

AN ORDINANCE OF THE CITY OF MALAD CITY, A MUNICIPAL CORPORATION OF IDAHO, REPEALING ORDINANCE NO. 338, ORDINANCE NO. 351 AND ORDINANCE NO. 375 OF THE CITY OF MALAD CITY, IDAHO, AND CONSOLIDATING THE PROVISIONS OF SAID ORDINANCES AND REENACTING A NEW ORDINANCE "OFFENSES AGAINST PROPERTY AND THE PUBLIC PEACE"; PROVIDING THAT PARKS SHALL BE CLOSED TO THE PUBLIC FROM MIDNIGHT UNTIL 6:00 A.M., APRIL THROUGH SEPTEMBER, AND FROM 7:00 P.M. UNTIL 7:00 A.M., OCTOBER THROUGH MARCH; PROVIDING DEFINITIONS; PROVIDING PROVISIONS FOR CURFEW HOURS TO BE FROM 12:00 MIDNIGHT UNTIL 5:00 A.M.; PROHIBITING ANY CHILD FROM VIOLATING, AND ANY PARENT FROM ALLOWING THE VIOLATION, OF THE CURFEW HOURS; PROVIDING EXCEPTIONS; PROVIDING AUTHORITY TO DETAIN; PROVIDING PENALTIES; DECLARING GRAFFITI A NUISANCE; PROHIBITING GRAFFITI; REQUIRING PROMPT REMOVAL OF GRAFFITI AND PROVIDING FOR NOTICE, ENFORCEMENT, AND APPEAL REGARDING ITS ABATEMENT; PROHIBITING EXCESSIVE NOISE, DISORDERLY CONDUCT, DISTURBING THE PEACE, LOUDSPEAKERS AND SOUND TRUCKS, UNLAWFUL ASSEMBLY, MALICIOUS INJURY TO PROPERTY, TRESPASSING, DEPOSITING INJURIOUS MATERIAL ON RIGHTS OF WAY, FRAUDULENTLY AVOIDING PAYMENT OF FEES, AND LITTERING; THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW, THE RULE REQUIRING THAT AN ORDINANCE BE READ ON THREE SEPARATE OCCASIONS HAVING BEEN DISPENSED WITH.

WHEREAS, a number of current code provisions protecting property or the public peace are outdated or contain outmoded language; and

WHEREAS, the Council has observed problems in other communities concerning street violence and crimes against property, and to prevent the same, the City of Malad City desires to enact stronger laws to protect public and private property and assist in maintaining the peace;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MALAD CITY, ONEIDA COUNTY STATE OF IDAHO, THAT THIS ORDINANCE, KNOWN AS THE "OFFENSES AGAINST PROPERTY AND PUBLIC PEACE ORDINANCE" IS HEREBY ENACTED TO READ FOLLOWS:

ORDINANCE NO. 338, ORDINANCE 351, AND ORDINANCE NO. 375 OF THE CITY OF MALAD CITY ARE HEREBY REPEALED IN THEIR ENTIRETY AND THE FOLLOWING SECTIONS ARE HEREBY SUBSTITUTED THEREFORE.

SECTION 1: Purpose. It is hereby declared that the provisions and prohibitions hereinafter contained and enacted are in the necessity of the public interest and that said provisions and prohibitions are enacted in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, and welfare, and the peace and quiet of Malad City and its

inhabitants.

SECTION 2: Definitions.

A. "Child" means any unemancipated person, male or female, under the age of eighteen years.

B. "Curfew" means the hours during which it is unlawful for any child to be found in the places and/or circumstances as hereinafter specified.

C. "Emancipated" means any person either eighteen years of age or older, or if under the age of eighteen, any person who is married or has been married; or any person who is in active military service; or any person who is both self-supporting and neither resides with nor is subject to parental control.

D. "Excessive Noise" means any noise which due to its volume, its duration or its location, annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

E. "Graffiti" means the marking, defacing, damaging, or destroying by spraying of paint or marking of ink, chalk, dye or other similar substances on public or private buildings, structures, and places.

F. "Graffiti Abatement Procedure" means the abatement procedure which identifies graffiti, issues notice to the landowner to abate the graffiti, and cures in absence of response.

G. "Parent" means the mother, father, or both (both being referred to in the singular as "parent"), guardian or other adult person having the legal care, custody or control of a child.

H. "Self-Supporting" means being able to take care of and provide for oneself and having control of one's earnings, belongings, and residence.

SECTION 3: Curfew. No parent shall allow his or her child to, nor shall any child, remain in, on, or occupy any area of the public streets, roads, alleys, parks, playgrounds, any other public grounds, places of amusement, places of entertainment, commercial establishments, or any unsupervised area as follows:

a. Children Under 16 Years of Age. Children 16 years

and under shall not loiter or act as provided above, between the hours of 10:00 o'clock p.m. and 6:00 o'clock a.m. of the following day of any Sunday through Thursday of any given week during any given year.

Children of 16 years of age or under shall not so loiter, be idle or act as provided above, between the hours of 11:00 o'clock p.m. and 6:00 a.m. o'clock of any day of state or federally recognized holidays or weekends consisting of any Friday or Saturday of any given week during any given year.

b. Children 16 Years of Age or Older and Under 18 Year.
Children 16 years of age or older and under 18 years of age shall not so loiter, be idle or act as provided above, between 11:00 o'clock p.m. and 6:00 o'clock a.m. of the following day of any Sunday through Thursday of any given week during any given year.

Children 16 years of age or older and under 18 years of age shall not so loiter, be idle or act as provided above, between 12:00 o'clock midnight and 6:00 o'clock a.m. of the following morning on weekends and holidays which shall consist of any Friday or Saturday of any given week of any given year or any state or federally recognized holiday.

SECTION 4: Exemptions. The following circumstances shall be deemed exceptions to the curfew hours required hereinabove.

- A. A child accompanied by his parent.
- B. A child engaged in lawful employment, or in going directly to or from such employment.
- C. A child on an errand or on legitimate business pursuant to instructions from his parent.
- D. A child involved in an emergency concerning the person or property of himself or another.
- E. A child engaged in or returning home from school-or church youth group-sponsored activities; or from other activities supervised by an adult and approved by the child's parent, or from any public social activity authorized by his parent, such as a movie, play, hay-ride, or other similar public social activity,

provided that such "returning home" shall be construed to mean that the child is proceeding immediately and directly after participation in such activity, by the most direct route and in the most expeditious manner legally possible, to his residence or such other place as shall be authorized by his parent.

SECTION 5: Authority to Enforce. Law enforcement officers of the city shall have authority to stop and momentarily detain a child, or one who appears to him to be a child as defined herein, during the hours of curfew set forth herein to obtain his name, age, and address, as well as the name and address of his parent whenever the law enforcement office has reasonable suspicion that the child and his parents are violating the provisions of this chapter. Upon determination that the child and his parent are in violation of the curfew provisions, the law enforcement officer shall direct or deliver the child to the residence of his parent in addition to issuing any violation notices, citations or juvenile violation reports as may be appropriate under the provisions of this chapter.

SECTION 6: Violation--Penalty. Upon a first violation for any child, the officer shall issue a juvenile violation report to the child, and provide a written warning notice to the parent, which notice shall clearly state the possible penalties set forth in this section which may be imposed for subsequent violations. Upon the second or subsequent violation for any child, the child shall be issued a juvenile violation report for a second or subsequent curfew violation and the parent shall be issued a citation for allowing a second or subsequent violation of curfew provisions. Upon a determination by the court that a second violation involving the child has occurred, the parent shall be fined not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00). Upon a determination that a third or subsequent violation involving any child has occurred, the parent shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than fifteen hundred dollars (\$1,500.00).

SECTION 7: Restricted Hours at Public Parks and Places. The

municipally owned or operated parks and public places shall be closed to the general public between the hours of midnight and six a.m. from April 1 through September 30 of each year and between the hours of seven p.m. to seven a.m. from October 1 through March 31 of each year and any and all persons are prohibited from entering upon or loitering about or being present in such municipal parks or places between the designated hours.

SECTION 8: Excessive Noise Prohibited. It is unlawful for any person to make, continue, or cause to be made, or allow to be made on premises owned or under his control, any excessive, loud, unnecessary or unusual noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

SECTION 9: Loudspeakers or Sound Trucks Prohibited. It is unlawful to play, use or operate for advertising purposes or for other purposes whatsoever any device commonly known as a sound truck, loudspeaker or sound amplifier, radio or phonograph, with loudspeaker or sound amplifier, radio or phonograph, with loudspeaker or sound amplifier, or any other instrument known as a calliope, or any instrument of any kind or character which emits loud and raucous noise and is attached to and upon any vehicle operated or standing on any streets or places mentioned in this chapter. Advertising by loudspeaker as described above for community or public events shall be allowed, and is exempt from this section.

SECTION 10: Disorderly Conduct. Every person who engages in any fight or affray, or who challenges another person to fight in a rude or angry manner, or who uses profane, indecent, obscene or opprobrious epithets or language addressing another person, or who intentionally insults another person in any manner, or who makes or caused unnecessary noise having a tendency to endanger or disturb the public peace, or who solicits another person to commit sodomy or prostitution, or who remains in any public building or place without permission of competent authorities in charge of such public building or place, or any person who goes near and stares,

gazes, or peeps into any room, apartment, chamber or other place of abode, not his own or under his control, which is occupied by any person or persons, shall be deemed guilty of a misdemeanor.

SECTION 11: Disturbing the Peace. No person shall wilfully or maliciously or intentionally or unnecessarily disturb the peace and quiet of another or of any neighborhood or family or religious congregation or other assembly by loud or unusual noises or indecent behavior or by offensive or unbecoming conduct, nor shall any person threaten, quarrel, fight, or provoke an assault or battery, or utter fighting words.

SECTION 12: Unlawful Assembly. It is unlawful for two or more persons to assemble together for the purpose of disturbing the peace or for the purpose of committing an unlawful act and not to disperse upon the command to do so by an officer. It is unlawful for any person, except public officers and persons assisting in preserving the peace, to remain present at the place of such unlawful assembly.

SECTION 13: Injury to Property. It is unlawful for any person to wilfully or maliciously injure, deface, mutilate, remove, pull down, break, or in any manner interfere with or molest, or secrete, or destroy any public property, or any real or personal property belonging to or under the control of any private person, firm or corporation or to the city or any other public entity.

SECTION 14: Graffiti Prohibited. It is hereby declared to be a nuisance and to be unlawful for any person to place or put, by any means, any drawing, inscription, figure, symbol, or mark or any type commonly known as graffiti on any public or private property without the permission of the owner of the premises on which the surface is located, or upon any natural surfaces such as rocks or trees, or any other surface whatsoever.

SECTION 15: Graffiti--Removal Required. Any person found to be in violation of the above section shall be required to remove or cause to be removed the graffiti from the surface on which it was placed. Inasmuch as it is often not possible to determine the identity of the person who applied the graffiti, it shall be the

duty of the owner or person in control of the premises on which the graffiti has been applied to promptly remove the graffiti after notice as hereinafter set forth. If, after notice as hereinafter provided, the graffiti nuisance is not abated, the city shall proceed to abate the graffiti nuisance and the costs of same shall be assessable against the property.

SECTION 16: Graffiti--Notice to Remove. A. Whenever the Chief of Police or the Oneida County Sheriff or their designated representatives discovers graffiti on any public or private property or any surfaces visible to persons utilizing public rights-of-way within the city, he shall, whenever seasonal temperatures permit the painting of exterior surfaces, cause a notice to be issued to the owner or person in control of the premises to abate the nuisance and remove the graffiti or cover it with paint or other suitable substance.

B. Said notice shall be served upon the owner(s) of the affected premises, as shown on the last property tax assessment rolls of Oneida County, Idaho, with a copy to the occupant of the premises. If there is no known address for the owner, the notice shall be served at the property address. Service of the notice may be accomplished through personal service on the owner, occupant, or person in charge or control of the property or by certified mail.

C. Notice shall be in writing and shall clearly state that the owner or person in charge or control of the property is required by this chapter to remove from public view or paint over the graffiti within fifteen days of receipt of the notice; that failure to do so will cause the city to abate the nuisance and to assess the costs to the owner; that failure to pay said costs within thirty days of receipt of billing shall result in an assessment against the property, collectable with the property taxes; that the owner or person served may, within ten days of receipt of the notice, deliver in writing to the Police Chief or the Oneida County Sheriff or their designated representatives his objections to the removal requirement and request a hearing before

the City Council.

SECTION 17: City Abatement Option. Nuisances which remain unabated after notice, may, at the option of the city, be removed, abated or destroyed by the city or its agents, after the following steps have been taken:

A. If after fifteen calendar days from the date a written notice is personally delivered to the property owner, or mailed to the property owner's address as shown in current official Oneida County Assessor records, no abatement of the nuisance has occurred, the designated enforcement officer shall provide a second ten-day notice to be delivered to the property owner by certified mail or personal service, which shall indicate the following:

- 1) That if the property owner fails to abate the nuisance, the city shall take steps to abate the same;
- 2) That the property owner may contract with the city to abate the nuisance and pay costs of the same;
- 3) That if the city abates the nuisance, all costs and expenses of abatement shall be billed and assessed against the property owner and if unpaid shall become collectable as a special assessment with property taxes;
- 4) That the property owner has a right to appear before the city council to show cause as to why he or she should not be forced to abate or pay for abatement of the nuisance; furthermore, that if the property owner desires such a hearing, a request for hearing, in writing, shall be given to the designated enforcement officer prior to expiration of the ten-day notice, and that abatement by the city will proceed if the property owner has not exercised this option to request a hearing;

5) If said certified notice is returned as undeliverable, or is unclaimed by the property owner, nothing shall preclude the city from exercising its abatement option as specified herein.

B. When the ten-day notice has expired without a request for hearing, the mayor's designated enforcement officer is authorized to remove, abate or destroy the nuisance. The designated enforcement officer is authorized to utilize city personnel to

abate the nuisance or to contact the mayor in regard to contracting for an outside party to abate the nuisance.

C. If the city abates any nuisance under the provisions of this chapter a statement of charges billed to the property owner shall be mailed or personally delivered to the property owner.

D. If payment is not received from the property owner within thirty days, the amount billed shall, in accordance with state law, be assessed as a special assessment collectable against the subject property as other state, county and municipal taxes.

E. If the property owner requests a hearing to show cause before the city council, the hearing shall, if feasible, be placed on the agenda of the next regularly scheduled city council meeting. The decision of the city council shall be final. A ten-day period shall be given the property owner after the council decision so that the property owner the property owner shall have additional opportunity to abate the nuisance or to pursue any legal remedies or defenses at the District Court level.

SECTION 18: Trespassing. It is unlawful for any person to take down any fence, or to let down any bars, or to open any gate so as to expose any enclosure, or to ride, drive, walk, lodge, camp or sleep in or on the property of another without the consent of the owner, occupant, or person in charge thereof.

SECTION 19: Littering. It is unlawful for any person to wilfully or negligently throw from any vehicle or from any other location or to place or deposit upon or along any street, alley, public thoroughfare, or public property, or private property without the consent of the owner, any debris, paper, litter, glass, can, nail, tack, wire, trash or garbage, lighted material, or other waste substance.

SECTION 20: Deposits of Injurious Material on Right-of-Way. It is unlawful for any person to deposit, place, or allow to remain in or upon any public right-of-way any material or substance injurious to persons or property.

SECTION 21: Removal of Vehicles or Other Personal Property From Private Property.

No person shall cause any motor vehicle or other personal

property to be parked, placed or left on any private property without securing the consent of the owner thereof or his agent. A Complaint having been duly signed by the owner of the property, or his agent of the action prohibited herein shall permit the police department to remove or cause to be removed said vehicle or other personal property to the nearest garage or other place of safety.

SECTION 22: When Police May Remove Vehicles Illegally Parked on Private Property.

If, at any time, a vehicle is parked upon private property without the consent of the owner of such property, or his agent, the Police Department is hereby authorized to remove said vehicle therefrom, and to cause the same to be stored providing the owner of such private property, or his agent, has first signed a written complaint against the owner or operator of said vehicle. Said Complaint being filed with the Police Department.

SECTION 23: Fraudulently Avoiding Payment of Admission Fees.

It is unlawful for any person to enter without the payment of the proper admission fee any theater, ballroom, lecture, concert or other place where admission fees are charged.

BE IT FURTHER ORDAINED that this ordinance shall be in full force and effect from and after its passage, approval, and publication according to law, the rule requiring that an ordinance

be read on three separate occasions having been dispensed with.

PASSED AND APPROVED this 8 day of ^{June}~~March~~, 1994.

ATTEST:

Susan J. Wittman
SUSAN J. WITTMAN, City Clerk

Terrill R. Schwartz
TERRILL R. SCHWARTZ, Mayor