

ORDINANCE NO. 2021-23

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, ESTABLISHING A CURFEW FOR MINORS; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROHIBITING MINORS FROM BEING OR REMAINING IN PUBLIC PLACES OR ESTABLISHMENTS DURING CERTAIN HOURS; PROVIDING FOR LEGAL DUTIES OF PARENTS; PROHIBITING THE PERMISSION OF CURFEW VIOLATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of West Melbourne, Florida by enacting a curfew for minors in public places and establishments; and

WHEREAS, this ordinance provides restrictions which vary from the curfew imposed under state law, as expressly authorized by section 877.25, Florida Statutes; and

WHEREAS, the objectives of this ordinance are:

- (1) To protect minors in this City from harm and victimization;
- (2) To promote the safety and well-being of minors in this City; and
- (3) To reduce the crime committed by minors in this City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida, that:

Section 1. Recitals and findings. The foregoing Recitals are hereby ratified and incorporated as findings of the City Council and as the legislative intent of this ordinance.

Section 2. Short title. This article shall be known and may be cited as the “City of West Melbourne Curfew for Minors.”

Section 3. Definitions. For the purposes of this ordinance the following terms shall have the meanings set forth below:

Emergency means an unforeseen combination of circumstances which results in a situation that requires immediate attention to care for or prevent serious bodily injury, loss of life, or significant property loss. The term includes, but is not limited to, a fire, a natural disaster, or an automobile accident.

Establishment means a privately-owned place of business to which the public is invited, including, but not limited to, a place of amusement or a place of entertainment.

With respect to such establishment, the term “operator” means any person, firm, association, partnership (and the members thereof), or corporation (and the officers thereof) operating or managing the establishment.

Minor means any person under 18 years of age who has not been emancipated by court order entered pursuant to Florida law.

Parent means a person who has legal custody of a minor as a:

- (a) Natural or adoptive parent;
- (b) Legal guardian;
- (c) Person who stands in loco parentis to the minor; or
- (d) Person who has legal custody of the minor by order of the court.

Public place means 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 the common areas of schools, hospitals, apartments, office buildings, transportation facilities, and shops.

Remain means to stay unnecessarily in a particular place.

Section 4. Minors prohibited in public places and establishments during certain hours; penalty; procedure.

- (a) A minor may not be or remain in a public place or establishment, or in a motor vehicle operating in or parked on a public place, between the hours of 12:00 a.m. and 5:00 a.m., Monday through Friday, except in the case of a legal holiday.
- (b) A minor may not be or remain in a public place or establishment, or in a motor vehicle operating in or parked on a public place, between the hours of 1:00 a.m. and 6:00 a.m. on Saturdays, Sundays, and legal holidays.
- (c) A minor who violates this section shall receive a written warning for her or his first violation. A minor who violates this section after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$50 for each violation.
- (d) If a minor violates curfew and is taken into custody, the police department shall attempt to contact the parent of the minor and, if successful, shall request that the parent take custody of the minor and shall release the minor to the parent. If the police department is not able to contact the minor’s parent within 2 hours after the minor is taken into custody, or if the parent refuses to take custody of the minor, the police department may transport the minor to her or his residence or proceed as authorized under part IV of chapter 39, Florida Statutes.

Section 5. Legal duty of parent; permitting minor to violate curfew prohibited; penalty.

- (a) The parent of a minor has a legal duty and responsibility to ensure that the minor does not violate Section 4(a) or (b).
- (b) An adult person may not knowingly permit a minor to violate Section 4(a) or (b) by virtue of the minor's presence in a motor vehicle owned or operated by such adult.
- (c) The operator of any establishment, or any person who is an employee thereof, may not knowingly permit a minor to remain upon the premises of the establishment in violation of Section 4(a) or (b).
- (d) A parent, motor vehicle owner or operator, or the operator or employee of an establishment who knowingly permits a minor to violate Section 4(a) or (b) shall receive a written warning for a first violation. A parent, motor vehicle owner or operator, or the operator or employee of an establishment who knowingly permits the minor to violate Section 4(a) or (b) after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$50 for each violation.

Section 6. Exemptions. Section 4 does not apply to a minor who is:

- (a) Accompanied by his or her parent or by another adult authorized by the minor's parent to have custody of the minor.
- (b) Involved in an emergency or engaged, with his or her parent's permission, in an emergency errand.
- (c) Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.
- (d) Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- (e) Attending or returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization or public agency, which function is supervised by adults.
- (f) On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- (g) Engaged in interstate travel or bona fide intrastate travel with the consent of the minor's parent.

Section 7. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses,

sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 8. Inclusion in Code. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City of West Melbourne Code of Ordinances in substantially the form of attached **Exhibit A**, and the sections and following articles may be renumbered to accomplish such intention.

Section 9. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 7th day of September, 2021.

1st READING: August 17, 2021

2nd READING: September 7, 2021

EXHIBIT A

Chapter 38 – OFFENSES

ARTICLE IV. – CURFEW FOR MINORS

Sec. 38-60. – Short title.

This article shall be known and may be cited as the “City of West Melbourne Curfew for Minors.”

Sec. 38-61. – Definitions.

For the purposes of this article the following terms shall have the meanings set forth below:

Emergency means an unforeseen combination of circumstances which results in a situation that requires immediate attention to care for or prevent serious bodily injury, loss of life, or significant property loss. The term includes, but is not limited to, a fire, a natural disaster, or an automobile accident.

Establishment means a privately-owned place of business to which the public is invited, including, but not limited to, a place of amusement or a place of entertainment. With respect to such establishment, the term “operator” means any person, firm, association, partnership (and the members thereof), or corporation (and the officers thereof) operating or managing the establishment.

Minor means any person under 18 years of age who has not been emancipated by court order entered pursuant to Florida law.

Parent means a person who has legal custody of a minor as a:

- (a) Natural or adoptive parent;
- (b) Legal guardian;
- (c) Person who stands in loco parentis to the minor; or
- (d) Person who has legal custody of the minor by order of the court.

Public place means 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 the common areas of schools, hospitals, apartments, office buildings, transportation facilities, and shops.

Remain means to stay unnecessarily in a particular place.

Sec. 38-62. – Minors prohibited in public places and establishments during certain hours; penalty; procedure.

- (a) A minor may not be or remain in a public place or establishment, or in a motor vehicle operating in or parked on a public place, between the hours of 12:00 a.m. and 5:00 a.m., Monday through Friday, except in the case of a legal holiday.

- (b) A minor may not be or remain in a public place or establishment, or in a motor vehicle operating in or parked on a public place, between the hours of 1:00 a.m. and 6:00 a.m. on Saturdays, Sundays, and legal holidays.
- (c) A minor who violates this section shall receive a written warning for her or his first violation. A minor who violates this section after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$50 for each violation.
- (d) If a minor violates curfew and is taken into custody, the police department shall attempt to contact the parent of the minor and, if successful, shall request that the parent take custody of the minor and shall release the minor to the parent. If the police department is not able to contact the minor's parent within 2 hours after the minor is taken into custody, or if the parent refuses to take custody of the minor, the police department may transport the minor to her or his residence or proceed as authorized under part IV of chapter 39, Florida Statutes.

Sec. 38-63. – Legal duty of parent; permitting minor to violate curfew prohibited; penalty.

- (a) The parent of a minor has a legal duty and responsibility to ensure that the minor does not violate section 38-62(a) or (b).
- (b) An adult person may not knowingly permit a minor to violate section 38-62(a) or (b) by virtue of the minor's presence in a motor vehicle owned or operated by such adult.
- (c) The operator of any establishment, or any person who is an employee thereof, may not knowingly permit a minor to remain upon the premises of the establishment in violation of section 38-62(a) or (b).
- (d) A parent, motor vehicle owner or operator, or the operator or employee of an establishment who knowingly permits a minor to violate section 38-62(a) or (b) shall receive a written warning for a first violation. A parent, motor vehicle owner or operator, or the operator or employee of an establishment who knowingly permits the minor to violate section 38-62 (a) or (b) after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$50 for each violation.

Sec. 38-64 – Exemptions.

Section 38-62 does not apply to a minor who is:

- (a) Accompanied by his or her parent or by another adult authorized by the minor's parent to have custody of the minor.
- (b) Involved in an emergency or engaged, with his or her parent's permission, in an emergency errand.
- (c) Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.

- (d) Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- (e) Attending or returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization or public agency, which function is supervised by adults.
- (f) On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- (g) Engaged in interstate travel or bona fide intrastate travel with the consent of the minor's parent.