

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> April 23, 2013		<b>DATE SUBMITTED:</b> March 28, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Police Department		<b>SUBMITTED BY:</b> Chief Eric Buske	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> DIVERSITY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> EDUCATION
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> GROWTH
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> IMAGE
			<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> PUBLIC SAFETY
<b>AGENDA ITEM DESCRIPTION:</b> An ordinance adopting Chapter 82 (Offenses and Miscellaneous Provisions), Section 82-7 (Curfew hours for juveniles).			
<p><b>SUMMARY STATEMENT:</b> Section 370.002 of the Local Government Code requires municipalities that have enacted a juvenile curfew ordinance to review the ordinance's effect on the community and on problems the ordinance was intended to remedy. Additionally, the Code requires a municipality to conduct public hearings on the need to continue the ordinance, modify the ordinance or abolish the ordinance.</p> <p>The City of Bryan Ordinance 1680 amended Chapter 82, Section 82-7 and established curfew hours for juveniles for the purpose of providing for the protection of juveniles from harm and for the protection of the health, safety and welfare of the general public. The City of Bryan Ordinance 1680 was enacted on April 24, 2007, and required a public hearing and review. This review was conducted and City of Bryan Ordinance 1865 was passed and approved on April 27, 2010.</p> <p>A review of juvenile crime data from 2006 through 2009 for the curfew period revealed an overall decrease of 65% in juvenile involvement in criminal activity. During the same time period there was a 35% decrease in the number of juvenile victims, there was a 64% decrease in the number of juvenile suspects, and a 78% decrease in the number of juvenile arrests.</p> <p>Juvenile crime data from 2010 through 2012 shows a continual decrease in juvenile involvement associated criminal activity during the curfew period. There was a 21% total decrease in juvenile involvement with law enforcement. Crime reports show a 35% decrease in juvenile suspects and a 40% decrease in juveniles being arrested during the curfew hours. The correlation between the continued decreases in juveniles involved in criminal activities seems to be effected positively by the juvenile curfew ordinance. The ordinance is a positive instrument in crime prevention and the safety of our young citizens.</p>			
<b>STAFF ANALYSIS:</b>			
<p><b>A. PROS:</b> The enforcement of the City of Bryan Ordinance 1865 (Curfew hours for juveniles) has a positive impact on reducing the number of criminal incidents involving juvenile victims and juvenile suspects during the curfew period. This reduction of juvenile involvement in criminal activity serves to promote the health, safety, and welfare of the general public.</p> <p><b>B. CONS:</b> The enforcement of a juvenile curfew ordinance may be perceived as an impingement on the fundamental constitutional rights and parental rights. However, during the last three years that has not been a complaint made to the Bryan Police Department.</p>			
<b>STAFF'S RECOMMENDATION (Including Rationale and Justification):</b> The Police Department recommends that the proposed ordinance be adopted in its current form. The stated purpose of the juvenile curfew ordinance was to provide for the protection of juveniles from harm and for the protection of the health, safety and welfare of the general public.			

The enforcement of a juvenile curfew ordinance between the hours of 12:00 a.m. (midnight) to 5:00 a.m. has a positive impact by decreasing juvenile involvement in criminal and delinquent activities. Based on the reported juvenile crime data and reduction of juvenile involvement continued ordinance existence is justified.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Adopt City of Bryan Ordinance (Curfew hour for juveniles).
2. Modify City of Bryan Ordinance (Curfew hours for juveniles) and adopt a modified ordinance. This action may require consideration at a future City Council meeting.
3. Abolish City of Bryan Ordinance (Curfew hour for juveniles).

**ATTACHMENTS:**

1. Ordinance

**FUNDING SOURCE:** N/A

**APPROVALS:** Hugh R. Walker, 03/28/2013

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 04-01-2013

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 04-01-2013

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING CHAPTER 82 OF THE BRYAN CITY CODE, ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS", SECTION 82-7, ENTITLED "CURFEW HOURS FOR JUVENILES"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; DECLARING A PENALTY; PROVIDING FOR PUBLICATION IN THE NEWSPAPER; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bryan passed and approved Ordinance 1865 amending Chapter 82 "Offenses and Miscellaneous Provisions" of the Bryan City Code, Section 82-7 "Curfew Hours for Juveniles" on the 27th day of April 2010, by a unanimous vote at a regular meeting of the City Council of the City of Bryan, Texas;

**WHEREAS**, Section 370.002 of the Local Government Code requires the City of Bryan to review the ordinance's effects on the community and on problems the ordinance was intended to remedy and to conduct public hearings on the need to continue the ordinance, modify the ordinance, or abolish the ordinance;

**WHEREAS**, juveniles under 17 years of age are particularly susceptible to participation in unlawful activities, gang-related activities, and to victimization by older perpetrators of crime, because of their lack of maturity and experience relative to adults;

**WHEREAS**, the City of Bryan is obligated to provide for the protection of juveniles from each other and from other persons, the protection of the health, safety and welfare of the general public, and the reduction of juvenile crime, violence, and gang-related activity in the City;

**WHEREAS**, a review of the effects of the enforcement of the curfew hours for juveniles has demonstrated a positive impact on reducing the number of criminal incidents involving juvenile victims and juvenile suspects during the curfew period;

**WHEREAS**, a curfew for juveniles under 17 years of age has aided in the achievement of these goals, and will be in the interest of the public health, safety, and welfare;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS;**

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 1.

That Chapter 82 (Offenses and Miscellaneous Provisions), Section 82-7 (Curfew hours for juveniles) of the Bryan City Code is hereby adopted as follows:

**Sec. 82-7. Curfew hours for juveniles.**

(a) *Definitions.* In this section:

*Chief of police* means the Chief of Police of the City of Bryan or a designated representative.

*Curfew hours* means the time between 12:00 midnight until 5:00 a.m. on any day of the week.

*Direct route* means the shortest path of public travel 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, loss of life or damage to or loss of property.

*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.

*Holding location* means a place designated by the chief of police to which a juvenile taken into custody for a violation of this section will be delivered to await pickup by a parent, responsible adult or juvenile authorities.

*Juvenile* means any person under 17 years of age.

*Operator* means any individual, firm, association, partnership, corporation or other form of entity or association, including the owners, members, managers, partners, officers, agents and employees thereof as applicable, operating, managing, or conducting any establishment.

*Parent* means a person who is:

- (1) A natural or adoptive parent or step-parent of another person;
- (2) A court-appointed guardian to have the care and custody of another person; or
- (3) At least 21 years of age and authorized by a parent or court-appointed guardian to have the care and custody of another person.

*Public place* means any street, alley, highway, sidewalk, playground, park, plaza, building, or other place used by or open to the public.

*Remain* means to:

- (1) Linger or stay; 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.

(b) *Offenses.*

- (1) A juvenile commits an offense if he or she remains in any public place or on the premises of any establishment within the city during curfew hours or fails to return home by a direct route from such public place or establishment after being asked to leave by a police officer or the owner, operator or other person in control of the premises.

(2) A parent of a juvenile commits an offense if he or she knowingly permits, or by insufficient control allows, the juvenile to remain in any public place or on the premises of any establishment within the city during curfew hours.

(3) The owner or operator of an establishment commits an offense if he or she knowingly allows a juvenile to remain upon the premises of the establishment during curfew hours.

(c) *Defenses.*

(1) It is a defense to prosecution under subsection (b)(1), (b)(2), or (b)(3) of this section that the juvenile was:

- a. Accompanied by the juvenile's parent;
- b. On an errand at the direction of the juvenile's parent and was using a direct route;
- c. In a motor vehicle or mode of transportation involved in interstate travel;
- d. Engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;
- e. Involved in an emergency;
- f. On the sidewalk abutting the juvenile's residence;
- g. Attending an activity supervised by adults and sponsored by a school, governmental entity, church, civic or charitable organization or similar entity that takes responsibility for the juvenile with the consent of the juvenile's parent or going to or returning home by a direct route from any such activity;
- h. Engaged in, participating in, or traveling to or from any event, function or activity to which the application of subsection (b)(1) of this section would contravene the juvenile's 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
- i. Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(2) It is a defense to prosecution under subsection (b)(3) of this section that the owner or operator of an establishment, or any employee or agent thereof, promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

(d) *Enforcement.*

(1) A police officer, upon finding a juvenile in violation of subsection (b)(1) of this section, shall:

- a. Ascertain the name and address of the juvenile; and
- b. Order the juvenile to go promptly home by a direct route.

(2) Notwithstanding subsection (d)(1) of this section, a police officer, upon finding a juvenile in violation of subsection (b)(1) of this section, may:

- a. Issue the juvenile a citation for the offense and deliver the juvenile to a parent; or
- b. Take the juvenile into custody and deliver the juvenile to a holding location if:
  1. A parent to whom custody of the juvenile may be released cannot be located; or
  2. Reasonable grounds exist to believe the juvenile has engaged in delinquent conduct or conduct indicating a need for supervision in accordance with Sections 51.03 and 52.01 of the Texas Family Code.

(3) If a parent cannot be located or fails to take charge of the juvenile, the juvenile shall be released to the appropriate juvenile authorities or responsible adult.

(4) A police officer finding any violations of any provisions of this section shall file a written report on the incident if a citation is issued.

(e) *Penalties.*

(1) 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, upon conviction, is punishable as follows:

- a. First offense: a fine not to exceed \$100.00;
- b. Second offense: a fine not to exceed \$250.00;
- c. Third and subsequent offenses: a fine not to exceed \$500.00.

(2) The municipal court, in its discretion, may order a defendant who is unable to pay all or part of a fine or costs, to discharge all or part of such fine or costs by performing community service.

(3) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection (b)(1) of this section and shall refer the juvenile to juvenile court.

(f) In accordance with Section 370.002 of the Local Government Code, this section must be reviewed and adopted every three years. At a minimum, the city shall:

- (1) Review the effects on the community and on problems the ordinance or order was intended to remedy;
- (2) Conduct public hearings on the need to continue the ordinance or order; and
- (3) Abolish, continue, or modify the ordinance or order.

(g) In accordance with Section 370.002 of the Local Government Code, section 82-7 of the Bryan City Code expires if the city does not review and adopt it every three years. In the event Section

370.002 of the Local Government Code is revoked or amended, the city is required to review and adopt the ordinance every three years.

Section 2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 3.

The Bryan City Code, as amended shall remain in full force and effect, save and except as amended by this ordinance.

Section 4.

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 5.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

Section 6.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government code, and that advance public notice of the time, place, and purpose of said meetings was given.

Section 7.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

Section 8.

This ordinance shall become effective after its date of passage and publication as required by law, said date being \_\_\_\_\_, 2013

PRESENTED AND GIVEN first reading the 9<sup>th</sup> day of April, 2013, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 23<sup>rd</sup> day of April, 2013, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

**ATTEST:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

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Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

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Janis K. Hampton, City Attorney