

Ordinance No.2013-039

Setting Curfew for Juveniles and Violations and Penalties

SECTION _____ Juvenile Curfew.

- (a) **Short title.** This section shall be known and may be cited as the "curfew ordinance".
- (b) **Purpose and findings.**
This curfew ordinance serves to regulate the conduct of juveniles on streets during daily nocturnal hours, and during those hours when school attendance and supervision is mandated by the Mississippi Compulsory School Attendance Law (section 37-13-91, et seq., Mississippi Code Annotated), to be effectively and consistently enforced for the protection of juveniles in the City of Diamondhead from each other and from other persons on the streets during specific hours, for the enforcement of parental control of, authority over and responsibility for their children, for the protection of the public from nocturnal mischief by juveniles, for the reduction in incidents of juvenile criminal activity, drug and alcohol abuse and addiction, and for the furtherance of family responsibility, and generally for the public good, safety and welfare.
- (c) **Definitions.**
Under this section, phrases, words and their derivations shall have the meanings given herein. When inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.
- (1) *City* means the City of Diamondhead, Mississippi, with administrative offices at City Hall, 5000 Diamondhead Circle, Diamondhead, Mississippi 39525, or such other place or address as may be subsequently established by the governing authority.
 - (2) *Governing authority* means the city council and mayor of the City of Diamondhead, Mississippi.
 - (3) *Juvenile* means any person under the age of eighteen (18) years (seventeen (17) or less years of age), unmarried and not emancipated by removal of juvenile disability by order of the court.
 - (4) *Parent* means any person having legal custody of a juvenile (i) as a natural or adoptive parent; (ii) as a legal guardian; or (iii) as a person to whom legal custody has been given by order of the court. A

parent other than a natural parent or adoptive parent subject to this section must be at least eighteen (18) years of age.

- (5) *Operator* means any individual, firm, association, partnership, corporation, or employee or agent thereof operating, managing, or conducting the business of any establishment or any person in control of the business premises. The term also includes the members or partners of an association or partnership and the officers of a corporation.
- (6) *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, abutting sidewalks, and the common areas of hospitals, apartment houses, housing projects or condominiums, office buildings, transport facilities, parks, shops, and business establishments.
- (7) *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.
- (8) *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, a natural disaster or an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (9) *Remain* means to linger or stay; or to fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- (10) *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.
- (11) *Street* means a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel.

(d) ***Curfew hours.***

Under this section [curfew hours] shall be:

- (1) 11:01 o'clock p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 o'clock a.m. of the following day; and
- (2) 12:01 o'clock a.m. until 6:00 o'clock a.m. on any Friday or Saturday; and

(e) Offenses.

- (1) A juvenile commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (2) A parent as defined in subparagraph (c)(4) of this section commits an offense if (s)he knowingly permits, or by insufficient control allows, the juvenile to remain in any public place or on the premises of any establishment within the city during applicable curfew hours as provided in subsection (d) above.
- (3) The owner or operator as defined in subparagraph (c)(5) of this section commits an offense if (s)he knowingly allows a juvenile to remain upon the premises of the establishment during curfew hours.

(f) Defenses.

- (1) It is a defense to prosecution under subsection (e) that the juvenile was:
 - a. Accompanied by the juvenile's parent as defined under subparagraph (c)(4) of this section, or by an adult over the age of seventeen (17) years (age eighteen (18) years or older) by permission of the parent;
 - b. On a reasonable errand at the direction of the juvenile's parent, without any detour or stop;
 - c. In a motor vehicle involved in interstate travel;
 - d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - e. Involved in an emergency;
 - f. On the sidewalk or area abutting between the street and the juvenile's residence; or abutting the residence of a next door neighbor, if the neighbor did not complain to the police department about the juvenile's presence;
 - g. Attending an official school, religious, civic or other recreational function or activity supervised by adults and sponsored by the City of Diamondhead, or another similar entity located in Hancock County. In all cases the entity takes responsibility for the juvenile while he/she is at the function and the juvenile must go directly home from the function/activity.
 - h. 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
 - i. Attending to a person needing assistance, or being stranded and in need of assistance or standing guard over personal property while awaiting assistance.
- (2) It is a defense to prosecution under subparagraph (e)(3) that the operator, as defined in subparagraph (c)(5) of this section of an establishment promptly notified the

Diamondhead Police Department that the juvenile was present on the premises of the establishment during the curfew hours and refused, or neglected, after having been requested, to leave.

(g) *Requirements for enforcement.*

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 believed that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (f) is present.

(h) *Penalties.*

- (1) A person who violates a provision of this curfew ordinance is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense upon conviction for first offense is punishable by fine not to exceed one hundred dollars (\$100.00), and upon conviction for a second and subsequent offense (s) is punishable by a fine not to exceed three hundred dollars (\$300.00).
- (2) By discretion of the municipal court, the municipal court may waive original jurisdiction over a juvenile or parent where the Youth Court of Hancock County assumes jurisdiction in proceedings concerning a delinquent or neglected child residing in the county under section 43-21-159, Mississippi Code Annotated.

(i) *Construction and severability.*

Severability is intended through and within the provisions of this section. If any provision, including inter alia any exception, part, phrase or term of or the application thereof to any person or circumstances, is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of this section in any and all other respects shall not be affected thereby. It is not intended under this section for a result to occur that is absurd, impossible to execute or unreasonable. It is intended that this section or part hereof be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given.

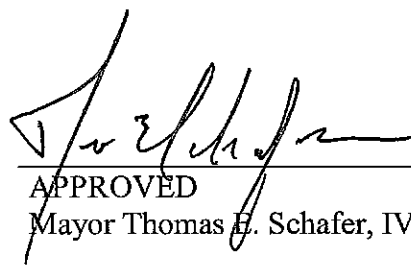
In accordance with Mississippi Code of 1972, § 21-13-11, this ordinance becomes effective thirty days from date of passage with a single publication of the ordinance prior to the effective date.

SO ORDAINED, THIS 19th DAY OF November 2013

Councilmember Knobloch ✓

Councilmember Lopez ✓
Councilmember LaFontaine ✓
Councilmember Sislow ✓
Councilmember Rech ✓
Mayor Schafer ✓


ATTEST: Lolita McSwain Deputy City Clerk


APPROVED
Mayor Thomas E. Schafer, IV

SEAL

THIS IS TO CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY OF DIAMONDHEAD, MISSISSIPPI, ON THE 19th DAY OF November 2013.

Lolita McSwain Deputy City Clerk