

(O-2010-74)  
MEET 3400  
2/22

ORDINANCE NUMBER O- **19932** (NEW SERIES)

DATE OF FINAL PASSAGE **FEB 22 2010**

AN EMERGENCY ORDINANCE PURSUANT TO  
SAN DIEGO CHARTER SECTION 295 AMENDING  
CHAPTER 5, ARTICLE 8 OF THE SAN DIEGO MUNICIPAL  
CODE BY REPEALING DIVISION 1 AND SECTIONS 58.0101,  
58.0102 AND 58.0103, AND ADDING NEW DIVISION 1,  
TITLED CURFEW REGULATIONS, AND ADDING NEW  
SECTIONS 58.0101, 58.0102, AND 58.0103, ALL RELATING  
TO CURFEW REGULATIONS.

WHEREAS, the City of San Diego, under the police power delegated to it by the  
Constitution of the State of California, has the authority to react when the potential exists for  
jeopardy to the public health, safety and general welfare of its citizens; and

WHEREAS, the Council of the City of San Diego is concerned with the ongoing level of  
juvenile violence, juvenile gang activity, and juvenile crime in the City of San Diego; and

WHEREAS, the crimes being committed by juveniles include serious offenses such as  
murders, drive-by shootings, drug-related crimes and other gang-related activities; and

WHEREAS, juveniles 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, local statistics regarding juvenile crime and victimization indicate  
that enforcement of a curfew for juveniles decreases the percentage of juvenile victimization and  
increases the number of arrests for violent crimes during curfew hours; and

WHEREAS, on February 4, 2010, the California Court of Appeals for the Fourth District  
ruled that the City of San Diego's current juvenile curfew ordinance is invalid; and

WHEREAS, the Court specifically determined that the lack of ability to travel to and from certain listed permitted activities made the ordinance unconstitutional; and

WHEREAS, the San Diego Police Department, on a nightly basis, uses curfew as a key tool in crime prevention and enforcement which creates an immediate need to correct the ordinance; and

WHEREAS, the Council of the City of San Diego believes that having an enforceable juvenile curfew ordinance is critical to preserving the public health, safety and welfare; and

WHEREAS, this ordinance is not subject to a Mayoral veto per City of San Diego Charter section 280; and

WHEREAS, it is the intent of this ordinance to repeal and replace all prior juvenile curfew ordinances; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 8, of the San Diego Municipal Code is amended by repealing Division 1 and Sections 58.0101, 58.0102 and 58.0103, and by adding new Division 1 and adding new Sections 58.0101, 58.0102, and 58.0103, to read as follows:

Division 1: Curfew Regulations

**§ 58.0101 Definitions for Curfew Regulations**

All defined terms in this Division appear in italics. For purposes of this Division, the following definitions apply:

*Curfew Hours* means the period from 10:00 p.m. any evening of the week, until 6:00 a.m. the following day.

*Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a

fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

*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.

*Guardian* means (1) a person who, under court order, is the guardian of a *minor*; or (2) a public or private agency with whom a *minor* has been placed by the court.

*Minor* means any person under eighteen (18) years of age.

*Parent* means a person who is a natural parent, adoptive parent, or step-parent of another person.

*Public place* means 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.

*Responsible Adult* means a person at least eighteen (18) years of age, authorized by a *parent* or *guardian* to have the care and custody of a minor.

**§ 58.0102 Curfew Regulations**

- (a) It is unlawful for any *minor* to be present in any *public place* or on the premises of any *establishment* within the City of San Diego during *curfew hours*.

- (b) It is unlawful for any *parent* or *guardian* of a *minor* knowingly to permit, or by insufficient control to allow, the *minor* to be present in any *public place* or on the premises of any *establishment* within the City of San Diego during *curfew hours*.
- (c) It is a defense to prosecution under section 58.0102(a) or (b) that the *minor* was:
- (1) accompanied by the *minor's parent* or *guardian*, or by a *responsible adult*;
  - (2) on an errand at the direction of the *minor's parent* or *guardian*, or the *responsible adult*, 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 *minor's* residence;
  - (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of San Diego, a civic organization, or another similar entity that takes responsibility for the *minor*, 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 of San Diego, a civic organization, or another similar entity that takes responsibility for the *minor*;

- (8) exercising First Amendment rights protected by the United States Constitution, or going to or returning home from, without any detour or stop, the exercising of those First Amendment rights;
  - (9) travelling from an activity listed in section 58.0102(c) to another activity listed in section 58.0102(c), without any detour or stop; or
  - (10) emancipated pursuant to law.
- (d) 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* or on the premises of the *establishment* during *curfew hours*. 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 responses and other circumstances, no defense under section 58.0102(c) is present or applicable.
- (e) Each violation of this section shall constitute a separate offense.

**§ 58.0103 Penalty**

Any person violating the provisions of section 58.0102 shall be guilty of a misdemeanor. *Minors* shall be dealt with in accordance with juvenile court law and procedure.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

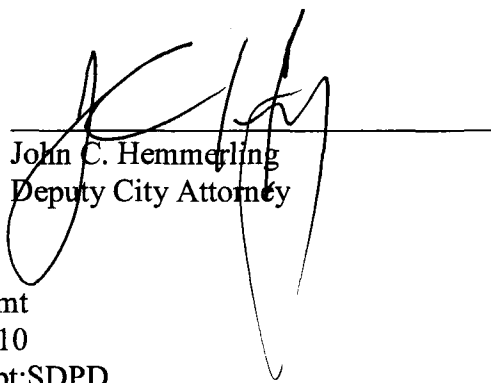
Section 3. That San Diego Ordinance No. O-18415 and San Diego Ordinance No. O-18416 are also repealed.

Section 4. This ordinance is declared to be an emergency measure required for the

immediate preservation of the public safety, health and welfare pursuant to San Diego Charter section 295 and shall take effect immediately and continue in force from the day of adoption by the affirmative vote of at least six members of the City Council.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



John C. Hemmerling  
Deputy City Attorney

JCH:amt  
02/16/10  
Or.Dept:SDPD  
O-2010-74

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 22 2010.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk