violation of this Ordinance punishable as herein provided.

(c) The owner, operator, or any employee of an establishment who violates this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00, and each occurrence may be deemed a separate violation of this Ordinance, punishable as herein provided. The owner, operator or employee of the establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours. It shall be a defense to prosecution under this section that the owner, operator or employee of the establishment had promptly notified the San Elizario Marshal's Office that the minor was notified that he or she must leave and the minor refused to depart.

### **Section 6. Review of ordinance**

The city council finds that the review of the curfew ordinance done by the city immediately prior to and in conjunction with the passage and the adoption of this Ordinance satisfies the requirements set forth in section 370.002 of the Texas Local Government Code for certain required reviews of a curfew ordinance by general-law and home rule municipalities. The dates for the statutorily required ordinance review of every three years hereafter shall be based upon the adoption of this Ordinance.