

#34
ORDINANCE 34

AN ORDINANCE OF THE CITY OF MALTA, IDAHO, TO PRESERVE THE PUBLIC PEACE AND SAFETY BY ESTABLISHING A CURFEW ORDINANCE APPLICABLE TO JUVENILES WITH EXPRESS FINDINGS AND DEFINED PURPOSES; PROVIDING DEFINITIONS, ESTABLISHING HOURS FOR JUVENILES; PROVIDING FOR EXCEPTIONS; FIXING PARENTAL RESPONSIBILITY; SPECIFYING ENFORCEMENT PROCEDURES; FIXING PENALTIES; PROVIDING FOR SEVERABILITY; REQUIRING CONTINUING EVALUATION; REPEALING EXISTING ORDINANCES ON CURFEWS AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MALTA:

SECTION 1. FINDINGS AND PURPOSE: The City Council of the City of Malta, hereby finds:

1.1. There has been a significant breakdown in the supervision normally provided by certain parents and guardians for juveniles under eighteen (18) years of age resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, noisy and rowdy behavior, burglary, breaking and entering, public drinking and littering, and harassment of residents.

1.2. The City Council further finds that the offensive activities of the juveniles are not easily controlled by existing laws and ordinance because the activities are easily concealed whenever police officers are present and that the establishment of reasonable curfew regulations will enable the community to better control the free and unobstructed access to the streets and public places by the majority of residents and will enable the police to act reasonably and fairly to prevent

the violation of laws and ordinances by juveniles.

1.3. The City Council further finds and have determined that a curfew meets a very real local need and that curfew ordinances previously in this community and in other communities have been a significant factor in minimizing juvenile delinquency. A curfew in the City of Malta is particularly appropriate in view of the sense of the community that there is a proper time for the cessation of outdoor activities of juveniles. That sense of the community is reflected in the curfew hours declared by this Ordinance which takes into consideration also the danger hours for nocturnal crime and for accumulations of juveniles with potential risks incident to immaturity.

1.4. The City Council further finds that the community is not overcrowded. The dwellings in the City are generally well designed and contain adequate indoor living space so as to permit juveniles to healthfully occupy their time. Commercial recreational facilities are limited and there is little or nothing for juveniles to do outdoors, but roam the streets, after the curfew hours which this Ordinance declares.

1.5. Malta is basically a family community. Parental responsibility for the whereabouts of children is the accepted norm by a substantial majority of the community. Legal sanctions to enforce such responsibility have had a demonstrated effectiveness in many communities over the years. The City Council has determined that as parental control increases there

is a likelihood that juvenile delinquency decreases and that there is a need for nocturnal curfew for juveniles in the City and that the establishment of a curfew applicable to juveniles will reinforce the primary authority and responsibility of parents and guardians over juveniles in their care and custody.

SECTION 2: DEFINITIONS: For the purposes of this Curfew Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

2.1. Juvenile is any person less than the age of eighteen (18).

2.2. Parent is any person having legal custody of a juvenile (1) as a natural or adoptive parent, (2) as a legal guardian, (3) as a person who stands in loco parentis or (4) as a person to whom legal custody has been given by order of court.

2.3. Remain means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totalling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home.

2.4. Street is a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes

of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes the legal right of way, including but not limited to the cartway or traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right of way of a street. The term street applies irrespective of what it be called or formally named, whether alley, avenue, court, road or otherwise. The term street shall also include shopping centers, parking lots, parks, playgrounds, public buildings and similar areas that are open to the use of the public.

2.5. Time of Night referred to herein is based upon the prevailing standard of time, whether Mountain Standard Time or Mountain Daylight Savings Time, generally observed at that hour by the public in the City, prima facie the time then observed in the Cassia County Law Enforcement Building dispatch office.

2.6. Years of Age continues from one birthday, such as the sixteenth to (but not including the day of) the next, such as the seventeenth birthday.

SECTION 3: CURFEW FOR JUVENILES: It shall be unlawful for any person under the age of eighteen (18) years to be or remain in or upon the streets within the City of Malta at night during the period ending at 5:00 A.M. beginning

3.1. At 11:59 P.M. on Friday and Saturday nights, and

3.2. At 10:00 P.M. on all other nights.

SECTION 4: EXCEPTIONS: In the following exceptional

cases a minor on a City street during the nocturnal hours for which Section 3 is intended to provide the maximum limits of regulation (and a clear guide for minors, their parents and their fellow-citizens) shall not, however, be considered in violation of the Curfew Ordinance.

4.1. When accompanied by a parent or guardian of such juvenile.

4.2. When accompanied by an adult authorized by a parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose within a specified area.

4.3. When 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. The juvenile shall evidence the bona fides of such exercise by first delivering to the person designated by the Cassia County Sheriff to receive such information, at the Law Enforcement Building on 15th Street, in the City of Burley, a written communication, signed by the juvenile and countersigned, if practicable, by a parent of the juvenile with their home address and telephone number, specifying when, where and in what manner the juvenile will be on the streets at night (during hours when the Curfew Ordinance is otherwise applicable to said minor) in the exercise of a First Amendment right specified in such communication.

4.4. In case of reasonable necessity for a juvenile

remaining on the streets but only after the juvenile's parent has communicated to the Sheriff or the person designated by the Sheriff to receive such notifications the facts establishing the reasonable necessity relating to specified streets at a designated time for a described purpose including points of origin and destination.

4.5. When the juvenile is on the sidewalk of a place where such juvenile resides, or on the sidewalk of either next door neighbor not communicating an objection to the Sheriff's Deputy.

4.6. When returning home, by a direct route from (and within one hour after the termination of) a school or community sponsored activity, or an activity of a religious or other voluntary association of which prior notice, indicating the place and probable time of termination, has been given in writing to and duly filed for immediate reference by, the Sheriff or officer assigned by him on duty at the Law Enforcement Center.

4.7. When authorized, by special permit from the Sheriff carried on the person of the juvenile thus authorized, as follows. When necessary nighttime activities of a juvenile may be inadequately provided in subsection 4.8. (h) or for a special permit as the circumstances warrant. Upon the findings of necessity for the use of the streets to the extent warranted by a written application signed by a juvenile and by a parent of the juvenile if feasible stating (1) the name, age and address

of the juvenile, (2) the name, address and telephone number of a parent thereof, (3) the height, weight, sex, color of eyes and hair and other physical characteristics of the juvenile, (4) the necessity which requires the juvenile to remain upon the streets during the curfew hours otherwise applicable, and (5) the street or route and the beginning and ending of the period of time involved by date and hour; the Sheriff may grant a permit in writing for the use by the juvenile of streets at such hours as in the opinion of the Sheriff may reasonably be necessary. In an emergency this may be handled by telephone or other effective communication, with a corresponding record being made contemporaneously to the Sheriff or to the person designated by the Sheriff to act on his behalf in an emergency, at the Law Enforcement Center.

4.8. When authorization, by regulation issued by the Sheriff, in other similar cases of reasonable necessity, similarly handled but adapted to necessary night-time activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Sheriff permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved not to extend more than one (1) hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably

necessary and is consistent with the purposes of this Curfew Ordinance.

4.9. When the juvenile carries a certified letter of employment, renewable each calendar month when the current facts so warrant, dated or re-issued not more than forth-five (45) days previously, signed by the Sheriff and briefly identifying the juvenile, the addresses of his home and of his place of employment, and his hours of employment.

4.10. When the juvenile is, with parental consent, in a motor vehicle. This contemplates normal travel. It is the intention of this provision to clearly exempt bona fide interstate movements along major routes through eh City of Malta and interstate travel beginning or ending in the City of Malta.

4.11. Each of the foregoing exceptions, and their several limitations such as provisions for notification, are severable, as hereinafter provided but here reemphasized. These exceptions will be considered by the council as warranted by future experience illuminated by the views of student government associations,, school personnel, citizens, associations, parents, officers and persons in authority concerned positively with juveniles as well as with juvenile delinquency.

SECTION 5. PARENTAL RESPONSIBILITY: It shall be unlawful for a parent having legal custody of juvenile knowingly to permit or by inefficient control to allow the juvenile to be

or remain upon any City street under circumstances not constituting an exception to, or otherwise beyond the scope of, the Curfew Ordinance. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

SECTION 6. ENFORCEMENT PROCEDURES:

6.1. If a Sheriff's officer reasonably believes that a juvenile is on the streets in violation of the Curfew Ordinance, the officer shall notify the juvenile that he or she is in violation of the ordinance and shall require the juvenile to provide his or her name, address and telephone number and how to contact his or her parent or guardian.

6.2. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate, a Sheriff's officer on the street shall, in the first instance, use his or her best judgement in determining age.

6.3. The normal procedure shall then be to take the juvenile to the Law Enforcement Center where a parent or guardian shall immediately be notified to come for the juvenile whereupon they shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant

facts, and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced personnel and access to information and records.

6.4. When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fail to take charge of the juvenile, then the juvenile shall temporarily be entrusted to an adult relative, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.

SECTION 7. PENALTIES: Any juvenile, parent or guardian who shall violate any of the provisions of the Curfew Ordinance shall be guilty of a misdemeanor.

SECTION 8. CONSTRUCTION:

8.1. Severability is intended throughout and within the provisions of the Curfew Ordinance. If any provisions, including any exception, part, phrase or term, or the application thereof to any person or circumstance shall not be affected thereby and the validity of the Curfew Ordinance in any and all other respects shall not be affected.

8.2. The Mayor of the City of Malta, after consultation with the remainder of the Board and the Prosecuting Attorney, is hereby authorized to give advisory opinions, in

writing, which shall be binding and shall be adhered to by the Sheriff, until the Ordinance is amended in such respect, interpreting terms, phrases, parts or any provisions. Normally such advisory opinions shall be in response to good faith, signed letters addressed to the City Mayor or to a member of the City Council, at the City Hall, questioning (1) as ambiguous, (2) as having a potentially chilling effect on constitutional rights specifically invoked, or (3) as otherwise invalid, in all three categories with respect to proposed conduct definitely described. This administrative remedy must be exhausted prior to presenting to any court a question in any of the three categories. The City Council does not intend a result that is absurd, impossible of execution or unreasonable. It is intended that the Curfew Ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended to be given. The City Council does not intend to violate the Constitution of the State of Idaho or the Constitution of the United States of America.

SECTION 9. CONTINUING EVALUATION: The City Council will continue its evaluation and updating of the Curfew Ordinance.

Accordingly, there shall be compiled and informally reported to the City Council through effective channels all exceptional cases hereunder of reasonable necessity the notices of school and other activities, the special permits and the

regulations hereinbefore authorized, and the advisory opinions, for consideration by the City Council in further updating and continuing evaluation of the Curfew Ordinance.

SECTION 10. REPEALER: All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.


SECTION 11. EFFECTIVE DATE: This Ordinance shall take effect immediately upon final passage and publication in the manner provided by law.

PASSED July 9, 1993.


APPROVED Effective July 9, 1993.

CITY OF MALTA

By


Mayor

ATTEST:


City Clerk