

ORDINANCE NO. 2066

AN ORDINANCE TO AMEND SECTION 19-28 OF THE LEXINGTON CITY CODE; TO AMEND PROVISIONS RELATING TO CURFEW; TO REPEAL THE ORIGINAL SECTION 19-28 OF THE LEXINGTON CITY CODE, AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) in the City of Lexington, Nebraska resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, public drinking and littering, drug use, breaking and entering, and harassment of residents; and

WHEREAS, persons under the age of eighteen (18) are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

WHEREAS, the City Council has found that there has been a significant breakdown in the supervision and guidance normally provided by parents for juveniles in an increase in the crimes and other unacceptable behavior cited above; and

WHEREAS, the City of Lexington, Nebraska, has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, the offensive activities of juveniles are not easily controlled by existing laws and ordinances; and

WHEREAS, a curfew for those under the age of eighteen (18) will be in the interest of the public health, safety, and general welfare and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Lexington, Nebraska, and will promote the public good, safety and welfare; and

WHEREAS, parental responsibility for the whereabouts of children is the accepted norm and legal sanctions to enforce such responsibility have had demonstrated effectiveness in many cities, the City Council has determined that a curfew ordinance will increase parental responsibility for juveniles within their control and decrease juvenile delinquency; and

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, as follows:

**Section 1:** That Section 19-28 of the Lexington City Code is hereby amended to read as follows:

**Sec. 19-28 Curfew.**

**Section A. Definitions.**

For the purposes 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 the singular and words in the singular number include 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

Section F. Construction and Severability.

1. 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.

**Section 2.** That 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 10th day of October, 1996.

  
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Mayor

Seal

ATTEST:

  
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City Clerk

NEBRASKA

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