

ORDINANCE NO.: 2011-051

*An Emergency Ordinance Imposing a Juvenile Curfew for the Five Points Area*

WHEREAS, the Five Points area is a popular hospitality district which attracts extremely large numbers of the general public especially in the late evening and early morning hours; and,

WHEREAS, several fights have broken out at the corner of Harden Street and Greene Street in early 2010 and in late May, 2010 shots were fired at the corner of Harden Street and Greene Street in the Five Points area; and,

WHEREAS, 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 area; and,

WHEREAS, on September 12, 2010, at 2:40 a.m., a minor, 15 years of age, was charged with and later plead guilty to possession of a hand gun in the Five Points area; and,

WHEREAS, 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 area; and,

WHEREAS, on June 20, 2011 an 18 year old was jogging in the Five Points area after midnight when he was physically assaulted by several persons; and,

WHEREAS, the assault was so vicious and severe, that the victim sustained life threatening injuries as a result of the assault and remains hospitalized; and,

WHEREAS, seven of the eight individuals who are suspected of assaulting the victim are minors ranging from 13 years of age to 16 years of age ; and,

WHEREAS, the Columbia Police Department has received reports that other members of the general public in the Five Points area during the evening hours of June 19, 2011 and early morning hours of June 20, 2011 received threats of assault by a group of individuals but managed to avoid being assaulted by fleeing; and,

WHEREAS, Columbia City Council 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,

WHEREAS, S.C. Code Ann. §5-7-250 authorizes the enactment of emergency ordinances to meet public emergencies affecting life, health, safety or the property of people; and,

WHEREAS, based upon the incidents in early 2010 and May 2010, July 24, 2010 and prior arrest involving a minor in the Five Points area, the reports of attempted assaults upon members of the general public in the Five Points areas and the vicious and severe assault that did occur, Columbia City Council has determined that there is a public emergency affecting life, health, safety or the property of people requiring the enactment of an emergency ordinance imposing a juvenile curfew; NOW, THEREFORE,

BE IT ORDAINED by the Mayor and Council this 28th day of June, 2011 that enactment of an emergency ordinance imposing a juvenile curfew to:

(i) promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the Five Points area;

(ii) promote the safety and well-being of the City's youngest citizens, persons under the age of seventeen (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;

(iii) and foster and strengthen parental responsibility for children.

(a) Definitions. As used within this ordinance, the following words and phrases shall have the meanings ascribed to them below:

*Curfew hours* refers to the hours of 11:00 p.m. through 6:00 a.m. the next day.

*Emergency* refers to unforeseen circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances.

*Establishment* refers to any privately-owned place of business within the Five Points area operated for a profit, to which the public is invited, 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 area* refers to the hospitality area as shown on the attached map, 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 of Columbia.

*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; and/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, which minors may wait, under visual supervision, to be retrieved by a parent, legal guardian or other responsible adult. No minors waiting in such facility shall be handcuffed and/or secured (by handcuffs or otherwise) to any stationary object.

(b) It shall be unlawful for a minor, during curfew hours, to remain in or upon any Public Place within the Five Points area, 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 area, 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.

(c) It shall be unlawful for a minor's parent, legal guardian or custodian of the minor to knowingly permit, allow or encourage such minor to violate subsection (b).

(d) 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 (b).

(e) 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 police department that a minor was present at the Establishment after curfew hours and refused to leave.

(f) 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.

(g) 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 City during Curfew hours is in violation of subsection (b).

If such investigation reveals that the presence of such minor is in violation of subsection (b), 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, legal guardian or custodian of the minor, and thereafter:

(i) release the minor to his or her parent(s), legal guardian 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 subsections (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 police department to the person; however, if any such warning has previously been issued to that person then the officer shall charge the person with a violation and shall issue a summons directing the person to appear in court.

(h) Any person found guilty of a violation of this ordinance shall be guilty of a misdemeanor, punishable upon conviction, in accordance with section 1-5 of the Columbia City Code.

(i) 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 and shall expire automatically as of the sixty-first (61st) day following the date of enactment.

Requested by:

Mayor and City Council

  
MAYOR

Approved by:

City Manager

Approved as to form:

City Attorney

ATTEST:

  
City Clerk

Introduced: 6/28/2011

Final Reading: 6/28/2011

