

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FRISCO, TEXAS, CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (JUVENILE CURFEW); REPEALING ORDINANCE NOS. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 AND 2023-02-05; REPEALING THE CITY’S JUVENILE CURFEW ORDINANCE IN RESPONSE TO HOUSE BILL 1819, EFFECTIVE SEPTEMBER 1, 2023; PROVIDING A SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Frisco, Texas (“City Council”) previously adopted a juvenile curfew ordinance as authorized by state law to help protect the public health, safety and welfare of City of Frisco, Texas (“City” or “Frisco”); and

WHEREAS, during the 2023 legislative session, the Texas Legislature adopted House Bill 1819 to prohibit a political subdivision such as Frisco from adopting or enforcing an order, ordinance or other measure that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age, except for curfews implemented under Chapter 418 of the Texas Government Code for purposes of emergency management; and

WHEREAS, House Bill 1819 is effective on September 1, 2023; and

WHEREAS, the City Council therefore finds that it is necessary to amend Chapter 54 (Offenses and Miscellaneous Provisions), Article V (Juvenile Curfew) of the Code of Ordinances of City of Frisco, Texas (“Code of Ordinance”) and to repeal Ordinance Nos. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 and 2023-02-05 to comply with the new state law; and

WHEREAS, Frisco has complied with all legal notices and public hearings as required by law; and

WHEREAS, the City Council finds that adopting this Ordinance is in the best interest of the citizens of Frisco.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amending Chapter 54 (Offenses and Miscellaneous Provisions), Article V (Juvenile Curfew) of the Code of Ordinances. Chapter 54 (Offenses and Miscellaneous Provisions), Article V (Juvenile Curfew) of the Code of Ordinances is hereby amended as follows¹:

¹ Additions are underlined and italicized; deletions are evidenced by strikethrough.

“ARTICLE V Reserved JUVENILE CURFEW

§ 54-132 Definitions.

For the purposes of this article, the following words, terms, phrases and their derivations shall have the meanings set forth below:

Curfew hours. ~~12:01 a.m. until 6:00 a.m. daily.~~

Emergency. ~~An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term shall include 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. ~~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.~~

Guardian. ~~A person to whom custody of a juvenile has been given by a court order.~~

Juvenile. ~~Any person under seventeen (17) years of age and at least ten (10) years of age.~~

Operator. ~~Any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers and directors of a corporation.~~

Parent. A person who is:

- (1) ~~A natural parent, adoptive parent or stepparent of another person; or~~
- (2) ~~At least eighteen (18) years of age and authorized by a parent, guardian, court order, or by the court, or by a court appointed guardian to have the care and custody of a person.~~

Public place. ~~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.~~

Remain. To:

- (1) ~~Linger, stay, walk, run, stand, drive or ride; 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.~~

§ 54-133 Offenses.

- ~~(a) — A juvenile commits an offense if the juvenile 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 juvenile commits an offense if such person knowingly permits, or by insufficient control allows, the juvenile to remain about, in or upon 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 such person knowingly allows a juvenile to remain upon the premises of the establishment during curfew hours.~~

~~§ 54-134 Defenses to prosecution.~~

- ~~(a) — It is a defense to prosecution under section 54-133(a) that the juvenile was:
 - ~~(1) — Accompanied by the juvenile's parent or guardian;~~
 - ~~(2) — On an errand at the direction of the juvenile's parent or guardian, without any detour or stop;~~
 - ~~(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 juvenile's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the juvenile's presence;~~
 - ~~(7) — Attending an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the juvenile, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the juvenile;~~
 - ~~(8) — Exercising First Amendment rights protected by the United States Constitution; or~~
 - ~~(9) — Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as amended.~~~~

- (b) — ~~It is a defense to prosecution under section 54-133(c) that the owner, operator or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.~~

~~§ 54-135 Enforcement.~~

~~Before taking any enforcement action under this section, a police 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 article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 54-134 is present.~~

~~§ 54-136 Penalty provision.~~

- (a) — ~~A person who violates a provision of this article is guilty of a misdemeanor, and upon conviction therefor, shall be fined a sum not exceeding five hundred and no/100 dollars (\$500.00). Each and every day that such violation continues shall be considered a separate offense.~~
- (b) — ~~When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a juvenile who violates section 54-133(a) of this article and shall refer the juvenile to the appropriate court.~~

~~§ 54-137 Review of article.~~

- (a) — ~~Before the third anniversary of the date of the adoption of this article, and every third year thereafter, the city council shall:~~
- ~~(1) — Review the effects of this article on the community and on problems the article was intended to remedy;~~
 - ~~(2) — Conduct at least two public hearings on the need to continue the provisions of this article; and~~
 - ~~(3) — Abolish, continue or modify the provisions of this article.~~
- (b) — ~~The failure of the city council to act in accordance with this section shall cause the provisions of this article to expire without further action by the city council.~~

~~§ 54-132 138 through § 54-170 Reserved”~~

SECTION 3: Repealing Ordinance Nos. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 and 2023-02-05. Ordinance Nos. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 and 2023-02-05 are hereby repealed in their entirety. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance, at which time Ordinance Nos. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 and 2023-02-05 shall be repealed. Such repeal shall not abate

any pending prosecution or lawsuit or prevent any prosecution or lawsuit from being commenced for any violation of Ordinance Nos. 07-09-50, 13-09-50, 17-04-24, 2020-03-10 and 2023-02-05 occurring before the effective date of this Ordinance.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 5: Repealing/Savings. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6: Open Meeting. The meeting at which this Ordinance was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

SECTION 7: Effective Date; Publication. This Ordinance shall become effective on September 1, 2023.

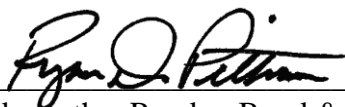
DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this ____ day of _____, 2023.

Jeff Cheney, Mayor

ATTEST:

Kristi Morrow, City Secretary

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys