

Filed with
Paper
1-5-18

ORDINANCE 2015-04

AN ORDINANCE ESTABLISHING A CURFEW
IN THE CITY OF AUSTIN, INDIANA

WHEREAS, the problems facing our youth, including drug and alcohol abuse, sexually transmitted diseases, and crime commission and victimization are exacerbated during the later night hours and early morning hours, when fewer opportunities for adult supervision exists; and

WHEREAS, The Common Council of the City of Austin desires to adopts the following ordinance to protect the health, safety, welfare and property values of Austin residents.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA, as follows:

SECTION 1. PURPOSE.

The purpose of this ordinance is to promote the general welfare and protect the general public through the reduction of juvenile violence within the city; to protect both real and personal property within the city from continuing juvenile mischief activity; to promote the safety and well-being of the city's youngest citizens, persons under the age of 18, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime; and to promote, foster, and strengthen parental responsibility for children.

SECTION 2. DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"CURFEW HOURS." The hours between 11:00 p.m. and 5:00 a.m. on Saturday or Sunday; after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday; or before 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.

"EMERGENCY." Refers to unforeseen circumstances, or the status or condition resulting therefrom requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to fires, natural disasters, automobile accidents, or

other similar circumstances.

“ESTABLISHMENT.” Any privately-owned place of business within the city operated for a profit, to which the public is invited, including, but not limited to any place of amusement or entertainment. With respect to such establishment, the term OPERATOR shall mean any person, and any firm, association, partnership (and the individual members of partners thereof) and/or any corporation (and the individual officers thereof) conducting or managing that establishment.

“MINOR.” Any person under 18 years of age who has not been emancipated by court order or married.

“OFFICER.” A police or other law enforcement officer charged with the duty of enforcing the laws of the state and/or the ordinances of the city.

“PERSON.” An individual, not an association, corporation, or any other legal entity.

“PUBLIC PLACE.” Any place to which the public or a substantial group of the public has access, including, but not limited to streets, highways, roads, sidewalks, alleys, avenues, parks, and/or the common areas of schools, hospitals, apartment houses, office buildings, and shops.

SECTION 3. CURFEW VIOLATION.

- A. It shall be unlawful for a minor, during curfew hours, to remain in or upon any public place within the city, to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the city, unless:
- i. The minor is accompanied by a parent, guardian, or custodian;
 - ii. The minor is accompanied by an adult specified by the child's parent, guardian, or custodian;
 - iii. The minor is involved in an emergency;
 - iv. The minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop;
 - v. The minor is attending any activity sponsored by a school, religious, or civic organization, by a public organization or agency, or by another similar organization or entity, which activity is supervised by adults, and/or the minor is going to or returning home from such activity without detour or stop;
 - vi. The minor is on an errand at the direction of a parent, guardian, or custodian and the minor has on his or her possession a writing signed by the parent, guardian, or custodian containing the following information: the name, signature, address, and telephone number of the parent, guardian, or custodian authorizing the errand, the name of the minor, the minor's destination, and the date and time that the minor is authorized to be engaged in the errand;

- vii. The minor is involved in interstate travel through, or beginning or terminating in the city; or
 - viii. The minor is exercising First Amendment rights protected by the United States Constitution or Article 1, Section 31 of the Constitution of the State of Indiana, or both, such as the free exercise of religion, freedom of speech, and the right of assembly.
- B. It shall be unlawful for a minor's parent or guardian to knowingly permit, allow, or encourage such a minor to violate this section.
 - C. It shall be unlawful for a person who is the owner or operator of a motor vehicle to knowingly permit, allow, or encourage a minor to violate this section.
 - D. It shall be unlawful for the operator of an establishment, or any person who is an employee thereof, to knowingly permit, allow, or encourage a minor to remain upon the premises of the establishment during curfew hours. It shall be a defense to prosecution of this section that the operator or employee of an establishment promptly notified the Police Department that a minor was present at the establishment after curfew hours and refused to leave.

SECTION 4. ENFORCEMENT.

- A. Before taking any enforcement action hereunder, an officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of a minor in a public place, motor vehicle, and/or establishment within the city during curfew hours is in violation of this ordinance.
- B. If such investigation reveals that the presence of such minor is in violation, then the officer may issue a written citation to the minor or offender, charging him or her with violation of this ordinance. The officer shall provide a copy of the same to the City Attorney and the City Attorney may consider further civil prosecution. Further, as soon as practicable, the officer shall advise the minor's parent or guardian of the alleged violation. If a parent or guardian is not immediately available, the officer shall issue a written advisement to be mailed by the Police Department.
- C. An officer may not detain a child or take a child into custody based on a violation of this ordinance unless the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that:
 - i. The child has violated this section; and
 - ii. There is no legal defense to the violation.

SECTION 4. PENALTY.

- A. A violator of this ordinance shall be subject to the following fines:
 - i. Twenty-five dollars (\$25.00) for a first offense;
 - ii. One hundred dollars (\$100.00) for a second offense, plus court costs; or
 - iii. Two hundred dollars (\$200.00) for a third offense and every subsequent offense, plus court costs.

SECTION 6. SEVERABILITY.

If any portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other portion or provision of this ordinance.

SECTION 7. EFFECTIVE DATE AND CONFLICT

This ordinance shall be effective from and after its passage by the Common Council of the City of Austin, Indiana, approval by the Mayor, and advertisement as required by law.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency. It is provided, however, that such repeal shall be only to the extent of such inconsistency, and in all other respects the ordinances or parts of ordinances are hereby ratified, re-established and confirmed.

PASSED AND ADOPTED by the Common Council of the City of Austin,
Indiana on the 14th day of December, 2015 by a vote of
4 to 0.

MAYOR

CITY OF AUSTIN, INDIANA

Douglas Campbell
Douglas Campbell

Attest:

Dillo Bush
Dillo Bush, Clerk-Treasurer

Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 14th day of December, 2015 at : .m.

Dillo Bush
Dillo Bush, Clerk-Treasurer