

ORDINANCE NO. A-217

AN ORDINANCE OF THE CITY OF NEWARK ADOPTING REGULATIONS CONCERNING LITTERING, REFRIGERATORS AND FREEZERS, NUISANCES ON PRIVATE PROPERTY, AND LOUD NOISES; ADOPTING A CURFEW; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Newark, Texas is a Type A general-law municipality located in Wise County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, Chapter 217 of the Local Government Code authorizes the City to define, abate, and remove nuisances and punish persons responsible for nuisances; and

WHEREAS, Chapter 342 of the Health and Safety Code gives the City the authority to regulate rubbish, other unsanitary matter, and unwholesome places; and

WHEREAS, Chapter 756 of the Health and Safety Code makes it unlawful to abandon or keep refrigerators or other airtight containers which can be latched and are accessible to children; and

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

SECTION 1.

The City of Newark hereby adopts rules regulating littering, refrigerators and freezers, nuisances on private property, and loud noises, and adopts a curfew, attached hereto as Exhibit "A" and made part hereof for all purposes.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances of the City of Newark, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each

day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.

The City Secretary of the City of Newark is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 6.

The City Secretary of the City of Newark is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause, publication clause and effective date clause in the minutes of the City Council and by filing the ordinance in the ordinance records of the City.

SECTION 7.

The City Secretary of the City of Newark is hereby directed to publish in the official newspaper of the City of Newark, the caption, penalty clause, and effective date clause of this ordinance two (2) days as authorized by Section 52.011 of the Local Government Code.

SECTION 8.

This ordinance shall be in full force and effect immediately upon passage and it is so ordained.

PASSED AND APPROVED ON THIS 4th DAY OF January, 2000.

Signature on File

MAYOR

ATTEST:

Signature on File

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

EXHIBIT A – NUISANCES

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Chapter 1. General Provisions.

1.01 Filing of statement of expenses.

Whenever any work is done by the city under the provisions of this ordinance, the City Secretary shall file a statement of the expenses incurred thereby with the county clerk. Such statement shall give the amount of such expenses, the name of the owner of such lot or premises, if known, a legal description of such lot or premises, and the date or dates on which such work was performed. The city shall have a privileged lien. Such lien shall bear ten percent (10%) interest per annum from the date said statement of expenses was filed. It is further provided that for any such expenditures and interest, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the city and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

Chapter 2. Littering.

2.01 Definitions.

- a. Litter is any quantity of uncontainerized paper, metal, plastic, glass, garbage, refuse, rubbish, or other solid waste material.
- b. Littering is dumping, throwing, placing, depositing, leaving, or causing to be dumped, thrown, placed, deposited, or left any refuse or waste of any kind or any object or substance which tends to pollute, mar, or deface any public street, highway, alley, road, right-of-way, park or other public place and private property.
- c. Private property means all property not owned by a governmental entity including vacant land or any land, building, or structure, together with any yard, grounds, walk, driveway, fence, porch steps, or other appurtenant structure.

2.02 Littering Prohibited.

It shall be unlawful for any person to throw or deposit litter on any private or public property within this city, whether owned by such person or not, except in authorized trash receptacles for the collection of litter and in such manner that the litter may be prevented from being carried or deposited by the elements upon any street, sidewalk, or other private or public property within the city.

2.03 Placing Litter in Receptacles 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.

2.04 Sweeping Litter into Street or Gutter Prohibited.

It shall be unlawful for any person to 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 from litter.

2.05 Duty to Keep Property Free of Litter.

It shall be unlawful for any owner or occupant of property within the city to place, deposit, throw, or permit litter to accumulate on any lot or premises located in the city unless the same has been deposited in an authorized receptacle for collection.

2.06 Owner to Remove Litter Upon Notice.

It shall be the duty of any owner or occupant of property within the city to remove or cause to be removed all such litter as may be necessary to comply with the provisions hereof. Whenever any such condition as described in Sections 2.02 - 2.05 is found to exist on a lot or premises within the city, the owner shall be notified in writing by certified mail, return receipt requested, to correct, remedy, or remove the condition within ten (10) days after such notice is given. Such notice shall either be served personally or by registered mail, return receipt requested, to the owner's post office address. If the notice cannot be served personally or the owner's post office address is unknown, notice must be given: by publication at least twice within 10 consecutive days; by posting the notice on or near the front door of each building on the property to which the violation relates; or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings. If the notice is sent by certified mail, return receipt requested, the municipality may inform the owner that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property.

2.07 City May Abate Nuisance; Provision for Lien.

If the owner or occupant of any lot or premises upon which any condition described in Sections 2.02 - 2.05 is not corrected, remedied, or removed within ten (10) days after notice to do so is given, the city may do such work at the expense of the city on the account of owner(s) of said premises and charge the expenses incurred to the owner(s) of such lot upon which such expenses are incurred. The doing of such work by the city shall not relieve the owner or occupant of said lot or premises from prosecution for failure to comply with such notice for violation of Sections 2.02 - 2.05.

Cross reference—Procedures for filing of statement of expenses, Section 1.01.

Chapter 3. Refrigerators and Freezers.

3.01 Definitions.

- a. Abandon - The throwing away of an icebox, refrigerator, or freezer on vacant property, junk heaps, trash piles, or debris accumulations or any other act which at common law would constitute an abandonment of personal property.
- b. Dangerous Exposure - The placing of an icebox, refrigerator, or freezer not in use in a garage, barn, outbuilding, porch, yard, lot or other portion of premises where persons may come upon it and be attracted to it.

3.02 Deemed Public Nuisance.

The abandonment or dangerous exposure of an icebox, refrigerator, or freezer with its door(s) in normal latching or locking condition is hereby declared to be a public nuisance and a serious menace to life because of the danger of persons, especially children, entering such an icebox, refrigerator, or freezer, and becoming locked inside and suffocating.

3.03 Owner to Remove Latches and/or Locks.

The owner of an abandoned or dangerously exposed icebox, refrigerator, or freezer and the owner or occupant of the premises where an abandonment or dangerous exposure occurs shall remove the door or dismantle or remove the latch or lock holding the door shut on the icebox, refrigerator, or freezer.

A person commits an offense if he abandons or dangerously exposes, or

causes or permits to be abandoned or dangerously exposed, an icebox, refrigerator, or freezer unless the latch or lock holding each door shut is dismantled or removed so that the door may be opened from within by pushing on it.

Chapter 4. Nuisances on Private Property.

4.01 Nuisance on Private Property Defined.

For the purposes of this chapter, the term “nuisance on private property” is defined to mean any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located. This includes but is not limited to the keeping, the depositing on, or the scattering over the premises of any of the following:

- a. Lumber, building materials, junk, trash or debris;
- b. Storage of furniture (other than furniture designed for outside use), household items, or products of a commercial trade or business enterprise, whether or not such items are used outside;
- c. Abandoned, discarded or unused objects or equipment such as automobiles and equipment parts, furniture, fixtures, appliances, cans, bottles, or containers;
- d. Items of salvage such as scrap metals, rags, papers, bottles, cans, and similar items;
- e. Any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin, or other disease-carrying pests, animals, or insects;
- f. Any deleterious or septic material upon any premises, unless such material is retained in containers or vessels which deny access to humans, flies, insects, rodents and animals.

4.02 Duty to Maintain Private Property.

No person owning, leasing, occupying or having charge of any premises shall maintain or keep any nuisance thereon nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

4.03 Notice to Remove or Abate Nuisance.

Upon becoming aware of nuisance conditions set forth herein, the Mayor or his designated representative shall make a determination whether or not the conditions and circumstances constitute a nuisance as herein defined. If it is determined that the conditions constitute a nuisance, the Mayor shall cause a written notice to be given to the owner of said premises to remove or abate the nuisance. Such notice shall either be served personally or by registered mail, return receipt requested, to the owner's post office address. If the notice cannot be served personally or the owner's post office address is unknown, notice must be given: by publication at least twice within 10 consecutive days; by posting the notice on or near the front door of each building on the property to which the violation relates; or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings. If the notice is sent by certified mail, return receipt requested, the municipality may inform the owner that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property.

4.04 City May Remove or Abate Nuisance.

If the owner, tenant, or person in control of said premises, or agent thereof, fails to comply with the order to remove or abate any nuisance, the city may then cause the said nuisance to be removed or abated and the expenses of such procedure shall be charged against the owner and shall thereupon become a valid and enforceable personal obligation of the owner of such premises which may be recovered by the city in a suit brought for the purpose. The city may assess the expenses on the property on which the nuisance is located or situated and make the same a lien thereon.

4.05 Filing Statement of Expenses; Lien.

- a. Whenever the city shall have performed any work or paid any necessary expenses in connection with any work done in the removal or abatement of any nuisance, it shall be the duty of the Mayor or his designated agent to immediately prepare and deliver or mail to the owner of the property upon which the nuisance was located an itemized statement in the form of an affidavit, duly sworn to, of all such work performed and all costs and expenses incurred and paid by the city in connection therewith. Said statement shall be sent to

the owner of said property if his true address is known; if not, said statement shall be sent to the owner of record according to the last official tax roll of the city at the address carried in connection therewith. Such affidavit, among other things and provisions, shall contain the following:

- (1) Name and address of owner, and name and address of tenant or agent of property, if known, and if unknown recite the fact;
 - (2) A legal description of the property;
 - (3) Statement of the action of the city;
 - (4) Itemized statement of the work done and performed, together with the cost thereof opposite each item; and
 - (5) Statement of payment made by the city to other parties, and to whom made, or reasonable charges by any concerned city department.
- b. Upon delivery or mailing of the statement and affidavit provided for above, the city shall be entitled to the payment of the aggregate amount so expended, or reasonable charges for city work, or costs paid, as therein set forth. Should the owner fail or refuse to pay the amount due, the affidavit containing the information as set out hereinabove, signed by the Mayor, shall be filed with the county clerk. Such statement, when filed, shall constitute a lien upon the property on which the expense was incurred, second only to tax liens and liens for street improvements, and the amount remaining unpaid on said statement shall accrue interest at the rate of ten percent (10%) per annum from the date of expenditure by the city, or from the date that the city itself performed such work and incurred said expense, as provided for in V.T.C.A., Health & Safety Code §§ 342.006-342.007.

4.06 Penalty for Violation.

The city may file charges in the municipal court for violation of the provisions of Section 4.02. Any person found guilty of maintaining such nuisance shall be guilty of a misdemeanor and be subject to a fine for each offense and the municipal court shall order the removal and abatement of the nuisance.

Chapter 5. Loud Noises.

5.01 Loud Noises Prohibited.

It shall be unlawful for any person, firm, or corporation to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise which interferes with the normal enjoyment of life or property or disturbs, endangers, or interferes with the public peace and comfort within the limits of the city.

5.02 Loud Noises Enumerated.

The following enumerated acts are declared to be loud, disturbing, and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.

- a. The playing of any radio, television, musical instrument, phonograph, stereo, or other machine or device for the producing, reproducing, or amplification of sound in such manner as to create a noise which could be reasonably considered to disturb a person of ordinary disposition residing in the vicinity or at any time with louder volume than is necessary for convenient hearing for persons who are in the room, vehicle, chamber, or location in which such machine or device is operated and who are voluntary listeners thereto is hereby prohibited. The operation of such set, instrument, phonograph, stereo, machine, or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, vehicle, or location in which it is situated shall be prima facie evidence of a violation of this section.
- b. The playing or operating or permitting to be played or operated any phonograph, radio, or loud-speaking or noise-making device or attachment on any premises under the ownership, management, or control of such person, when such premises are being used as a place of business to which the public generally is invited, in such a manner or in such volume as to be reasonably calculated to disturb the peace or to be unreasonably offensive to the public or to the occupants of other premises in the vicinity.
- c. The sounding of any horn or signal device on any automobile or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control; or, if in motion, only as a danger signal after or as brakes are being applied and

deceleration of the vehicle is intended.

- d. The use of any automobile, motorcycle, or other vehicle so out of repair or operated in such manner as to create loud and unnecessary spinning or squealing of tires, grating, grinding, rattling, or other noise.
- e. The parking, storage or repairing of any motor vehicle or any motorized equipment between the hours of 10:00 p.m. and 7:00 a.m. with any motor(s) left in operation for an extended period.
- f. The use of sound amplifying equipment for commercial advertising purposes. (*Ordinance adopting Code*)

Chapter 6. Curfew.

6.01. Definitions.

- a. Curfew Hours means:
 - (1) 11:00 p.m. until 6:00 a.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday.
 - (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
- b. 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, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- c. 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.
- d. Guardian means:
 - (1) a person who, under court order, is the guardian of the person of a minor; or
 - (2) a public or private agency with whom a minor has been placed by a court.
- e. Minor means any person under 17 years of age.

- f. Officer means a police officer of the City of Newark, state or county.
- g. Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting business at any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
- h. Parent means a person who is:
 - (1) a natural parent, adoptive parent, or step-parent of another person; or
 - (2) at least 18 years of age and who must be authorized by a parent or guardian to have the care and custody of a minor.
- i. 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, highways, parks and the common areas and parking lots of school, hospitals, apartment houses, office buildings, transportation facilities, commercial shopping centers, and shops.
- j. Remain means to:
 - (1) linger or stay; or
 - (2) fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.
- k. Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member of organ.

6.02 Offenses.

- a. A minor commits an offense if he/she remains in any public place or on the premises of any establishment within the city during curfew hours.
- b. A parent or guardian of a minor commits an offense if he/she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment

within the city during curfew hours.

- c. The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

6.03 Defenses.

- a. It is a defense to prosecution under Section 6.02 of this ordinance that the minor was:
 - (1) accompanied by the minor's parent or guardian;
 - (2) on an errand at the direction of the minor's parents or guardian, without any detour or stop;
 - (3) in a school sponsored event with school transportation;
 - (4) engaged in an employment activity, or going to or returning from home from an employment activity, without any detour or stop;
 - (5) involved in an emergency; on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (6) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Newark, a civic organization, a school district or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Newark, a civic organization, a school district or another similar entity that takes responsibility for the minor;
 - (7) 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; or
 - (8) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family

Code.

- b. With respect to an apparent violation of this ordinance occurring during the curfew hours established by Section 6.01, paragraph a. of this ordinance, it shall be a defense to prosecution that the offense occurred at a time when the school in which the minor is enrolled was not in session; or that the minor has graduated from high school or received a high school equivalency certificate; or that the minor has permission to be absent from school or be in a public place from an authorized school official. In the case of a child being educated in a home school, a parent shall be deemed a school official for purposes of this section.
- c. It is a defense to prosecution under Section 6.02, paragraph c. that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

4.04 Enforcement.

- a. Before taking any enforcement action under this ordinance, an officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Section 6.03 is present.
- b. When required by Section 51.05 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 6.02 of this ordinance and shall refer the minor to court.