



# City of San Leandro

Meeting Date: September 4, 2012

## Ordinance

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**File Number:** 12-360

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.C.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Jayne Williams  
City Attorney

**FINANCE REVIEW:** Not Applicable

**TITLE:** ADOPT: Ordinance No. 2012-012, an Ordinance Repealing and Reserving Sections 4-1-810 and 4-1-815 Of Title 4, Chapter 4-1 of the San Leandro Municipal Code and Amending Article 3 of Title 4, Chapter 4-1 of the San Leandro Municipal Code Relating to Youth Curfews (reestablishes new definitions and defenses to violations and adds new violation provisions)

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**WHEREAS**, the City Council of the City of San Leandro (hereafter, the "City Council") passed and adopted Ordinance No. 1982-021 on April 19, 1982, amending Section 4-1-815 of Title 4, Chapter 4-1 of the San Leandro Municipal Code to provide for a youth curfew between the hours of 10:00 p.m. and 5:00 a.m. for unemancipated minors (hereafter, the "Nighttime Curfew Ordinance"); and

**WHEREAS**, the City Council passed and adopted Ordinance No. 2007-017 on July 30, 2007, adding Section 4-1-810 of Title 4, Chapter 4-1 of the San Leandro Municipal Code to provide for a youth curfew between the hours of 8:00 a.m. and 3:00 p.m. for all minors subject to compulsory education or compulsory continuation education (hereafter, the "Daytime Curfew Ordinance"); and

**WHEREAS**, on February 4, 2010, the Fourth District Court of Appeal for the State of California ruled that a youth curfew ordinance passed and adopted by the City Council of the City of San Diego was partially invalid under the equal protection clauses of the Constitution of the United States and the Constitution of the State of California for its failure to exempt from penalty certain forms of speech and association that are protected under the First Amendment of the Constitution of the United States (hereafter, the "Court Decision"); and

**WHEREAS**, rulings by the Fourth District Court of Appeal for the State of California apply with equal effect throughout the State of California; and

**WHEREAS**, notwithstanding the legal effects of the Court Decision, the passage and adoption of a youth curfew ordinance remains well within the legislative prerogative of the City

Council as a lawful exercise of the police power of the City of San Leandro under the Constitution of the State of California; and

**WHEREAS**, no court has ruled that the Nighttime Curfew Ordinance or the Daytime Curfew Ordinance are an unlawful exercise of a city's police power; and

**WHEREAS**, the City Council shall ensure that the Nighttime Curfew Ordinance and Daytime Curfew Ordinance continue to observe compliance with all applicable state and federal laws that govern youth curfew ordinances, as established by the Court Decision.

**NOW, THEREFORE**, the City Council of the City of San Leandro does ORDAIN as follows:

Section 1. PURPOSE. The recitals above are true and correct and incorporated herein by this reference.

Section 2. REPEAL OF CODE. Section 4-1-810 and Section 4-1-815 of Chapter 4.1, Title 4 of the San Leandro Municipal Code are hereby repealed.

Section 3. RESERVATION OF CODE. Section 4-1-810 and Section 4-1-815 of Chapter 4.1, Title 4 of the San Leandro Municipal Code are hereby reserved.

Section 4. AMENDMENT OF CODE. Article 3 of Chapter 4.1, Title 4 of the San Leandro Municipal Code is hereby amended as follows:

### ARTICLE 3. ~~RESERVED~~ YOUTH CURFEWS

#### 4-1-300 DEFINITIONS.

As used in this Article, the following words and phrases shall mean:

(a) "**Emergency**" shall mean any unforeseen combination of circumstances or the resulting state thereof that calls for immediate action. The term includes, but is not limited to, fire, natural disaster, automobile accident, explosion, or any situation that requires immediate action to prevent loss of life or serious bodily injury, including but not limited to any 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.

(b) "**Establishment**" shall mean any privately owned place of business operated for profit to which the public is invited, including but not limited to any place of amusement or entertainment.

(c) "**Guardian**" shall mean: (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.

(d) "**Loiter**" shall mean to delay an activity, errand or journey with aimless idle stops and purposeless distractions, to remain in place in an idle manner, or to hang around aimlessly or without real necessity.

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

(f) "**Parent**" shall mean a person who is a natural parent, adoptive parent or step-parent of a minor.

(g) "**Public place**" shall mean any place or ground to which the public or a substantial group of the public has access and includes, but is not limited to, the common areas of

schools, hospitals, apartment houses, office buildings, transport facilities and shops.

(h) “**Responsible adult**” shall mean a person at least eighteen (18) years of age, authorized by a parent or guardian to have the care and custody of a minor.

#### 4-1-305 DAYTIME CURFEW.

(a) It is unlawful for any minor who is subject to compulsory education or compulsory continuation education to loiter, wander, stroll, or play in or upon any public street, highway, road, alley, park, playground, or other public place, public building, place of amusement, eating establishment or vacant lot during the hours of 8:00 a.m. to 3:00 p.m. of that same day, on days when the minor’s school is in session.

(b) There is a rebuttable presumption that the minor’s school is in session on days when the school facilities within the City of San Leandro are held open for the compulsory education or compulsory continuation education of all minors.

(c) It is a defense to Section 4-1-305 (a) that the minor was:

(1) Accompanied by his or her parent, guardian or other responsible adult having care or custody of the minor; or

(2) On an emergency errand directed by his or her parent, guardian or other responsible adult having care or custody of the minor; or

(3) Going or coming directly to or from his or her place of gainful employment or to or from a health care appointment; or

(4) Permitted to leave the school for lunch or a school-related activity and has in his or her possession a valid, school-issued, off-campus permit; or

(5) Going or coming directly to or from a school-approved or school-related business, trade, profession, occupation or program in which he or she is lawfully engaged, such as a work study or work experience program, subject to verification by a proper school authority; or

(6) Exempt by federal or state law from compulsory education or compulsory continuation education; or

(7) Authorized to be absent from his or her school under the provisions of Section 48205 of the California Education Code, applicable federal or state law or a school absence policy permitted under the foregoing laws; or

(8) Going directly to or from an event or activity that is directly related to any medical condition of a parent or other responsible adult having the care or custody of the minor; or

(9) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly, or going to or returning home therefrom, without any detour or stop; or

(10) Traveling from an activity listed in this section to another activity listed in this section, without any detour or stop.

#### 4-1-310 NIGHTTIME CURFEW.

(a) It is unlawful for any unemancipated minor to loiter, wander, stroll or play in or upon any public street, highway, road, alley, park, playground, or other public place, public building, place of amusement, eating establishment or vacant lot during the hours of 10:00 p.m. to 5:00 a.m. of the following day.

(b) It is unlawful for any parent or guardian of an unemancipated minor to knowingly permit or, by insufficient control, to allow the minor to loiter in or upon any public street, highway, road, alley, park, playground, or other public place, public building, place of amusement, eating establishment or vacant lot during the hours of 10:00 p.m. to 5:00 a.m. of the following day.

(c) It is a defense to Section 4-1-310 (a-b) that the minor was:

- (1) Accompanied by his or her parent, guardian or other responsible adult having care or custody of the minor; or
- (2) On an errand at the direction of his or her parent, guardian or other responsible adult having care or custody of the minor, without detour or delay; or
- (3) In a motor vehicle involved in intrastate or interstate travel, and such driving does not constitute loitering or wandering; or
- (4) Engaged in employment, or going to or returning home from employment, without detour or delay; or
- (5) Involved in an emergency; or
- (6) On the sidewalk adjacent to his or her residence, provided that the minor is not otherwise violating the law; or
- (7) Attending an official school, religious, or other recreational activity supervised by a responsible adult and sponsored by the City of San Leandro, a civic organization or other similar entity that takes responsibility for the safety of the minor; or going to or returning home from an official school, religious or other recreational activity supervised by a responsible adult and sponsored by the City of San Leandro, a civic organization or other similar entity that takes responsibility for the safety of the minor, without detour or delay; or
- (8) Emancipated pursuant to law; or
- (9) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly, or going to or returning home therefrom, without any detour or stop; or
- (10) Traveling from an activity listed in this section to another activity listed in this section, without any detour or stop.

#### 4-1-315 ENFORCEMENT OF ARTICLE.

(a) Prior to any enforcement action under this Article, a police officer shall ask the apparent offender to provide:

- (1) A form of government-issued or school-issued identification belonging to him or her, or a statement of his or her age; and
- (2) A reason for him or her to be in or upon the public street, highway, road, alley, park, playground, or other public place, public building, place of amusement, eating establishment or vacant lot during the curfew hours established under this Article.

(b) The police officer shall not detain, arrest or issue a citation to the apparent offender unless the police officer reasonably believes:

- (1) That the apparent offender has violated the provisions of this Article; and
- (2) That, based on the apparent offender's responses or other circumstances, no rebuttable presumptions or defenses under the provisions of this Article appear to be present or applicable.

#### 4-1-320 VIOLATIONS.

(a) Each and every violation of this Article shall constitute a separate offense in accordance with Section 1-12-140.

(b) Minors who are found to have violated the provisions of this Article shall be dealt with in accordance with juvenile court law and procedure.

(c) Any person found to have violated the provisions of this section shall be guilty of an infraction.

- (1) The fine for this violation shall be \$50.00 for the first offense, \$100.00 for the

second offense within twelve or fewer consecutive months of the first offense, and \$200.00 for the third and additional offenses within twelve or fewer consecutive months from the second offense.

(2) In lieu of paying the \$50.00 fine, first-time offenders may be assigned to a diversion program which may include five (5) hours of community service with a civic organization located within the City of San Leandro. Upon completion of community service, the minor shall obtain written proof of completion from the civic organization, which shall be subject to verification by the Chief of Police or his or her designee. To meet the requirements of the diversion program, the minors background shall be reviewed by the Chief of Police to determine eligibility. All second, third, and additional offenders within twelve or fewer consecutive months from the first offense shall be assigned to the diversion program described herein without exception.

(3) In the discretion of the Chief of Police, parents of minors who are guilty of a third or additional offenses under subsection (c)(2) above may be required to attend a parenting class, approved and or provided by the Chief of Police, before any fines or offenses are dismissed in the Chief's discretion.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

Section 6. Effective Date of Ordinance. This Ordinance shall take effect thirty (30) days after adoption. The City Clerk of the City of San Leandro is directed to publish the title of the Ordinance once and post a complete copy thereof on the City Council Chamber bulletin board prior to its adoption.

Introduced by Councilmember Reed on this 16th day of July, 2012, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Cutter, Gregory, Prola, Reed, Souza, Starosciak;  
Mayor Cassidy (7)

NOES: None (0)

ABSENT: None (0)