

ORDINANCE NO.: 2011-059

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 14, Offenses and Miscellaneous Provisions, Article V, Offenses Involving Minors to add Division 3, Juvenile Curfew for the Five Points Adult Hospitality District

The Mayor and City Council of the City of Columbia, South Carolina, deem it necessary to adopt a juvenile curfew ordinance for the Five Points Adult Hospitality District of the City. In support thereof, they make the following findings of fact:

1. The Five Points Adult Hospitality District is a popular hospitality district which attracts extremely large numbers of the general public to hospitality venues, including a large contingent of college-age patrons, especially in the late evening and early morning hours; and

2. The City places great value upon the right of members of the general public to walk freely upon the public streets and public spaces of the City without undue hindrance or threat of harm; and,

3. During the past 18 months, there has occurred a level and type of nocturnal crime and violence the City finds unacceptable, to wit: (1) several large fights broke out at the corner of Harden Street and Greene Street in the Five Points Adult Hospitality District in early 2010, and in late May 2010 gun shots were fired at the same location; (2) just before 3:00 a.m. on July 24, 2010, someone fired several rounds on Harden Street hitting a pedestrian and striking the outside of Chubby's 2x4 in the Five Points Adult Hospitality District; (3) on September 12, 2010, at 2:40 a.m., a Minor, 15 years of age, was arrested, charged with, and later pled guilty to possession of a hand gun in the Five Points Adult Hospitality District; (4) on March 4, 2011, a Minor, 16 years of age, was arrested for the unlawful carrying of a pistol, auto tampering and resisting arrest within the Five Points Adult Hospitality District; (5) and on June 20, 2011 an 18 year old person was jogging in the Five Points Adult Hospitality District after midnight when he was physically assaulted by several individuals resulting in life threatening injuries and seven of the eight individuals who have been charged with participating in the assault of the victim are Minors ranging from 13 years of age to 16 years of age; and

4. The City has had to devote an inordinate and disproportionate amount of police resources to patrol and enforce the law in the Five Points Adult Hospitality District, particularly during Curfew Hours; and

5. The City has surveyed 20 City police officers with extensive experience patrolling the Five Points Adult Hospitality District, including 15 officers with experience on its P.A.C.E. team (which targets high crime areas), and such officers overwhelmingly responded that the Five Points Adult Hospitality District is not safe for those under the age of 17 during Curfew Hours, with many citing, as driving factors of their assessment, juveniles' special vulnerability and their prevalence on the streets and sidewalks due to the absence of establishments granting juveniles entry after 11:00 p.m.; and

6. The Mayor and City Council believe that its youngest citizens, Persons under the age of 17, often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, and may be particularly vulnerable to becoming participants in unlawful activities, particularly unlawful violence, and drug and alcohol related activities, and activities creating ample opportunity for their being victimized by older perpetrators of crime; and

7. The City shares a responsibility with parents and guardians to protect children, and believes that a nocturnal juvenile curfew will promote parental involvement in the upbringing of their children through encouraging parents to take a more active role in their children's lives; and

8. The Mayor and City Council have been informed that the cities of Greenville, South Carolina; Dallas, Texas; and Charlottesville, Virginia, have achieved their aims of reducing and preventing youth violence

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and victimization, and strengthening and bolstering parental responsibility for children through the imposition and enforcement of juvenile youth curfews; and

9. Certain academic literature studying and surveying the efficacy of juvenile curfews has found that juvenile curfews are effective at reducing both violent and property crimes committed by Juveniles below the statutory curfew age; and

10. In light of the fact that within the Five Points Adult Hospitality District during Curfew Hours, 72% of businesses are closed, and 72% of those that remain open prohibit the entry of those under 17 years of age, the Mayor and City Council finds that this ordinance is narrowly tailored to achieve its aims; and

11. The Mayor and City Council adopted an emergency youth curfew ordinance, No. 2011-051, and that police officials have reported that this ordinance has been effective in reducing the presence of juveniles during Curfew Hours and in reducing crimes involving juveniles as either perpetrators or victims; and

12. Based upon a survey of City police officers familiar with, and who have served in, the Five Points Adult Hospitality District; Columbia Police Department reports; surveillance video of various incidents in the Five Points Adult Hospitality District during Curfew Hours; news reports; newspaper editorials; personal observations of the Five Points Adult Hospitality District by City Council members during Curfew Hours; academic studies; reports on the efficacy of juvenile curfews imposed in other municipalities; and the experience of the City during the time for which its emergency youth curfew ordinance has been in effect, the Columbia City Council has determined that the public health and safety require the enactment of a permanent ordinance imposing a juvenile curfew in the Five Points Adult Hospitality District:

The Mayor and City Council find that this ordinance shall be enacted to:

- (i) to promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the Five Points Adult Hospitality District;
- (ii) to promote the safety and well-being of the City's youngest citizens, Persons under the age of 17, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful violence and drug activities, and to being victimized by older perpetrators of crime; and
- (iii) to foster and strengthen parental responsibility for children.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council this 23rd day of August 2011, that the 1998 Code of Ordinances of The City of Columbia, South Carolina, Chapter 14, Offenses and Miscellaneous Provisions, Article V, Offenses Involving Minors, is amended to add Division 3, Juvenile Curfew for the Five Points Adult Hospitality District, and to read as follows:

DIVISION 3. JUVENILE CURFEW FOR THE FIVE POINTS ADULT HOSPITALITY DISTRICT

Sec. 14-160. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Curfew Hours refers to the hours of 11:00 p.m. through 6:00 a.m. the next day, each day of the week.

Establishment refers to any privately-owned place of business within the Five Points Adult Hospitality District operated for a profit, to which the public is invited, or to any non-profit organization licensed to sell or serve beer, wine or other alcoholic beverage, 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 members or partners thereof) and/or any corporation (and the officers thereof) conducting or managing that Establishment.

Five Points Adult Hospitality District refers to the hospitality area as shown on the map attached hereto as Exhibit A, which is incorporated herein by reference thereto, and includes Maxcy Gregg Park and M. L. King Park.

Minor or Juvenile refers to any Person under seventeen (17) years of age who has not been emancipated by court order entered pursuant to state law.

Officer refers to a police or other law enforcement officer charged with the duty of enforcing the laws of the State of South Carolina and/or the ordinances of the City.

Parent refers to:

- (1) a Person who is a Minor's biological or adoptive parent and who has legal custody of a Minor (including either parent, if custody is shared under a court order or agreement);
- (2) a Person who is the biological or adoptive parent with whom a Minor regularly resides;
- (3) a Person judicially appointed as a legal guardian of the Minor; or
- (4) a Person eighteen (18) years of age or older standing in *loco parentis* (as indicated by the authorization of an individual listed in part(s)(1), (2) or (3) of this definition, above, for the Person to assume the care or physical custody of the Minor, or as indicated by any other circumstances).

Person refers to an individual, not to any association, corporation, or any other legal entity.

Public Place refers to 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, transportation facilities and shops.

Remain refers to the following actions:

- (1) to linger or stay at or upon a place; and/or
- (2) to fail to leave a place when requested to do so by an Officer or by the owner, Operator or other Person in control of that place.

Temporary Care Facility refers to a court-approved foster home, group home, non-secure facility, or program as provided by S.C. Code Ann. § 63-19-810, where Minors may wait, under visual supervision, to be retrieved by a Parent or other responsible adult. No Minors waiting in such facility shall be handcuffed and/or secured (by handcuffs or otherwise) to any stationary object.

Sec. 14-161. Five Points Adult Hospitality Curfew established.

(a) It shall be unlawful for a Minor, during Curfew Hours, to Remain in or upon any Public Place within the Five Points Adult Hospitality District, 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 Five Points Adult Hospitality District, unless:

- (1) the Minor is accompanied by a Parent; or
- (2) the Minor is involved in an emergency; or
- (3) the Minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop; or
- (4) the Minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
- (5) the Minor is attending an 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 from such an activity without detour or stop; or
- (6) the Minor is on an errand at the direction of a Parent, and the Minor has in his or her possession a writing signed by the Parent containing the following information: the name, signature, address and telephone

number of the Parent authorizing the errand, the telephone number where the Parent may be reached during the errand, the name of the Minor, and a brief description of the errand, the Minor's destination(s) and the hours the Minor is authorized to be engaged in the errand; or

(7) the Minor is involved in interstate travel through, or beginning or terminating in, the City of Columbia; or

(8) the Minor is 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.

(b) It shall be unlawful for a Minor's Parent to knowingly permit, allow or encourage such Minor to violate subsection (a).

(c) It shall be unlawful for a Person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of subsection (a).

(d) It shall be unlawful for the Operator of any Establishment, or for 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 under this subsection that the Operator or employee of an Establishment promptly notified the Columbia Police Department that a Minor was present at the Establishment during Curfew Hours and refused to leave.

(e) It shall be unlawful for any Person (including any Minor) to give a false name, address, or telephone number to any Officer investigating a possible violation of this ordinance.

Sec. 14-162. Enforcement.

(1) Minors. 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 Five Points Adult Hospitality District during Curfew Hours is in violation of Sec. 14-161(a).

If such investigation reveals that the presence of such Minor is in violation of Sec. 14-161(a), then:

(i) if the Minor has not previously been issued a warning for any such violation, then the Officer shall issue a verbal warning to the Minor, which shall be followed by a written warning mailed by the police department to the Minor and his or her parent(s), or

(ii) if the Minor has previously been issued a warning for any such violation, then the Officer shall charge the Minor with a violation of this ordinance and shall issue a summons requiring the Minor to appear in court.

As soon as practicable, the Officer shall notify the Parent of the Minor, and thereafter:

(i) release the Minor to his or her Parent or other responsible adult; or

(ii) place the Minor in a Temporary Care Facility for a period not to exceed the remainder of the Curfew Hours, so that his or her Parent(s) may retrieve the Minor; or

(iii) if a Minor refuses to give an Officer his or her name and address, refuses to give the name and address of his or her Parent(s), or if no Parent can be located prior to the end of the applicable Curfew Hours, or if located, no Parent appears to accept custody of the Minor, the Minor may be taken to a Temporary Care Facility or otherwise to be dealt with in the manner and pursuant to such procedures as required by state law. See S.C. Code Ann. §§ 63-19-10, *et seq.*

(2) Others. If an investigation by an Officer reveals that a Person has violated Sec. 14-161(b), (c), (d), and/or (e), and if the Person has not previously been issued a warning with respect to any such violation, an Officer shall issue a verbal warning to the Person, which shall be followed by a written warning mailed by the Columbia Police Department to the Person; however, if any such warning has previously been issued to that

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Person then the Officer shall charge the Person with a violation and shall issue a summons directing the Person to appear in court.

(3) Any Person found guilty of a violation of this ordinance shall be guilty of a misdemeanor, punishable upon conviction, in accordance with Sec. 1-5 of the Columbia City Code. For the purpose of enforcing this ordinance, the Columbia Police Department is hereby authorized to maintain records of warnings and violations.

(4) Nothing in this ordinance shall be taken or construed to limit, foreclose or otherwise impair the ability of the City to enforce other City ordinances or state laws regulating the conduct of Juveniles and their companions, including, but not limited to laws relating to contributing to the delinquency of Minors, underage possession and consumption of alcohol or tobacco products, and the like.

This ordinance is effective immediately upon enactment.

Requested by:

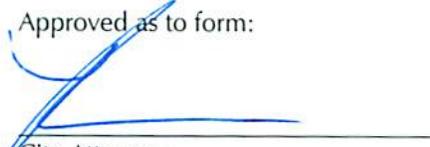
Mayor and City Council


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Public Hearing: 8/23/2011

Introduced: 8/16/2011

Final Reading: 8/23/2011