

CITY OF CLAY, ALABAMA

ORDINANCE 2008-25

**AN ORDINANCE FOR THE CITY OF CLAY TO CONTROL CURFEW HOURS,
ENFORCEMENT AND PENALTIES FOR VIOLATION OF THE GENERAL CODE OF
THE CITY OF CLAY**

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 18 in the City of Clay; and within cities surrounding the City of Clay; and

WHEREAS, the City of Clay is concerned for the safety and welfare of its citizens in light of said increase in violence in this City and in the surrounding cities, particularly since the passage of curfew law(s) in the surrounding cities. The City is concerned that said enforcement of said curfew laws may force said juvenile violence, juvenile gang activity, and crime by persons under the age of 18 into the City unless the City also acts proactively; and

WHEREAS, persons under the age of 18 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 City of Clay has an obligation to provide for 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, a need has been shown for the City of Clay to provide for the protection of minors from each other and from other persons in the City of Clay, for aiding parents in carrying out their responsibility to exercise reasonable supervision of their children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and,

WHEREAS, the victimization of minors and the involvement of minors in crime and violent crime is at an unacceptable and alarming level compelling the City Council to adopt this ordinance for the public good, safety and welfare; and,

WHEREAS, the Council of the City of Clay finds that a curfew of those under the age of 18 will be in the best interest of the public health, safety, and general welfare and will help attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Clay.

NOW THEREFORE BE IT ORDAINED, by the Council of the City of Clay that this Ordinance be passed and for it to read as follows:

- (a) For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning given herein:
 - (1) Accompanied means to go along with or be associated with under individualized supervision.
 - (2) Custodian includes a “parent” as defined herein or an adult to whom the care of supervision of a minor has been temporarily delegated or assigned by the minor’s custodial parent(s) or legal guardian.
 - (3) Direct Route means the shortest path of travel through a public place to reach a final destination, without any detour or stop.
 - (4) Emergency means an unforeseen combination of circumstances or the resulting state that demands for immediate action. The term includes but is not limited to, a fire, a natural disaster, an accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
 - (5) 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. The term also includes the employees of an establishment.
 - (6) Minor means any person under eighteen (18) years of age, who has not been emancipated under Alabama law.
 - (7) Operator means any individual firm, association, partnership, or corporation that owns, operates, manages or conducts any establishment. The term includes the members of partners of any association or partnership, the officers of a corporation and employees.
 - (8) Parent means a natural person having legal custody of a minor (a) as a natural or an adoptive parent (b) as a legal guardian, (c) as a person who stands in loco parentis, or (d) as a person to whom legal custody has been given by court order.
 - (9) Public place means any place to which the public or substantial group of the public has access and includes but is not limited to roads, streets, highways, sidewalks, alleys, parks, playgrounds, public buildings, common areas of schools, apartment houses, office buildings, businesses, transport facilities, shops and appurtenant open spaces or vacant lots.

- (10) Remain means to linger or stay or to fail to leave premises when requested to do so by a law enforcement officer.
- (11) 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.
- (12) Supervised by an adult means that adult persons are present at the activity and the adult persons take full responsibility for the minor.
- (13) Time of night means the prevailing standard of time, whether Central Standard Time or Daylight Savings time, generally observed at that hour by the public in the city; prima facie the time then observed in the city's administrative offices or police department.
- (14) Years of Age continues from one birthday to, but not including the day of, the next birthday.

Division 2: Duties of Parents, Custodians, Guardians and other Persons

It is unlawful for a parent, guardian, or other person having custody and control of any minor to permit, or by insufficient control, to allow, the minor to be in or upon the public streets, or any other place listed in this section within the city between the hours as provided for in this section, except in circumstances as set out herein.

Division 3: Offenses and Exceptions

Section 1

- (1) It shall be unlawful for a minor to remain in a public place or in or upon the premises of an establishment.
 - (a) During Jefferson County School System scheduled hours;
 - (b) From 9:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day;
 - (c) From 11:00 p.m. on any Friday, Saturday or eve of an official city holiday(s) as declared by the Mayor until 6:00 a.m. of the following day.
- (2) It shall be unlawful for a parent or custodian knowingly to permit or negligently by insufficient control to allow a minor under the parent's or custodian care of custody to violate this section.

- (3) It shall be unlawful for an operator or establishment or operators or establishment's agents or employees to knowingly permit a minor to remain in or upon the premises over which the operator has supervision, custody or control, in violation of this section.
- (4) An operator or establishment with the City of Clay city limits or police jurisdiction of Clay shall conspicuously post and maintain on the business premises a current copy of the Clay curfew hours. Failure to comply with this requirement to conspicuously post notice of the curfew shall constitute a violation of this section.
- (5) The provision of this section shall apply to minors who are suspended or expelled from school, unless they are emancipated under Alabama law.
- (6) A separate offense shall be deemed committed for each violation of this section.

Section 2

- (1) It shall be a defense to a prosecution for a violation of this section if a minor is:
 - (a) When the minor is accompanied by his or her parent or other adult having lawful care and custody of the minor;
 - (b) When the minor is upon an emergency errand directed by his or her parent or adult having lawful care and custody of such minor;
 - (c) When the minor is attending and going to and returning from school, an official school, religious, or other recreational activity supervised by adults or sponsored by the city, school, or another public body, a civic organization, or other similar entity that takes responsibility for the minor without any unnecessary detour or stop within one (1) hour of the termination of the activity sponsored by the city, school, other public body or civic organization or similar entity;
 - (d) When the minor is going to or returning directly home from lawful employment that makes it necessary to be in such place during proscribed period of time without any unnecessary detour or stop and within one (1) hour of the termination of the employment activity;
 - (e) When the minor is attending or traveling directly to or from an activity involving the First Amendment rights of free speech, freedom of assembly or free exercise of religion;

- (f) When the minor is in a motor vehicle with parental consent for normal travel (Interstate and intrastate travel through the city is exempted in all cases from the curfew);
 - (g) When the minor is on the sidewalk or right-of-way adjoining the property where the minor resides, or on the property where he resides.
- (2) It shall be a defense to a prosecution for a violation of this section if an operator or an establishment's agents or employees promptly notified a law enforcement agency that a minor was present in or upon the premises of an establishment in violation of this section and refused to leave.

Division 4: Penalties

The following penalties shall apply to any violation of this section:

- (1) 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 Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (d) is present. When a police officer or other law enforcement officer observes or has a probable cause to believe that a violation of this section has been committed, he shall detain the minor to be released only to the parent or custodian.
- (2) When the minor is delivered into the hands of the parent, guardian or other person having the care and custody of said minor or standing in loco parentis to said minor, said parent, guardian or other person shall be cited and summoned to court for a violation of this section.
- (3) Even if the parent, guardian, or other person having the care and custody of said minor or standing in loco parentis to said minor refuses to pick up or otherwise fails to make arrangements to have a competent adult come and take charge of the minor, said parent, guardian or other person shall be cited and summoned to court for a violation of this section.
- (4) If a parent, guardian or other person having the care and custody of the minor cannot be located, then the minor of the child shall be released and/or temporarily entrusted to a relative, neighbor or other person who will, on behalf of the parent, assume the responsibility of caring for the minor pending the availability or arrival of the parent, assume the responsibility of caring for the minor pending the availability or arrival of the parent.

- (5) In case of a first violation of this section within any twelve-month period, a violator shall be required to appear in court and, upon conviction, shall be punished by a fine of two hundred fifty dollars (\$250.00).
- (6) Upon receiving a citation for a second violation of this section within any twelve-month period, the violator shall be required to appear in court and, upon conviction, shall be punished by a fine of five hundred dollars (\$500.00).
- (7) Upon receiving a citation for a third or subsequent violation of this section within any twelve-month period of receiving an initial citation, the violator shall be required to appear in court and upon conviction, shall be punished by a fine of five hundred dollars (\$500.00) and/or imprisonment in the county jail, workhouse, or house of correction or at hard labor upon the streets and public works for not exceeding six (6) months. The court may suspend or probate the sentence upon a conviction.
- (8) The provisions of this section shall be enforced equally without regard to race, ethnicity or sex.

Division 5: Enforcement Statistics

Sheriff or Police Department

- (1) The Sheriff and/or Police Department shall inform the Council as to the following:
 - (a) the number of curfew violation;
 - (b) other arrests from said curfew violations;
 - (c) the locations of said curfew violations;
- (2) The City Attorney and/or the City Prosecutor shall report to the City Council the number and disposition of curfew violations every six months.
- (3) Curfew violations associated with gang activity shall be reported separately.

ADOPTED AND APPROVED THIS 6TH DAY OF OCTOBER, 2008

Charles D. Hart, D.V.M.
Mayor

ATTEST:

Bobby Christmas
City Clerk/Treasurer