

1 ORDINANCE 2010-

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3 AN ORDINANCE OF PROVO CITY, UTAH, AMENDING THE PROVO CITY  
4 CODE BY ADOPTING SECTION 9.14.295 PERTAINING TO DAY-TIME  
5 TRUANCY.

6  
7 WHEREAS, Provo City children and youth, at least six years old and younger than 18  
8 years old, who are unemancipated, are required to attend school (Utah Code Ann. 53A-11-101.5)  
9 unless excused from school attendance under a codified exemption (Utah Code Ann. 53A-11-  
10 102); and

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12 WHEREAS, a free public school education is one of the greatest benefits available to  
13 Provo City's children and youth; and

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15 WHEREAS, an Provo City child or youth can only achieve his or her full potential by  
16 attending school regularly; and

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18 WHEREAS, truancy from an Utah public school is an unexcused absence as defined by  
19 the Utah Code Annotated (§53A-11-101); and

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21 WHEREAS, ongoing and continuous truancy is considered a precursor to and an  
22 indicator of other serious behavioral and academic problems for children and youth; and

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24 WHEREAS, when truancy is not recognized at an early date and cited consequences  
25 applied, children and youth will develop bad habits that reinforce ongoing problems in all of  
26 Grades K-12 and even into the employment years; and

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28 WHEREAS, it is the intent of the State Board of Education to promote regular and on time  
29 school attendance among all students for all of their school years:

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31 NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah as  
32 follows:

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34 PART I:

35 Section 9.14.295 Day-time Truancy of the Provo City Code is hereby adopted as follows:

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37 **9.14.295 Day-time Truancy**

38 Definitions.

39 "**Care and custody**" means the legal authority of a parent or guardian to supervise or  
40 otherwise be responsible for a minor, or the express authority given from such parent or legal  
41 guardian of a minor to a responsible adult to supervise or otherwise be responsible for the  
42 activities and care of the minor.

43 "**Emergency errand**" means any errand or travel undertaken to directly and  
44 immediately seek to prevent or reduce the consequences of an illness or injury, criminal or  
45 potential criminal activity, or fire or other accident and shall include the seeking of aid and  
46 assistance from medical or emergency response personnel or the purchase of medications.

47 "**Minor**" means any unmarried, unemancipated person who is not a member of the  
48 armed forces of the United States and who is under the age of eighteen (18) years.

49 "**Compulsory school age minor**" means a person at least six (6) years old and younger  
50 than eighteen (18) years old, that is not exempted and must be attending a public or regularly  
51 established private school during the school year of the district in which the minor resides  
52 pursuant to Utah compulsory education requirements, Utah Code Annotated 53A-11-101 to -106.

53 "**Establishment**" means any privately owned place of business operated for a profit to  
54 which the public is invited, including, but not limited to, any place of amusement or  
55 entertainment.

56 "**Operator**" means any individual, firm, association, partnership, or corporation  
57 operating, managing, or conducting any establishment. The term includes the members or  
58 partners of an association or partnership and the officers of a corporation.

59 "**Remain**" means: (a) Linger or stay; or (b) Fail to leave premises when requested to do  
60 so by a police officer or the owner, operator or other person in control of the premises.

61 "**Truancy hours**" means those hours in which a compulsory school age youth should be  
62 attending school in the district or jurisdiction in which the student attends school.

63 (2) A compulsory school age minor commits an offense if she or he remains in any public  
64 place or on the premises of any establishment within the city during truancy hours.

65 (3) A parent or guardian of a minor commits an offense if he or she knowingly permits or  
66 by insufficient control allows, a compulsory school age minor to remain in any public place or  
67 on the premises of any establishment within the city during truancy hours.

68 (4) The owner, operator, or any employee of an establishment commits an offense if she  
69 or he knowingly allows a compulsory school age minor to remain upon the premises of the  
70 establishment during truancy hours.

71 (5) Defenses:

72 (a) It is a defense to prosecution under section (2) of this Chapter that the minor  
73 was:

74 (i) Accompanied by a parent, guardian, or other responsible adult having  
75 care and custody of such minor;

76 (ii) Engaged on an emergency errand directed by the minor's parent,  
77 guardian or other responsible person having care and custody;

78 (iii) In a motor vehicle engaged in normal interstate travel beginning in,  
79 traveling through, or ending in Provo City; (iv) Going to, or returning directly  
80 from, a medical or dental appointment, or

81 (v) Attending or engaged in traveling between the minor's home or place  
82 of residence and a place where any religious, municipal, social, entertainment,  
83 sporting, political, library, or school function is occurring; or

**Comment [o1]:** It is an offense to suggest that public education is free. One third of our state budget goes to public education. Public education is perhaps the most expensive endeavor of the State of Utah.

Moreover, education has a cost in terms of effort on behalf of the student. The belief that any education can or should be free is perhaps at the heart of our public school woes.

**Comment [o2]:** Perhaps we need a lesson on the proper use of articles.

**Comment [o3]:** This is an official ordinance of the City of Provo. Is it really the intent of the city to assert that home-educated children cannot hope to achieve his or her full potential?

**Comment [o4]:** This premise makes the classic logic fallacies of *cum hoc ergo propter hoc* (with this therefore because of this) and *post hoc ergo propter hoc* (after this therefore because of this). It encourages the reader to believe that reducing truancy will reduce the other behavioral problem. My belief is that while truancy is a problem, it is an effect not a cause.

**Comment [o5]:** While this claim is not supported, I generally believe it to be true. However, its use here suggests that current tools available to school administrators are inadequate. Are they? Is the school district already making full use of Utah Code Title 53A, Chapter 11, Sections 101.7 and 103?

**Comment [o6]:** We have just defined "Minor." The use of "person" here inappropriately applies to those who are emancipated and to those who are members of the armed forces of the United States

**Comment [o7]:** Utah Code Title 53A, Chapter 11, Section 101.7 clearly states that the district may impose administrative penalties on a school-age minor who is truant. However, that section limits the district from even sending a "notice of truancy" to any student's parent under the age of 12. Is it really the intent of the city to assert that although a "notice of truancy" is inappropriate for a nine-year-old truant, being detained, interrogated and taken into custody by a Provo City Police officer is appropriate?

**Comment [o8]:** "Compulsory school age youth" is distinct from prior usage and remains undefined.

It is not clear from this definition if truancy hours are child dependent or absolute. If child dependent, it creates a serious problem under paragraph 4 below.

**Comment [o9]:** Although I'm not sure if a "public school" is a "public place." If it is, then according to the wording of this ordinance, to comply, a compulsory school age minor would be committing a violation by going to school. This ordinance would give any student the right to walk away from school as long as he or she was going to some location other than a public place or establishment.

**Comment [o10]:** This clause says it's okay for a parent to allow his or her child to go to a public place or establishment instead of going to school as long as that public place or establishment is not in Provo. Based on the purported motivation of this ordinance, it is a curious exception.

**Comment [o11]:** This makes it a crime for certain individuals to not call to report a supposed truant. The police officer would have the right to verify if a person who appears to be a compulsory school age minor should be in school. Are these owners and operators of establishments going to be required to interrogate a person to determine his or her status? If so, this will place a tremendous burden on individuals who appear to be compulsory school age minors (such as young college students and home schoolers). If not, this clause has no teeth because it would be a defense to assert that it was not known if the person was a compulsory school age minor.

**Comment [o12]:** This is an odd exemption. It says that if an individual is traveling to or from another state and happens to be in Provo, he or she is not in violation. More importantly, This clause suggests that it is a violation under this ordinance to be in transit. The language of the violation (paragraph 2) does not suggest that any travel is a violation. Thus, raising as a defense certain kinds of travel (as specified in this and the following two sub paragraph) suggests that paragraph 2 is to be interpreted very loosely.

**Comment [o13]:** Going to and returning from a dental or medical appointment is okay, however, the language does not permit being at a dental or medical appointment. Clearly medical and dental offices are "establishments" under the definitions of this ordinance

**Comment [o14]:** This defense is unbelievable. It says that as long as a child is at a place where a social, entertainment, or sporting function is occurring, there is no offense. Not that the child is participating in the event, but that the child is at a place where such an event is occurring. This seems to make it okay for a student to skip school and go to a movie or arcade.

84 (vi) Within the boundaries of the minor's place of residence.  
85 (vii) Given permission to leave the school campus for lunch or any school-  
86 approved activity, or  
87 (viii) Going to, or returning directly from, a compulsory alternative  
88 education program, or  
89 (ix) Granted an exemption to compulsory education by the local board of  
90 education, under section 53A-11-102, Utah Code Annotated, as amended, or any  
91 successor provision.  
92 (b) It is a defense to prosecution under section (4) of this Chapter that the owner,  
93 operator or employee of an establishment promptly notified the police department  
94 that a minor was present on the premises of the establishment during truancy hours and  
95 refused to leave.  
96 (6) For a Minor who violates this section it shall be a secondary offense. No citation for  
97 a violation of this section shall be issued unless the officer issuing such citation has cause to stop  
98 or arrest the minor for the violation of some other provision of this Code or local ordinance.  
99 (7) Enforcement Procedures.  
100 (a) Before taking any enforcement action under this section, a police officer must  
101 ask the apparent offender's age and reason for being in the public place. The officer shall  
102 not issue a citation or make an arrest under this section unless the officer reasonably  
103 believes that an offense has occurred and that, based on any response and other  
104 circumstances, no defense in section (5) of this Chapter is present.  
105 (b) If the peace officer takes the minor into temporary custody, the peace officer,  
106 without unreasonable delay, shall:  
107 (i) Transport the minor to the school from which the minor is absent,  
108 releasing the child to the principal or other designated school official;  
109 (ii) Release the minor to any other individual who has been designated by  
110 the local school board to receive and return the minor to school; or  
111 (c) If the minor refuses to return to the school or go to the receiving center, or the  
112 peace officer is unable to otherwise release the minor to the appropriate school, the peace  
113 officer may release the minor to the minor's parent or guardian, and shall notify the  
114 appropriate school officials of the violation. If a parent or guardian cannot be reached or  
115 is unable or unwilling to accept custody, the minor shall be referred to the division of  
116 child and family services, in the manner required under state law.  
117 (d) Any person who violates the provisions of this Chapter is guilty of a class B  
118 misdemeanor.  
119 (8) A parent or guardian shall not be cited for a violation of section (3) of this Chapter,  
120 unless the minor in question was previously cited for a violation of this section and the parent or  
121 guardian was warned or advised by a peace officer, school official, or court official of such  
122 violation.  
123 (9) Severability. If any section, subsection, sentence or word of this Chapter is held, by a  
124 court of competent jurisdiction, to be invalid, the remaining unaffected portions shall remain in  
125 full legal force and effect.

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127 PART II:

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129 A. If a provision of this Ordinance 2010-\_\_ conflicts with a provision of a previously  
130 adopted ordinance concerning the same title, chapter, and/or section number amended herein, the  
131 provision in this Ordinance shall prevail.

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133 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to  
134 be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid,  
135 the remainder of the ordinance shall not be affected thereby.

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137 C. The Municipal Council hereby directs that the official copy of the Provo City Code be  
138 updated to reflect the provisions enacted by this ordinance.

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140 D. This ordinance shall take effect immediately after being posted or published as  
141 required by law.

142  
143 END OF ORDINANCE.

**Comment [o15]:** At least it is not a violation to stay at home when you are sick. Yet, if the minor is in violation only at a public place or at an establishment, why provide this defense?

**Comment [o16]:** Given permission by whom? A school administrator, a parent, a fellow student?

**Comment [o17]:** The local board of education cannot grant any individual exemption to compulsory education, they simply do not have the authority. I believe that this defense intends to acknowledge that certain individuals are not required by state law to attend school. A school age minor can be exempted from mandated school attendance through several mechanisms, including that of a parent notifying the school district of the parents intent to educate the child at home. However, even in this case, the local board of education does not grant any exemption. The act of notification creates the exemption, it is not at the discretion of the local school board.

Because this clause relies on an exemption which the local school board cannot grant, it is a defense for none.

**Comment [o18]:** This exemption gives a way for owners, operators and employees to protect themselves from knowingly allowing a compulsory school age minor from remaining on the premises of an establishment during truancy hours. That individual has only to call the police to notify them that a minor is present. This opens the door for any and all establishments to call the police anytime a minor is on their premise during school hours.

**Comment [o19]:** This paragraph is currently under consideration for removal by the Council. However, even granting secondary offense status only protects the minor, not the owner, operator or employee of an establishment.

**Comment [o20]:** This seems to give the police the right to interrogate minors without their parents being present. Why? Because they are at McDonald's at 10:00 am on a school day.

**Comment [o21]:** This expressly indicates that a child can be arrested for being truant.

**Comment [o22]:** Temporary custody is not arrest. This subparagraph spells out what an officer is required to do if he or she takes a minor into temporary custody. However, there is no protocol for what an officer will do if the minor is arrested.

**Comment [o23]:** This is a concern because it allows the defenses to be removed while leaving the descriptions of violation in place.

**Comment [o24]:** Other thoughts: What would happen if a minor, when detained by an officer exercised his Miranda Right to remain silent? I think the officer would have to choose between arrest and walking away.

This would make a hey day for another Jeffery Westerman (the officer recently sentenced for forcible sexual abuse). Westerman did not seek abuse a randomly chosen citizen, but chose a woman with whom he had a legitimate reason to interact. His victim had the misfortune to be in a minor collision to which Westerman responded. Do we really want the next Westerman to have his pick of any seventeen year old truant?