

**POLICY AND PROCEDURE**  
**CHECKPOINT POLICY**

**I. PURPOSE**

The purpose of this policy is to provide procedures for the physical construction and operation of all Lexington Police Department (“Department” or “LPD”) checkpoints in order to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or other drugs or who are in violation of other traffic safety laws in the State of Mississippi. This policy governs all checkpoints or roadblocks constructed or operated by Department personnel.

**II. POLICY**

It shall be the policy of this department to implement a checkpoint program. This will be done as part of a comprehensive enforcement program. To ensure standardization of this program a clear and concise set of written guidelines has been developed governing procedure on how checkpoints will be operated within this Department.

To implement this policy this agency must:

1. Conduct checkpoints only for constitutionally acceptable purposes. Checkpoints or roadblocks shall not be conducted for purposes of general crime control or deterrence, narcotics interdiction or to check for outstanding warrants.
2. Satisfy federal, state and local legal requirements.
3. Conduct checkpoints with a minimal amount of intrusion or motorist inconvenience.
4. Assure the safety of the general public as well as law enforcement officers involved.
5. Provide for an objective site selection process based on relevant data without relying in any way on the race or ethnicity of the residents of a particular location or the perceived race or ethnicity of motorists passing through a particular location.
6. Officer selection should be based on experience and training.
7. Operational procedure will be covered during a briefing period prior to each checkpoint.

**III. PROCEDURES**

A. A method for selecting motorists to be stopped, e.g., every vehicle, every fifth vehicle, etc. should be decided prior to each checkpoint to ensure objectivity. Exceptions shall not be made to the method for selecting motorists to be stopped absent specific unusual circumstances. Any exceptions must be documented and include the reason for the exception.

B. The role of each officer at each checkpoint should be determined.

C. A predetermined area should be identified for the removal of vehicles that require further investigation.

D. A record will be maintained containing the information set forth in Section VII.

E. Checkpoints are to be set up only by the patrol division of the Department using at least one marked LPD vehicle, but any LPD officer may assist in the checkpoint while wearing official LPD identifying clothing.

F. All checkpoints must be approved by a LPD patrol shift supervisor or supervisory officer responsible for LPD DUI enforcement grant (if any).

G. LPD personnel conducting a checkpoint shall not run or cause to be run, searches for outstanding warrants concerning drivers or their passengers in whole or in part on the basis of race or ethnicity.

H. The department must be able to objectively outline criteria utilized in the site selection process:

1. Traffic experiences.

- a. Unusual incidence of alcohol/drug or other traffic related crashes;
- b. Alcohol/drug impaired driving violations;
- c. Unusual number of night-time single vehicle crashes;
- d. Any other documented alcohol/drug or other traffic related vehicular incidents;
- e. The location of establishments that sell liquor by the drink;
- f. Special holidays or other occasions; and
- g. Other objective criteria that may arise from time to time.

2. Select locations which permit the safe flow of traffic through the checkpoint.
  - a. Consideration should be given to posted speed limits, traffic volume and visibility.
  - b. Ensure sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway.
  - c. Consider other conditions that may pose a hazard.
  - d. The site should have sufficient visibility from each direction and sufficient illumination.

#### **IV. PERSONNEL**

1. A sworn, uniformed officer will be assigned to provide on-scene supervision of the checkpoint.
2. The checkpoint will be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation. Any officers not in official uniform must be wearing clothing that clearly identifies the officer as a LPD officer.

#### **V. MOTORISTS WARNINGS/SAFETY METHODS**

1. Special care is required to warn approaching motorists of the checkpoint.
2. Basic equipment may include, but is not limited to:
  - a. Warning signs placed in advance of the checkpoint
  - b. Flares, fugues, or similar devices.
  - c. Safety cones or similar devices.
  - d. Marked patrol vehicles. Absent exigent circumstances, at least one marked patrol car with blue lights on must be at each checkpoint.
3. The use, placement and types of traffic control devices must comply with federal, state, or local transportation codes.

#### **VI. CONTINGENCY PLANNING**

Any deviation from these procedures must thoroughly be documented with the

reason for the deviation (i.e. traffic backing up, intermittent inclement weather).

## **VII. DATA COLLECTION AND EVALUATION**

To monitor and ensure standardization, consistency, and compliance with policy, the following information must be recorded for each checkpoint:

1. Time, date, and location of the checkpoint (including the cross streets that are in the closest proximity to the checkpoint's location).
2. Objective reasons for conducting the checkpoint, which may include the following:
  - a. Unusual incidence of alcohol/drug or other traffic related crashes;
  - b. Alcohol/drug impaired driving violations;
  - c. Unusual number of vehicle crashes;
  - d. Any other documented alcohol/drug or other traffic related vehicular incidents;
  - e. The location of establishments that sell liquor by the drink;
  - f. Special holidays or other occasions (with such reason to be stated); and
  - g. Other objective criteria that may arise from time to time (which shall be described with reasonable particularity).
3. The predetermined order of selecting motorists at the checkpoint.
4. Identity of the supervisor who authorized the checkpoint.
5. If the checkpoint is moved to a new location outside the area described by originally-recorded cross streets (e.g., to a different intersection), the new location will be treated as a new checkpoint.
6. A record of any vehicular search, issuance of citation or arrest made at the checkpoint. For the purpose of recorded information under this Section

only, a “vehicular search” shall mean the search of any portion of the vehicle not in plain view or if a driver or any passenger exits the vehicle.

- a. Incident reports, including written descriptions of the relevant facts and circumstances, shall be created for each arrest and for each vehicular search, regardless of whether the search results in an arrest.
7. A summary report, which, at a minimum includes:
- a. The information set forth in VII.1 through VII.5 above.
  - b. Citation numbers for each citation issued, the race of the person cited, and the offense for which the person was cited.
  - c. Incident report numbers for each arrest, the race of the person arrested, and the offense for which the person was arrested.
  - d. Each incident number for a vehicular search, along with the race of the person(s) subject to each vehicular search, and the result of the vehicular search (*e.g.*, arrest, citation, no action taken).
  - e. A Summary Report on Checkpoint form is attached.

## **VIII. EXIGENT CIRCUMSTANCES CHECKPOINTS OR ROADBLOCKS**

1. Checkpoints (or roadblocks) not in compliance with this Policy may be established under constitutionally permissible exigent circumstances. To the extent practicable, such checkpoints or roadblocks must comply with the requirements of this Policy.
2. Documentation shall be prepared describing the exigent circumstances that justified the creation of the checkpoint or roadblock.

*[End of Policy]*

## UNBIASED POLICING POLICY

### I. PURPOSE

The purpose of this policy is to emphasize the Lexington Police Department's commitment to unbiased, equitable treatment of all persons.

### II. POLICY

Persons having contact with members of this agency shall be treated in a fair, impartial, equitable, and objective manner, in accordance with law, and without consideration of their individual demographics as defined in this policy.

### III. DEFINITIONS

*Biased Policing:* Discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of officers toward classes of individuals or persons based on individual demographics.

*Fair and Impartial Treatment:* the belief that persons, irrespective of race or other distinctions, shall be treated in the same basic manner under the same or similar circumstances. This does not mean that all persons in the same or similar circumstances can or must be treated identically. Reasonable concessions and accommodations may be, and sometimes should be made, when dealing with individuals with physical or mental disabilities, injury, illness, or similar conditions, or when information about them necessitates treatment.

*Individual Demographics:* For the purposes of this policy, personal characteristics, include, but are not limited to race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status.

*Police Services:* Sometimes referred to as community caretaking functions, there are actions and activities that may not directly include enforcement of the law but that contribute to the overall well-being and safety of the public. These include, but are not limited to, such tasks as assistance at fire scenes, traffic accidents, and medical emergencies; lifesaving services, crime prevention; preventive patrol; traffic control; public information; education; and similar activities.

## **IV. PROCEDURES**

### **A. Fair and Impartial Treatment**

1. Biased policing is prohibited both in enforcement of the law and the delivery of public services.
2. Officers shall take equivalent enforcement actions and provide equal services to all persons in the same or similar circumstances.
3. Officers shall not consider individuals demographics when performing law enforcement duties or delivering police services except when such characteristics are part of a specific subject description.
4. Unless exigent circumstances exist, officers shall not engage in a law enforcement matter when it involves a family member, friend, relative, or other person with whom he or she has a personal relationship, such that the officer's objectivity may be, or may appear to be, compromised. In situations where the officer is personally involved, he or she will summon other officers for assistance.

### **B. Compliance**

1. Officers who witness or who are aware of instances of biased policing shall report the incident to either the Chief of Police or his or her designee or, if the Chief of Police is the subject of such biased policing or involved therewith, then to the Board of Aldermen. Also, where appropriate, officers are encouraged to intervene at the time the biased policing incident occurs.
2. Depending on the nature and seriousness of the incident, the Chief of Police may provide the involved officer(s) with informal, non-punitive intervention such as training and counseling.
3. All external complaints and internal complaints that cannot be resolved effectively and appropriately by the Chief of Police or his or her designee- or that are determined to be potentially serious in nature- shall be forwarded to the Board of Aldermen for investigation. If the Chief of Police or his or her designee is the subject of such external or internal complaints, then the complaint shall be forwarded to the Board of Aldermen for investigation.
4. The Chief of Police or his or her designee shall maintain data relating specifically to complaints of biased policing. Information shall be provided to the Chief of Police or his or her designee in a manner most suitable for administrative review, problem identification, and development of appropriate corrective actions.

### **C. Training**

All employees of the Lexington Police Department will receive basic training within their first month of employment as well as periodic in-service training afterwards and, where deemed necessary, remedial training on subjects related to police ethics, cultural diversity, police-citizen interaction, standards of conduct, conducting motor vehicle stops, implicit bias, and related topics suitable for preventing incidents of biased policing.

## ALLEGATIONS OF MISCONDUCT POLICY

### I. POLICY

It is the policy of the Lexington Police Department (“agency” or “LPD”) that any person who believes that an employee of this agency has acted improperly may bring a complaint pursuant to the following procedure.

### II. DEFINITIONS

For the purpose of this policy the terms set forth below are defined as follows:

- A. **Chief Law Enforcement Officer** means the chief of police or a designee. Within this model policy, the chief law enforcement officer will be referred to as CLEO.
- B. **Complainant** means a person who submits a complaint to the CLEO alleging misconduct by an agency member.
- C. **Complaint** means a written statement made to or by a CLEO alleging misconduct.
- D. **Member** means all voluntary and compensated personnel of the agency.
- E. **Discipline** means:
  - 1. oral reprimand,
  - 2. written reprimand,
  - 3. suspension,
  - 4. demotion, or
  - 5. discharge.
- F. **Exonerated** means a preponderance of the evidence established either that:
  - 1. the act or acts complained of did not occur;
  - 2. the agency member named in the complaint was not involved in the alleged misconduct; or
  - 3. the act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful or proper.
- G. **Not Sustained** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
- H. **Sustained** means a fair preponderance of the evidence obtained in the investigation established that the accused person’s actions constituted misconduct.
- I. **Formal Statement** means the questioning of an agency member in the course of obtaining a recorded, stenographic or signed statement to be used as evidence in a disciplinary proceeding against the agency member.

- J. *Respondent*** means any agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.
- K. *Misconduct*** means:
1. a violation of any agency policy and procedure governing conduct of agency members;
  2. the use of unnecessary or excessive force;
  3. the conviction of any criminal offense;
  4. abuse of authority;
  5. conduct which violates a person's civil rights;
  6. abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin, nationality, sexual orientation or preference, or gender identity;
  7. sexual harassment as that term is defined under Title VII of the Civil Rights Act of 1964;
  8. intimidation or retribution toward a complainant or witness involved in any complaint proceeding.
- L. *Policies and Procedures*** mean the administrative rules adopted by the agency regulating the conduct of agency members.
- M. *Shall/ Will*** means, as used herein, that the action is mandatory.
- N. *May*** means that the action is permissible.
- O. *Receiving authority*** means the person who receives the complaint when the subject of the complaint is a CLEO.

### III. PROCEDURE

#### A. INITIATING COMPLAINT

1. Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.
2. Any agency member shall self-report to the CLEO any action, inaction, or condition of that agency member which the agency member reasonably believes would constitute grounds for disciplinary action under any of the agency's policies and procedures or local, state or federal law.
3. Upon receiving a complaint against a member within the agency, the CLEO receiving the complaint shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered filed until the complainant signs the CCF. (CCF Receipt and CCF Form are attached to this Policy).
4. If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CLEO receiving the

complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CLEO shall sign the complaint as the complainant. If the CLEO has reason to believe the complaint is unfounded, the CLEO shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CLEO may refuse to accept the complaint and shall advise the anonymous person of that fact.

5. After a CCF is filed, the CLEO shall sign the document, keeping a copy for the agency and providing a copy to the complainant, for the complainant's own records. The CLEO will forward a copy of the document to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
6. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
7. Any complaint made against a CLEO shall initially be made to the mayor and Board of Aldermen. Upon receiving a complaint the receiving authority shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered until the complainant signs the CCF. The receiving authority shall follow this Allegations of Misconduct Policy for any complaints against the CLEO, i.e., the receiving authority would step into the shoes of the CLEO, and the CLEO would be the respondent.
8. The mayor and Board of Aldermen shall refer investigations of alleged misconduct against a CLEO to an outside law enforcement agency or criminal justice agency.

## **B. THE INVESTIGATION OF A COMPLAINT**

1. Upon receipt of the Citizen Complaint Form (CCF), the CLEO shall make an initial determination as to whether the facts alleged require a formal investigation. If the CLEO decides that an investigation is not required, the disposition of the investigation is not required. The disposition of the complaint shall be either "not sustained" or "exonerated." The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse this decision and order a formal investigation.
2. If the CLEO determines a formal investigation is required an appropriate person will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate and when the CLEO is the subject of the complaint, the investigation will be assigned to an external agency.
3. The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.
4. As soon as possible after being assigned the investigation the investigator shall inform the complainant of his or her name, business phone number and the status of the complaint.

5. The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another agency member the investigator shall report that fact to the CLEO or, in the case of a complaint against a CLEO, the mayor and Board of Aldermen.
6. All agency members shall cooperate with the investigation.
7. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections.
  - a) *Allegations*: an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
  - b) *Investigation*: a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.
  - c) *Conclusions*: the investigator's findings, conclusions as to whether any misconduct occurred and the underlying reasons for the findings and conclusions.
8. The investigation shall be completed within thirty (30) days of the filing of the complaint unless the CLEO determines there is good cause to grant an extension to the investigation time. The complainant and respondent shall be informed of any extension.

### **C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION**

1. Upon completion of the investigation the investigator shall submit the report, case file and all investigative notes to the CLEO. The CLEO may require additional investigation or make one of the following decisions: "exonerated," "not sustained," or "sustained."
2. The CLEO may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.
3. If the decision is "exonerated" or "not sustained" the CLEO shall immediately notify the complainant and the respondent of the decision.
4. If the complaint is "sustained" the CLEO will:
  - a) issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
  - b) take appropriate remedial and/or disciplinary action.

5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO and/or appropriate person shall review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.
6. The investigation may be re-opened by the CLEO at any time if new evidence is discovered concerning the complaint.
7. When a “sustained” disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

**D. MAINTENANCE AND DISCLOSURE OF DATA**

1. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure shall be governed by the provisions of the Mississippi Public Records Act.
2. All data collected, created or received by the agency in connection with this policy and procedure shall be maintained for no shorter than 10 years.
3. The placement of the disposition report or other data in an employee’s personnel file shall be governed by the agency’s personnel policy.
4. Access to data collected, created, or received in connection with this policy and procedure is governed by the Mississippi Public Records Act.

**Citizens Complaint Form Receipt**

On (date) \_\_\_\_\_, (Complainant's Name Printed)  
\_\_\_\_\_ filed a complaint with the Lexington Police  
Department concerning the conduct of (person complained against)  
\_\_\_\_\_. This was in reference to  
an incident which occurred on (date) \_\_\_\_\_ and was documented in  
report/citation number \_\_\_\_\_. This form acknowledges receipt  
of the complaint, which has Administrative Case Number \_\_\_\_\_.

\_\_\_\_\_  
Signature of person filing complaint (if feasible):

\_\_\_\_\_  
Date

Employee receiving complaint:

Printed name: \_\_\_\_\_

\_\_\_\_\_  
Date

Signature: \_\_\_\_\_



## Citizens Complaint Form

|                                       |           |     |
|---------------------------------------|-----------|-----|
| Name of Complainant                   |           | DOB |
| Address                               | Phone (H) | (C) |
| Email Address                         |           |     |
| When is the best time to contact you? |           |     |
| Who is the complaint made against?    |           |     |

IF THE PERSON'S NAME IS UNKNOWN, DESCRIBE THAT PERSON BELOW

|                                 |                    |                              |
|---------------------------------|--------------------|------------------------------|
| Date of Incident                | Time of Occurrence | Report/Citation # (if known) |
| Location of Incident Occurrence |                    |                              |
| <i>Office Use Only</i>          |                    |                              |
| Administrative Case Number      |                    |                              |
| Employee Receiving Complaint    |                    |                              |

Describe in detail as to what occurred and be specific as to what was said. Include detailed information (name, address, phone) of witnesses to incident. It is useful to include the following: who, what, when, where, how.

*[insert detail]*

*[continue detail]*

I declare this to be a true and accurate report and the information therein to be factual.

|                                      |      |
|--------------------------------------|------|
| Name of Person Filing Complaint      | Date |
| Signature of Person Filing Complaint |      |

AN ORDINANCE PROHIBITING ABANDONMENT OF VEHICLES; RESTRICTING THE DISPOSITION OR KEEPING OF WRECKED, NON-OPERATING, OR DISCARDED VEHICLES ON STREETS OR PRIVATE PROPERTY; PROVIDING FOR IMPOUNDING OF CERTAIN VEHICLES; AND IMPOSING PENALTIES.

WHEREAS, In the City of Lexington vehicles are or may be in the future abandoned in the streets and other places within the city; and

WHEREAS, there are or may be in the future dismantled, partially dismantled, wrecked, junked, non-operating, or discarded vehicles left about the city other than in junkyards or other appropriate places; and

WHEREAS, such conditions tend to impede traffic in the streets or interfere with the enjoyment of and reduce the value of private property, invite plundering, create fire hazards and other safety, and health hazards to the public, interfere with the comfort and well-being of the public, and create, extend, and aggravate urban blight; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF LEXINGTON:

SECTION I. DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of this Ordinance:

- (1) Abandon shall mean any partially dismantled, non-operating, wrecked, junked, or discarded vehicle, which is allowed to remain on public property longer than forty-eight (48) hours or on private property longer than six (6) months.
- (2) Person shall mean any person, firm, partnership, association, corporation, company, entity, or organization of any kind.
- (3) Property shall mean any real property within the city which is not a street or highway.
- (4) Street or Highway shall mean the entire width between the boundary lines of every way publicly maintained road, including the full right of way thereof when any part thereof is open to the use of the public for purposes of vehicular travel.
- (5) Vehicle shall mean a machine propelled by power other than human power designated to travel along the ground by use of wheels, trends, runners, or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, buggy, wagon, tractor, or other farm machinery.

SECTION II. ABANDONMENT OF VEHICLES. No person in charge or control of any property within the city, whether as owner, agent, tenant, occupant, lessee, or otherwise, shall abandon any vehicle within the city, and no person shall leave any

vehicle at any place within the city for such time and under the circumstances as to cause such vehicle to be considered abandoned under this ordinance.

**SECTION III. LEAVING OF WRECKED, NON-OPERATING VEHICLE ON STREET.** No person shall leave any partially dismantled, non-operating, wrecked, or junked vehicle on any street or highway within the city.

ORDINANCE REGULATING THE SALE, POSSESSION, AND USE OF  
FIREWORKS IN THE CITY OF LEXINGTON, MISSISSIPPI AND THE  
ESTABLISHING OF PENALTIES FOR VIOLATION THEREOF

WHEREAS, the Mayor and Board of Aldermen of the City of Lexington, Mississippi hereby find that public safety and welfare are adversely affected by the unrestricted sale and use of fireworks within municipal limits; and

WHEREAS, the Mayor and Board of Aldermen of the City of Lexington, Mississippi hereby find that there is a need to regulate the time, place, and manner of the sale and use of fireworks within municipal limits; and

WHEREAS, the Mayor and Board of Aldermen of the City of Lexington, Mississippi hereby find they are authorized by §21-19-15 of the Mississippi Code to regulate these matters in the interest of the public welfare; and

WHEREAS, the Mayor and Board of Aldermen of the City of Lexington, Mississippi hereby find that such regulation will reduce injuries to people and destruction of property by fire; and

WHEREAS, the Mayor and Board of Aldermen of the City of Lexington, Mississippi hereby find the importance of celebrating national holidays, including Independence Day, Juneteenth, New Years, Labor Day, and Memorial Day, and that it is common for people to buy and use fireworks during these holidays.

BE IT HEREBY ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LEXINGTON, as follows:

§1. All prior ordinances adopted by the City of Lexington regulating the sale, possession, and use of fireworks are hereby repealed.

§2. It is a violation of this section of this ordinance to sell any fireworks, including Class ‘C’ fireworks as defined by the Interstate Commerce Commission and M.C.A. §45-13-1, within the Lexington municipal limits, except for the following designated periods when the sale of any fireworks which are legal under Mississippi state law is permitted within the municipal limits of Lexington, Mississippi:

- (1) From June 9<sup>th</sup> to July 4<sup>th</sup> each year, inclusive of start and end date;
- (2) From eleven (11) days prior to the last Monday of May each calendar year till 1:00am on the last Tuesday of May that same calendar year;

- (3) From eleven (11) days prior to the first Monday of September each calendar year till 1:00am on the first Tuesday of September that same calendar year;
- (4) From December 20<sup>th</sup> to January 1<sup>st</sup> each year, inclusive of start and end date.

Furthermore, it is a violation of this section of this ordinance to sell fireworks within the city limits without a valid, properly displayed fireworks permit by the City of Lexington, issued from city hall. Said permit shall cost one-hundred fifty dollars (\$150.00), and shall be valid for one year from the date of issue, but shall only be valid during the prescribed periods of allowed sales. No permit shall be issued to any residential address, and any permit so issued shall be considered void, and a refund of one-hundred fifty dollars (\$150.00) shall be issued. Said permit must be prominently displayed near the cash register or, if there be no cash register, near the entrance to the establishment.

§3. Every person convicted of a violation of §2 of this ordinance shall be punished as follows:

- (a) Upon first conviction under this section of this ordinance, by a fine of not more than one hundred fifty dollars (\$150.00).
- (b) Upon second conviction under this section of this ordinance, by a fine of not more than three hundred dollars (\$300.00).
- (c) Upon third and all subsequent convictions under this section of this ordinance, by a fine of not more than five hundred dollars (\$500.00), or by not more than thirty (30) days imprisonment.

§4. It is a violation of this section of this ordinance to use or possess any fireworks, including class "C" fireworks as defined by the Interstate Commerce Commission and M.C.A. §45-13-1, within the Lexington Municipal limits, except for the following designated periods of time and specified places when the use of any fireworks which are legal under Mississippi state law is permitted within the municipal limits of Lexington, Mississippi:

- (1) From June 9<sup>th</sup> to July 4<sup>th</sup> each year, inclusive of start and end date;
- (2) From eleven (11) days prior to the last Monday of May each calendar year till 1:00am on the last Tuesday of May that same calendar year;
- (3) From eleven (11) days prior to the first Monday of September each calendar year till 1:00am on the first Tuesday of September that same calendar year;
- (4) From December 20<sup>th</sup> to January 1<sup>st</sup> each year, inclusive of start and end date.

The city reserves the authority to declare at the last public meeting prior to each permissible period of fireworks use that drought or other conditions render the use of fireworks unsafe, and to prohibit the use of fireworks during that time, without repealing this ordinance in its entirety.

It shall be a violation of this section of this ordinance for any child under the age of 18 to light or use fireworks without adult supervision.

It shall be a violation of this ordinance for to use fireworks between the times of 1:00am and 9:00am.

§5. Every person convicted of a violation of §4 of this ordinance shall be punished for each offense by a fine of not more than twenty-five dollars (\$25.00).

§6. The ordinance shall take effect and shall be enforceable from and after the due publication thereof as required by law.

§7. If any section or part of this ordinance shall be found by any court of proper jurisdiction to be unenforceable for any reason, the remainder of the ordinance shall remain valid and enforceable.

[Insert section regarding board of aldermen approval. This looks like a premade form]

## Article []- Unlawful Discrimination

### Section 1. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

Age means the number of years an individual has been alive.

City contractor means any person, corporation, or entity that has a contract to do business with the City of Lexington.

Discriminate, discrimination, or discriminatory means any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

Employee means any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.

Employer means a person who employs one or more employees in the City of Lexington, or any agent of such person. Employer shall include the City of Lexington and any city contractor.

Familial status means an individual's past, current or prospective status as parent or legal guardian to a child or children below the age of 18 who may or may not reside with that individual.

Gender identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Marital status means an individual's past, current, or prospective status as single, married, divorced, or widowed.

National origin means an individual's or his or her ancestor's place of origin.

Place of public resort, accommodation, assemblage, or amusement means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds. The term does not include any of the following:

- (1) Any lodging establishment which contains not more than three rooms for rent and which is actually occupied by a proprietor of such establishment as a primary residence.
- (2) Any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

Religion means all aspects of religious belief, observance, and practice.

Sexual orientation means actual or perceived homosexuality, heterosexuality, pansexuality, asexuality, or bisexuality.

Veteran status means an individual's status as one who served in the active military, naval or air service, and who was discharged or released under conditions other than dishonorable.

## Section 2. Civil rights declared.

The right of an otherwise qualified person to be free from discrimination because of that person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is recognized as and declared to be a civil right. This right shall include, but not be limited to, all of the following:

- (1) The right to obtain and hold employment and the benefits associated therewith without discrimination.
- (2) The right to the full enjoyment of any of the accommodations, advantaged, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (4) The right to exercise any right granted under this article without suffering coercion or retaliation.

## Section 3. Exceptions

Notwithstanding the foregoing, the following are not discriminatory practices prohibited by this ordinance:

- (1) A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities by the corporation, association, or society.
- (2) An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this article.

## Section 4. Human Rights.

The purpose of incorporating human rights in this to promote principles of diversity, inclusion, and harmony in the City of Lexington through education, community events, the provision of advice to the City Council and Mayor, and through receiving and resolving complaints filed under this article.

- (1) Responsibilities. The responsibilities include managing records and accounts, developing public education programs, managing citizen complaints, and any other tasks needed. Responsible parties may use the services of clerks, other city government employees or the services of contractors as necessary
- (2) Activities. The City of Lexington shall receive, initiate, investigate, seek to conciliate, hold hearings on and forward complaints alleging violations of this article, including issuing penalties; it shall present an annual report to the mayor and city council of its activities; it shall develop public education programs regarding compliance with this article and equal opportunity and treatment of all individuals; and it shall engage in any other necessary action to effectuate its purpose and duties.

#### Section 5. Enforcement.

Subject to the procedures developed, the City of Lexington shall receive, initiate, investigate, seek to conciliate, hold hearings on and forward complaints alleging violations of this article. If a complaint is not successfully conciliated, the City of Lexington shall hear the matter and make a determination as to whether a violation of this article has occurred. If the City of Lexington determines that a violation has occurred, they shall issue an order to cease and desist from the discriminatory practice and levy a fine of \$500.00 for a first violation, \$1,000.00 for subsequent violation. These penalties shall be enforceable, if necessary, via an action in municipal court. All proceedings described herein shall be conducted in accordance with Mississippi law.

#### Section 6. Other Remedies.

This article may not be construed to limit any other remedies available under state or federal law.

## Letter to Lexington City Attorney Re: Profanity Ordinance

Lexington's Profanity Ordinance ("Profanity Ordinance") makes it a crime to "curse, insult, deride, ridicule, or use abusive language" toward a member of the Lexington Police Department, a fireman, or any other city peace officer while that officer is "properly performing his official duties." Lexington, Miss. Profanity Ordinance (July 2, 1963). It is well settled that the First Amendment protects the right to yell obscenities or expletives at law enforcement officers. While statutes that narrowly address unprotected classes of speech, such as "fighting words"—words that could incite violence or create danger—have been upheld by the United States Supreme Court, statutes that punish individuals for merely using profanity or expletives toward a law enforcement officer have been struck down. Given that the Profanity Ordinance merely punishes individuals for using curse words or making other insults towards law enforcement officers, a court would very likely find it to be unconstitutional and overbroad. Therefore, we highly recommend that this ordinance be repealed.

### 1. **The First Amendment protects the right to shout or yell expletives at law enforcement officers, and courts have struck down ordinances that prohibit this conduct.**

The Supreme Court of the United States has long held that yelling obscenities or expletives at a law enforcement officer is a protected right under the First Amendment. *See City of Houston, Tex. v. Hill*, 482 U.S. 451, 460 (1987) (holding that a municipal ordinance that made it "unlawful for any person to...in any manner oppose, molest, abuse, or interrupt any policeman in the execution of his duty," thereby prohibiting all verbal interruptions of police officers, was facially overbroad and unconstitutional). The Court in *Hill* stated that "The First Amendment protects a significant amount of verbal criticism and challenges directed at police officers. 'Speech is often provocative and challenging. . . [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.'" *Id.* at 461 (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)). Statutes cannot merely punish "spoken words." *Hill*, 482 U.S. at 461. Rather, they must be "carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression." *Gooding v. Wilson*, 405 U.S. 518, 522 (1972).

The Profanity Ordinance punishes the use of spoken words against law enforcement officers (i.e., curses, insults, or abusive language) and is not narrowed to only punish words that could lead to a "clear and present danger." Therefore, the Profanity Ordinance prohibits protected classes of speech and thus violates the First Amendment.

### 2. **The Profanity Ordinance is overbroad because it does not limit its prohibition to fighting words.**

In *Chaplinsky v. New Hampshire*, the Court defined unprotected classes of speech as "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words," which might provoke the average person to retaliation. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (finding that a statute was constitutional where it was "narrowly drawn and limited to define and punish specific conduct lying within the domain of state power, the use in a public place of words likely to cause a breach of the peace"). Profanity alone does not constitute fighting words. *Cohen v. California*, 403 U.S. 15 (1971).

The Court has also struck down statutes where descriptions of fighting words swept too broadly and could be interpreted to include forms of protected speech. *See Gooding v. Wilson*, 405 U.S. 518, 525

(1972) (finding that the words “opprobrious” and “abusive” in a statute could apply to spoken words and thus swept too broadly to constitute fighting words); *see also Seals v. McBee*, 898 F.3d 587, 590 (5th Cir. 2018) (holding that a statute that “criminalizes the use of violence, force, or threats” was unconstitutional because “threats” could broadly incorporate protected threats, such as threatening to sue a police officer).

While the language prohibited in the Profanity Ordinance could encompass unprotected classes of speech, such as fighting words, prohibiting the use of curses, insults, derision, or other abusive language against law enforcement officers sweeps broadly enough to include protected classes of speech, making it unconstitutional.

### **3. Mississippi courts have held that profanity alone is not a punishable offense.**

Miss. Code Ann. § 97-29-47 provides that “if any person shall profanely swear or curse, or use vulgar and indecent language, or be drunk in any public place, in the presence of two (2) or more persons, he shall, on conviction thereof, be fined not more than one hundred dollars (\$100.00) or be imprisoned in the county jail not more than thirty (30) days or both.” In *Brendle v. City of Houston*, the Mississippi Court of Appeals limited this statute, per *Chaplinsky*, to only include “fighting words, obscene words, or some libelous words” (quotation marks omitted). *Brendle v. City of Houston*, 759 So.2d 1274, 1283 (Miss. Ct. App. 2000) (holding that curse words addressed to a police officer were not fighting words punishable under the Mississippi profanity statute); *but cf. Jones v. State*, 798 So.2d 1241, 1248 (Miss. 2001) (stating that the court would not adopt the reasoning in *Brendle* where the defendant called a police officer a “child killing m\*ther f\*\*ker” and instead found that the arresting officer did not have sufficient evidence to believe breach of the peace was threatened or a crime was about to be committed). While the Court of Appeals recognized that “law enforcement officers must endure verbal abuse” in *Odem v. State*, they also found that verbal expressions can escalate to “fighting words” where the language does not stop with “simply expressing [one’s] displeasure.” *Odem v. State*, 881 So. 2d 940, 949 (Miss. Ct. App. 2004).

Mississippi courts have narrowly construed the Mississippi profanity statute to apply only to unprotected classes of speech and have found that using curse words against a law enforcement officer did not constitute fighting words. *See Brendle* 759 So.2d at 1283. Because the Profanity Ordinance punishes individuals for merely cursing, insulting, or using other abusive language against a law enforcement officer, a Mississippi court would likely find the ordinance overly broad.

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The Profanity Ordinance violates the First Amendment because it punishes individuals for spoken words alone. Shouting or yelling expletives or other obscenities is a protected class of speech, and statutes that punish this conduct have been struck down at the federal level. Moreover, in *Brendle*, the Mississippi Court of Appeals found that curse words used against a police officer were not fighting words. Therefore, a court is highly likely to strike down the Profanity Ordinance for violating the First Amendment. As a result, we highly recommend that the ordinance be repealed.