

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND CHAPTER 19 OF THE LEXINGTON CITY CODE; TO REPEAL OBSOLETE SECTIONS AND TO RENUMBER THE REMAINING SECTIONS; TO REPEAL ORIGINAL CHAPTER 19 AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.**

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AS FOLLOWS:

**Section 1.** That Chapter 19 of the Lexington City Code is hereby amended to read as follows:

**CHAPTER 19**

**OFFENSES--MISCELLANEOUS**

- Sec. 19-1 Disorderly Conduct
- Sec. 19-2 Firearms--Discharge
- Sec. 19-3 Fireworks--Possession and Sale
- Sec. 19-4 Fireworks--Permit for Display; Other Use Prohibited
- Sec. 19-5 Curfew
- Sec. 19-6 Weapons-Carrying Concealed
- Sec. 19-7 Lexington, Nebraska Anti-Litter Ordinance
- Sec. 19-8 Sexual Predator Residency Restrictions

Sec. 19-1 Disorderly Conduct.

No person shall publicly curse or swear, or within the hearing of others, use profane, obscene, indecent, abusive or offensive language, or shall disturb the peace of others or the good order and quiet of the City by violent, tumultuous or disorderly conduct, or by menacing, threatening, traducing, assaulting, striking, wounding, challenging to fight or fighting another or others or by quarreling or rioting, shouting or making unusual or unseemly noises. (Mun. Code Sec. 7-301)

Sec. 19-2 Firearms--Discharge.

No person shall wantonly or unnecessarily fire off or discharge any firearms of any kind or air rifles within the City. (Mun. Code Sec. 7-502; Ord. No. 1766, Sec. 2)

Sec. 19-3 Fireworks--Possession and Sale.

It shall be unlawful for any person to have possession of, for sale or for any other purpose, to offer for sale, or to use, within the City, any fireworks of any kind, except, however, the display of fireworks as provided in Section 19-10, and except sparklers, vesuvius fountains, spray

fountains, torches, color fire cones, star and comet type color serial shells without explosive charges for the purpose of making a noise, color wheels, toy cap pistols and toy caps each of which does not contain more than twenty-five hundredths of a gram of explosive material. Such fireworks shall be used, or sold at retail, only on those dates of each year when sale of such fireworks is permitted by the Nebraska State Fire Marshal. (Mun. Code, Sec. 7-505; Ord. No. 1638, Sec. 1)

#### Sec. 19-4 Fireworks--Permit for Display; Other Use Prohibited.

Any person desiring to have or to hold a fireworks display within the City shall file with the City Clerk an application in writing for a permit therefor, which application shall set forth and specifically designate the place where such fireworks display is to be held, the kind and quantity of fireworks to be used, the time thereof and the person to have supervision thereof, and the City Manager and City Clerk may thereupon issue, or refuse to issue, a permit in writing for the holding of such fireworks display, excluding all firecrackers, at the time and place and under the supervision of the person as set forth in the application, and upon the issuance of any permit may require such additional supervision as shall be deemed necessary or proper, which requirement shall be stated in the permit.

For any fireworks display permit issued pursuant to this Section, the City Manager shall have authority to designate an area for public observation of such fireworks display, and shall post reasonable notice of such observation area. During the time of such fireworks display it shall be unlawful for any other person to have in his possession, to set off or otherwise cause to discharge or burn any fireworks within such area, or to discharge or throw fireworks into such area from any adjacent land or highway. (Mun. Code, Sec. 7-505.01; Ord. No. 1986)

#### Sec. 19-5 Curfew.

##### A. Definitions.

For the purpose of the Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural tense include the singular and words in the singular number, the plural. The word "shall" is always mandatory and not merely directory.

1. **City** is the City of Lexington, Dawson County, Nebraska, with administrative offices at 406 East 7th Street.
2. **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, natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
3. **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.
4. **Juvenile** or **minor** is any unemancipated person under the age of eighteen (18) or, in

equivalent phrasing often herein employed, any person seventeen (17) or less years of age.

5. **Parent** is any person having legal custody of a juvenile (i) as a natural or adoptive parent, (ii) as a legal guardian, (iii) as a person who stands *in loco parentis*, or (iv) as a person to whom legal custody has been given by court order.
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, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public. As a type of public place, a street is a way or place, or whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. "Street" includes that legal right of way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right of way of a street.
7. **Remain** means to stay behind, to tarry and to stay unnecessarily in a public place including the congregating of groups (or of interacting minors) totaling four (4) or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in the Ordinance. More and more exceptions become available with a juvenile's increasing years and advancing maturity as appropriate in the interest of reasonable regulation.
8. **Time of night** referred to herein is based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Savings Time, generally observed at that hour by the public in the City; prima facie the time then observed in the City Administrative Offices and police station.

#### B. Curfew For Juveniles.

It shall be unlawful for any person Fifteen (15) or less years of age to be or remain in or upon a public place within the City of Lexington, Nebraska during the period beginning at 10:30 p.m. and ending at 5:00 a.m. on any day of the week, and it shall be unlawful for any person Sixteen (16) or Seventeen (17) years of age to be or remain in or upon a public place within the City of Lexington, Nebraska during the period and beginning at 12:00 p.m. and ending at 5:00 a.m. on any day of the week.

#### C. Exceptions.

The following shall constitute valid exceptions to the operation of the Ordinance:

1. When a juvenile is accompanied by a parent of such juvenile.
2. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
3. In the event of an emergency, or when the juvenile is on an errand as directed by his/her parent.
4. When a juvenile 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, by first delivering to the person designated by the City's Chief of Police to receive such information a written communication, signed by the juvenile and countersigned, if practicable, by a parent of the juvenile with their home address and telephone number, specifying when, where and in what manner the juvenile will be in a public place during hours when the Ordinance is applicable to said minor in the exercise of a First Amendment right specified in such communication.
5. When a juvenile is on the sidewalk or property where the juvenile resides.
6. When a juvenile is returning home from and within one (1) hour of the termination of a school activity or an activity of a religious or other voluntary association, or a place of public entertainment, such as a movie, play or sporting event.
7. When the juvenile is legally employed and the juvenile is either in the course of his employment or traveling to or from such place of employment.
8. When the juvenile is, with parental consent, engaged in normal interstate travel through the City or originating or terminating in the City.
9. When the juvenile is married or has been married pursuant to state law.
10. Each of the foregoing exceptions, and their several limitations such as provisions for notification, are severable, as hereinafter provided but here reemphasized, and will be considered by Council when warranted by future experience illuminated by the views of student government associations, school personnel, citizens, associations, parents, officers and persons in authority concerned positively with juveniles as well as with juvenile delinquency.

D. Parental Responsibility.

It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any City public place under circumstances not constituting an exception to, or otherwise beyond the scope of, the Ordinance. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning

the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

E. Penalties.

Any minor under the age of sixteen (16) violating the provisions of this Ordinance shall be dealt with in accordance with the juvenile court law of the State of Nebraska and procedure thereunder. Any other person violating this Ordinance shall be served with a citation to appear in court, and upon conviction be fined not more than \$500.00 for each offense or shall be imprisoned in jail for a period not to exceed thirty days, or both such fine and imprisonment.

F. Construction and Severability.

Severability is intended throughout and within the provisions of the Ordinance. If any provision, including any exception, part, phrase, or term, 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 the Ordinance in any and all other respects shall not be affected thereby. (Ord. 2066)

Sec. 19-6 Weapons--Carrying Concealed.

No person shall carry any pistol, bowie knife, dirk, metal knuckles or other deadly and dangerous weapon concealed on or about his person.

This section shall not apply to any officer authorized by law of this City or of the State or United States to preserve the peace or to make arrests, or to any person whose calling or employment, or the circumstances in which he may be placed shall be such as to justify a prudent man in carrying such weapon for the necessary defense of his person, family or property. (Mun. Code, Sec. 7-501)

Sec. 19-7 Lexington, Nebraska Anti-Litter Ordinance

A. Definitions.

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "Aircraft" is any contrivance now known or hereafter invented, used or designated for

navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and balloons.

- (2) "Authorized private receptacle" is a litter storage and collection receptacle as required and authorized in Section 22-7 of the Lexington City Code.
- (3) "City" is the City of Lexington, Dawson County, Nebraska.
- (4) "Garbage" is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
- (5) "Litter" is "garbage," "refuse," and "rubbish" as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.
- (6) "Park" is a park, reservation, playground, beach, recreation center or any other public area in the City, owned or used by the City and devoted to active or passive recreation.
- (7) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (8) "Private Premises" is any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.
- (9) "Public Place" is any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds, and buildings.
- (10) "Refuse" is all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
- (11) "Rubbish" is nonputrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.
- (12) "Vehicle" is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

B. Litter in Public Places; Composting and Recycling Centers.

- (a) No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in public receptacles, in authorized private receptacles for collection, or in other designated areas.
- (b) City may, by posting of appropriate signs, designate areas available for public deposit of materials for composting, recycling, or as a transfer station for transport to a landfill. No person shall deposit litter other than specifically permitted by such signs, and no person shall deposit litter in any place not specifically designated by such signs.

C. Placement of Litter in Receptacles So as to Prevent Scattering.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

D. Sweeping Litter Into Gutters Prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

E. Merchants' Duty to Keep Sidewalks Free of Litter.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street, or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the City shall keep the sidewalk in front of their business premises free of litter.

F. Litter Thrown by Persons in Vehicles.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the City, or upon private property.

G. Truck Loads Causing Litter.

No person shall drive or move any truck or other vehicle within the City unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive or move any vehicle or truck within the City, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

H. Litter in Parks.

No person shall throw or deposit litter in any park within the City except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

I. Litter in Lakes and Fountains.

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the City.

J. Dropping Litter From Aircraft.

No person in an aircraft shall throw out, drop or deposit within the City any litter, handbill or any other object.

K. Litter on Occupied Private Property.

No person shall throw or deposit litter on any occupied private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

L. Owner to Maintain Premises Free of Litter.

The owner or person in control of any private property shall at all times maintain the premises free of litter. Provided, however, that this Section shall not prohibit the storage of litter in authorized private receptacles for collection.

M. Litter on Vacant Lots.

No person shall throw or deposit litter on any open or vacant private property within the City whether owned by such person or not.

N. Penalties.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one hundred dollars (\$100.00) or be imprisoned in the Dawson County Jail for a period not exceeding thirty (30) days or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.



O. Separability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. (Ord. No. 1978)

Section 19-8 Sexual Predator Residency Restrictions.

A. Definitions. For purposes of this ordinance:

- (1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;
- (2) School means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;
- (3) Reside means to sleep, live, or dwell at a place, which may include more than one location, and may be mobile or transitory;
- (4) Residence means a place where an individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;
- (5) Sex offender means an individual who has been convicted of a crime listed in Nebr. Rev. Stat. section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and
- (6) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has been classified as Level 3 because of a high risk of recidivism as determined by the Nebraska State Patrol under Nebr. Rev. Stat. section 29-4013, and who has victimized a person eighteen years of age or younger.

B. PROHIBITED LOCATION OF RESIDENCE. It is unlawful for any sexual predator to reside within five hundred feet from a school or child care facility.

C. MEASURE OF DISTANCE. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.

D. PENALTIES. A person who violates this section shall be punished as provided generally in the code.

E. EXCEPTIONS. This ordinance shall not apply to a sexual predator who:

- (1) Resides within a prison or correctional or treatment facility operated by the state or a political subdivision;
  - (2) Established a residence before July 1, 2006, and has not moved from that residence;
- or

- (3) Established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(Ordinance No.2216, adopted August 23, 2006) See LB 1199, 2006.

**Section 2.** That original Chapter 19, together with all ordinances or sections of ordinances in conflict herewith are hereby repealed.

**Section 3.** That this Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Deputy City Clerk