

SPECIAL CALLED CITY COUNCIL MEETING
September 7, 2017

MINUTES OF THE SPECIAL CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD **SEPTEMBER 7, 2017** AT 7:00 PM IN THE COUNCIL CHAMBERS, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

PRESENT:

C. R. Evans Jr., Mayor
Philip Cox, Mayor Pro Tem
Jerry Clark
Lawrence Davis - *arrived at 7:09 pm*
John Posey
Michael Paul Williams

ABSENT:

Also in attendance were, Charles Cunningham, City Manager, Clyde Carter, Police Chief, Wendy Bates, City Comptroller, and Rachél Gafford, City Secretary representing staff, Jim and Jean Beth Hamblen representing the public.

I. CALL TO ORDER – Mayor Evans called the meeting to order at 7:00 pm

1. Invocation was given by *Mayor Evans*.
2. Pledge of Allegiance was led by *Councilman Posey*.

II. CITIZEN FORUM

No one signed up to speak.

III. CITIZEN'S REQUEST

None

IV. CONSENT AGENDA

1. City Council to review, make possible corrections and approve minutes from a Regular Called Meeting of the City Council held on August 17, 2017.

Mayor Pro Tem Cox made a motion to approve the consent agenda as submitted.

Councilman Posey seconded the motion.

Mayor Evans called for a vote.

Motion carried 4 – 0 – 0; Councilman Davis not present at the time of the vote.

V. PUBLIC HEARING

Mayor Evans opened the Public Hearing at 7:02 PM

1. City Council to hear public comments regarding 2nd reading of **ORDINANCE NO. 2017-09-07A**; an Ordinance of the City Council of the City of Overton, Texas,

Reenacting and Amending Chapter 95 entitled "Curfew Hours For Minors" of the Code of Ordinances, defining terms, creating hours for curfew for minors, creating offenses for minors, parents of minors, and business establishments violating curfew regulations, providing for enforcement by the Police Department; providing a penalty of up to \$500.00 for each offense; making various findings and provisions related to the subject; containing a severability clause; repealing all other ordinances in conflict herewith; providing for publication and providing that this ordinance shall be effective from and after September 7, 2017.

Police Chief Carter informed Council that the Ordinance presented reflects the change of the curfew hours to be Sunday through Thursday 10 pm to 6 am and Friday and Saturday 11 pm to 6 am.

No citizens comments received

2. City Council to hear public comments regarding 1st reading of **ORDINANCE NO. 2017-09-14B**; an Ordinance approving and adopting a budget for the City of Overton, Texas for the fiscal year beginning October 1, 2017, and ending September 30, 2018, in accordance with the Local Government Code of the State of Texas and the ordinances and rules of the City Of Overton, Texas; appropriating the various amounts thereof, and repealing all ordinances or parts of ordinances in conflict therewith; providing for a severability clause, an effective date and directing the City Secretary to file a true copy of the budget with the County Clerks of Rusk and Smith County, Texas.

No citizens comments received

3. City Council to hear public comments regarding 2nd reading of **ORDINANCE NO. 2017-09-14C**; an Ordinance Levying Ad Valorem Taxes for Maintenance and Operation and the Interest and Sinking Fund of the Municipal Government of the City of Overton for the 2017-2018 Fiscal Year (Tax Year 2017); providing for a severability clause and an effective date.

No citizens comments received

4. City Council to hear public comments regarding 2nd reading of **ORDINANCE NO. 2017-09-14D**; an Ordinance Levying Ad Valorem Taxes for the Maintenance and Operation of the City of Overton Municipal Cemetery for the 2017-2018 Fiscal Year (Tax Year 2017); providing for a severability clause and an effective date.

Jean Beth Hamblen asked if a copy of these proposed Ordinances were available somewhere to be viewed by the public.

City Secretary Gafford responded that all of the above proposed Ordinances were available for viewing on the City's website www.ci.overton.tx.us.

Mayor Evans closed the Public Hearing at 7:08 PM

Mayor Evans made the following announcement:

The City Council of the City of Overton will vote on a proposed tax rate for general operation (O & M) and Debt for the 2017 tax year that would increase total tax revenues. The Council will also vote on a proposed tax rate for the Cemetery Operations and Maintenance Fund for the 2017 tax year at 7:00 p.m., Thursday, September 14, 2017 in City Council Chambers located at City Hall, 1200 South Commerce Street, Overton, Texas 75684.

VI. OLD BUSINESS

1. City Council to take action regarding **ORDINANCE NO. 2017-09-07A**; An Ordinance of the City Council of the City of Overton, Texas, reenacting and Amending Chapter 95 entitled "Curfew Hours for Minors" of the Code of Ordinances.

Mayor Pro Tem Cox made a motion to approve Ordinance No. 2017-09-07A as submitted.

Councilman Posey seconded the motion.

Mayor Evans called for discussion.

Councilman Posey made the statement that he believed the Ordinance has been working well and felt the City needed to keep this Ordinance in place.

Councilman Clark asked Police Chief Carter on the status of the juveniles that were caught out at the City park.

Police Chief Carter responded that one of the individuals was currently in the Gregg County Jail, the others individuals involved all received a first warning and if they were caught again they would be issued a citation.

Mayor Evans stated that he felt like the change of moving the curfew hours to 10 pm on school nights was a good idea.

Mayor Evans asked for additional discussion or comments, no one responded.

Mayor Evans called for a vote on Ordinance No. 2017-09-07A re-enacting and amending Chapter 95 - Juvenile Curfew Ordinance of the City of Overton Code of Ordinances.

Motion carried 5 – 0 – 0.

VII. NEW BUSINESS

1. Hear, consider and/or take action on **ORDINANCE NO. 2017-09-07B**, an Ordinance of the City of Overton, Texas, declaring unopposed candidates as elected to the positions Mayor, Council Member, Place # 2, and Council Member Place # 4, and declaring those three races of the General Election hereby cancelled in accordance with Chapter 2 of the Texas Election Code.

City Secretary Gafford presented Ordinance No. 2017-09-07B and the Certification of Unopposed Candidates for the 2017 General Election for the City of Overton. Gafford requested that Council take action to Cancel the Election.

Mayor Pro Tem Cox made a motion to approve Ordinance No. 2017-09-07B as submitted.

Councilman Williams seconded the motion.

Mayor Evans called for discussion.

Councilman Davis asked if he was able to vote or not since he was one of the candidates.

Mayor Evans responded yes you may vote.

Mayor Evans asked for additional discussion or comments, no one responded.

Mayor Evans called for a vote on Ordinance No. 2017-09-07B cancelling the 2017 General Election and declaring the unopposed candidates duly elected for an additional two (2) year term of office.

Motion carried 5 – 0 – 0.

VIII. ADJOURNMENT

Councilman Posey made a motion to adjourn.

Councilman Clark seconded the motion.

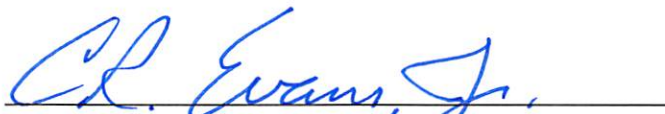
Mayor Evans called for a vote.

Motion carried 5 – 0 – 0.

With no further business, the meeting was adjourned at **7:15 PM**

Minutes submitted, approved and/or corrected this **14th** day of **September, 2017.**

CITY OF OVERTON


C. R. Evans, Jr., Mayor

ATTEST:


Rachel Gafford, City Secretary

ATTACHMENT A

City of Overton, Texas

Ordinance No. 2017-09-07A
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ORDINANCE NO. 2017-09-07A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, RE-ENACTING AND AMENDING CHAPTER 95 ENTITLED "CURFEW HOURS FOR MINORS" OF THE CODE OF ORDINANCES, DEFINING TERMS, CREATING HOURS FOR CURFEW FOR MINORS, CREATING OFFENSES FOR MINORS, PARENTS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS, PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING A PENALTY OF UP TO \$500.00 FOR EACH OFFENSE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; CONTAINING A SEVERABILITY CLAUSE; REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE FROM AND AFTER SEPTEMBER 7, 2017.

WHEREAS, Texas Local Government Code, Section 370.002 provides as follows:

- (a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:
 - (1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
 - (2) conduct public hearings on the need to continue the ordinance or order; and
 - (3) abolish, continue, or modify the ordinance or order.
- (b) Failure to act in accordance with Subsections (a)(1) -(3) shall cause the ordinance or order to expire.

WHEREAS, a public hearing was held on August 31, 2017, and September 7, 2017; and

WHEREAS, the City Council originally adopted a Juvenile Curfew Ordinance on May 29, 2001 by Ordinance No. 052901-C which expired May 29, 2004. The City Council then adopted another a Juvenile Curfew Ordinance on February 19, 2008 by Ordinance Chapter 95 which expired February 19, 2011. Finally, City Council adopted another Juvenile Curfew Ordinance on October 16, 2014 by Ordinance NO. 2014-10-16A; and

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Ordinance No. 2017-09-07A
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WHEREAS, after employing a Juvenile Curfew Ordinance since May 29, 2001, the Overton Police Department has concluded that such an ordinance is effective in reducing juvenile crime and the incidents of juvenile victims of crime during the curfew period; and

WHEREAS, a copy of Chapter 95 entitled "Curfew Hours for Minors" enacted by Ordinance No. 2014-10-16A is shown as an attachment to this Ordinance as Attachment A.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, THAT:

SECTION 1. Chapter 95 of the Code of Ordinances for the City of Overton, Texas is hereby reenacted.

SECTION 2. If any section, provision, subsection, paragraph, sentence, clause, phrase, or word in this ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Overton, Texas, hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are repealed to the extent of conflict only.

SECTION 4. This Ordinance shall be in full force and effect from and after September 7, 2017.

PASSED AND APPROVED, this the 7th day of September, 2017.

CITY OF OVERTON, TEXAS



C.R. Evans Jr.
C. R. Evans Jr., Mayor

ATTEST:

APPROVED AS TO FORM & LEGALITY:

Rachel Gafford
Rachel Gafford, City Secretary

Blake Thompson
Blake Thompson, City Attorney

City of Overton, Texas

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ATTACHMENT A

CHAPTER 95: CURFEW HOURS FOR MINORS

Section

- 95.01 Definitions
- 95.02 Curfew Hours for Minors
- 95.03 Defenses to Prosecution
- 95.04 Enforcement procedures
- 95.05 Parental responsibility
- 95.06 Penalty
- 95.07 Review

§ 95.01 Definitions

In connection with this article, the following terms, phrases and words, shall have the meaning given herein:

Adult. A responsible person, 18 years of age or older, other than a parent, guardian or custodian, in whose care and under whose individualized supervision the minor has been placed by the parent, guardian, or custodian and under circumstance which demonstrate actions indicating oversight and concern for the minor.

City. The City of Overton, Texas as defined by its corporate boundaries.

Minor. Any person under the age of seventeen (17) or, in equivalent phrasing often herein employed, any person sixteen (16) or less years of age.

Parent. Any person having legal custody of a minor:

- (1) As a natural or adoptive parent;
- (2) As legal guardian;
- (3) As a person who stands in loco parentis; or
- (4) As a person to whom legal custody has been given by order of court, including both a managing conservator and a possessory conservator.

Parking lot. Any area, whether paved or unpaved, whether public or private, used or intended to be used for the storage or parking of vehicles.

Remain. To stay behind, to tarry or to stay unnecessarily upon the streets or parking lots of the city.

Street. A way or place, of whatsoever nature, open to the use of the public as a matter of right for purpose of vehicular travel or in the case of sidewalk thereof for pedestrian travel. The term street includes the legal right-of-way including but not limited to traffic lanes, the curbs, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a

City of Overton, Texas

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street. The term street applies irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise.

Time of night. As referred to herein, the time of night is based upon the prevailing standard of time, whether central standard or central daylight, saving time. The time observed in the city's administrative offices and police station shall be prima facie evidence of the time of night.

Year of age. Continues from one birthday, such as the sixteenth (16th) to (but not including the day of) the next seventeenth (17th) birthday, making it clear that "sixteen (16) or less years of age" is herein treated as equivalent to the phrase "under seventeen (17) years of age."

§ 95.02 Curfew hours for minors

It shall be unlawful for any person sixteen (16) or less years of age (under seventeen (17)) to be or remain in or upon the streets or parking lots within the city at night during the period of 10:00 pm to 6:00 am Sunday through Thursday and 11:00 pm to 6:00 am Friday and Saturday.

§ 95.03 Defenses to Prosecution

It shall be a defense to prosecution under Section 95.02 of this article where one of the following situations exists:

- (1) The minor was accompanied by a parent.
- (2) The minor was accompanied by an adult authorized by a parent of such a minor for a designated period of time and purpose within specified area.
- (3) The minor was in route, using the most direct route, to or from the following:
 - (a) A place of the minor's employment;
 - (b) A restaurant, library, movie theater, store or other place of public accommodation;
 - (c) A play, dance, sporting event or other of public entertainment;
 - (d) A church, meeting hall, school, courthouse or other place of public assembly or worship; or
 - (e) An emergency errands.
- (4) The minor was 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.
- (5) The minor was married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as same may hereafter be amended.

City of Overton, Texas

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§ 95.04 Enforcement procedures

- (a) If a police officer determines that a minor violation of this provision is the minor's first violation of this provision, the police officer shall issue a warning to the minor and notify the minor's parent(s) of the violation. Subsequently, any police officer upon finding a minor in violation of Section 95.02, may transfer the case to proper authorities for handling under the provisions of title 3 of the Texas Family Code, as same may hereafter be amended.
- (b) In addition, a complaint may be filed against the parents in municipal court for violation hereof. The police department shall file all necessary legal papers, supply all necessary documentation, and provide necessary testimony as required for pursuing violation of this article by either the minor or by any parent or guardian.

§ 95.05 Parental Responsibility

It shall be unlawful for a parent having legal custody of a minor knowingly to permit or by inefficient control to allow, such minor to be or remain upon any city street or parking lot under circumstances not constituting a defense to, or otherwise beyond the scope of this article. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended that a reasonable community standard of parental responsibility be applied through an objective test. It shall be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

§ 95.06 Penalty

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state.

§ 95.07 Review

- (a) As required by section 370.002 of the Texas Local Government Code, before the third anniversary of the date of adoption of the juvenile curfew ordinance the city council shall:
 - (1) Review the ordinance effects on the community and on problems the article was intended to remedy;
 - (2) Conduct public hearings on the need to continue the article; and
 - (3) Abolish, continue, or modify the article.
- (b) Failure to act in accordance with subsection (a)(1)-(3) shall cause the article to expire.

ATTACHMENT B

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ORDINANCE NO: 2017-09-07B

AN ORDINANCE OF THE CITY OF OVERTON, TEXAS DECLARING UNOPPOSED CANDIDATES AS ELECTED TO THE MAYOR, COUNCILMAN, PLACE # 2, AND COUNCILMAN PLACE # 4 POSITIONS, AND DECLARING THOSE THREE RACES OF THE GENERAL ELECTION CANCELLED IN ACCORDANCE WITH CHAPTER 2 OF THE TEXAS ELECTION CODE

WHEREAS, the City Secretary has filed with the City Council a Certification of Unopposed Candidates for the Mayoral, Councilman Place # 2, and Councilman Place # 4 positions; and

WHEREAS, the City Secretary has certified that there are no write-in candidates for those offices under applicable law; and

WHEREAS, Chapter 2 of the Texas Election Code provides for the cancellation of the general elections under certain conditions; one for which is that all candidates for positions in the general election are unopposed;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, THAT:

1. C. R. Evans, Jr. is declared elected to the Office of Mayor for a two-year term, John Posey is declared elected to the Office of Council Member Place # 2 for a two-year term, and Lawrence Davis is declared elected to the Office of Council Member Place # 4 for a two-year term.
2. Under this declaration, the newly elected officials aforementioned above shall assume the duties of their elected office effective November 16, 2017.
3. Under this declaration, the general election scheduled for November 7, 2017 for the Mayoral position, Council Member Place # 2 position, and Place # 4 position is hereby cancelled.

PASSED AND ADOPTED this 7th day of September, 2017.



CITY OF OVERTON

C.R. Evans, Jr.
C.R. Evans, Jr., Mayor

APPROVED AS TO FORM AND LEGALITY:

Blake Thompson
Blake Thompson, City Attorney

ATTEST:

Rachél Gafford
Rachél Gafford, City Secretary

City of Overton, Texas

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Prescribed by Secretary of State
Section 2.051-2.053, Texas Election Code
5:02

**CERTIFICATION OF UNOPPOSED CANDIDATES
(CERTIFICACION DE CANDIDATOS UNICOS)**

To: City Council of the City of Overton, Texas
(Al: *Consejal de la ciudad de Overton, Texas*)

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the Municipal Election scheduled to be held on **November 7, 2017**.

(Como autoridad a cargo de la preparacion de la boleta de votacion oficial, por la presente certifico que los siguientes candidatos son candidatos unicos para un cargo en la Eleccion Municipal que se llevara cabo el 7 de Noviembre 2017.

List of offices and names of candidates:
(Lista de cargos y nombres de los candidatos:)

Offices (Cargos)	Candidates (Candidatos)
Mayor (Firma del Alcalde)	C. R. Evans, Jr.
Council Member, Place # 2 (Miembro del Consejo #2)	John Posey
Council Member, Place # 4 (Miembro del Consejo #4)	Lawrence Davis

Rachél Gafford
Signature (Firma)

Rachél Gafford
Printed name (Nombre en letra de molde)

City Secretary (Secretaria de la Ciudad)
Title (Puesto)

August 28, 2017 (28 de agosto de 2017)
Date of signing (Fecha de firma)



(SEAL)

City of Overton, Texas

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Prescribed by Secretary of State
Section 2.051-2.053, Texas Election Code

**ORDER OF CANCELLATION
(ORDEN DE CANCELACION)**

The City Council of the City of Overton, Texas hereby cancels the Mayor, Council Member Place # 2, and Council Member Place # 4 elections scheduled to be held on May 9, 2015 in accordance with Chapter 2 of the Texas Election Code. The following candidates have been certified as unopposed and are hereby elected as follows:

(El Concejo Municipal de la Ciudad de Overton, Texas por la presente cancela las elecciones del Alcalde, del Lugar del Miembro del Consejo # 2 y del Miembro del Consejo # 4 previstas para el 9 de mayo de 2015 de acuerdo con el Capítulo 2 del Código de Elecciones de Texas. Los siguientes candidatos han sido certificados como sin oposición y son por la presente elegidos como sigue:)

Candidate (Candidato)

Office Sought (Cargo al que presenta candidatura)

C. R. Evans, Jr.
John Posey
Lawrence Davis

Mayor (Alcade)
Councilman Place # 2 (Concejal Distrito 2)
Councilman Place # 4 (Concejal Distrito 4)


Mayor (Alcalde)




City Secretary (Secretaria de la Ciudad)

(Seal)

September 7, 2017 (7 de septiembre de 2017)
Date of Adoption (Fecha de adopcion)