

## Chapter 50

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ARTICLE I. IN GENERAL

**Sec. 50-1. Aiding or abetting.**

The prohibition of any act by any ordinance of the city, or in any amendment thereof, shall include the causing, securing, aiding or abetting of another person to do such act.

(Code 1982, § 19-1)

**Sec. 50-2. False information to police.**

It shall be unlawful for any person to give any information or report to the department of police or to any member of such department, relating to any crime or offense, which information or report is false and which information or report such person knows to be false.

(Code 1982, § 19-3)

**Sec. 50-3. Obedience to police.**

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

(Code 1982, § 19-4)

**Sec. 50-4. Loitering, lurking for malicious, unlawful purposes; peeping Toms.**

- (a) No person shall loiter or lurk in any of the streets or public places adjacent thereto for malicious or unlawful purposes.
- (b) No person shall loiter unnecessarily in or about any private dwelling or peep into the window of any private dwelling to the discomfort or alarm of the occupants of such dwelling, the neighbors or any person going to and from such dwelling.

(Code 1982, § 19-8)

**Sec. 50-5. Loitering generally.**

- (a) It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

It shall be unlawful to camp, sleep, or remain upon the grounds of any municipal building or any municipal building, and municipal cemetery, field or woodlands, or any other city owned, controlled or maintained property between the hours of 9:00 pm to 5:00am, unless such person is in lawful employment, participating in a program or activity sponsored or authorized by the City or unless such person has the prior written authorization of the City Administrator to be on said property during the aforementioned

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hours. In considering a request for authorization to be on said property during these hours, the City Administrator shall consider the purpose of the request/use, whether the use would unreasonably disturb persons who occupy property adjacent to the property in question, whether the use will cause damage to the property from destruction or overuse, and whether adequate facilities exist to support the proposed use. When authorizing any such use, the City Administrator may designate the specific area within City property where the use shall be permitted, based upon the foregoing criteria.

- (b) When any person causes or commits any of the conditions enumerated in subsection (a) of this section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

(Code 1982, § 19-9; Ord. No. 22-30, 04-01-23)

### **Sec. 50-6. Desecration and defacement.**

- (a) A person is guilty of desecration and defacement if he intentionally desecrates any public monument or structure, any place of worship or burial, or any private structure not owned by him.
- (b) As used in this section, "desecrate" means marring, defacing, damaging or otherwise physically mistreating, in a way that will outrage the sensibilities of an ordinary person likely to observe or discover the actions.
- (c) Desecration is an offense.

(Code 1982, § 19-13)

**State law references:** Similar provisions, 17-A M.R.S.A. § 507.

### **Sec. 50-7. Removing or destroying public plants, fixtures.**

No person shall climb, peel, cut, remove or in any way deface or destroy any tree, shrub, plant, sign or fixture on the commons, cemeteries, parks or in any street or public place of the city; nor deface any public building or any building not his own, by cutting, breaking, dashing with paint or in any manner defacing or injuring such building.

(Code 1982, § 19-11)

**Cross references:** Parks and recreation, ch. 54.

### **Sec. 50-8. Defacing fences.**

No person shall deface any fence around the parks, commons or public squares by putting up billboards or posting bills thereon, or in any other way.

(Code 1982, § 19-12)

### **Sec. 50-9. Public indecency.**

- (a) A person is guilty of public indecency if:
  - (1) In a public place:

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- a. He engages in sexual intercourse or a sexual act, as defined in 17-A M.R.S.A. § 251; or
  - b. He knowingly exposes his genitals under circumstances which, in fact, are likely to cause affront or alarm; or
- (2) In a private place, he exposes his genitals with the intention that he be seen from a public place or from another private place.
- (b) For purposes of this section "public place" includes, but is not limited to, motor vehicles which are on a public way.
- (c) Public indecency is an offense.

(Code 1982, § 19-14)

**State law references:** Similar provisions, 17-A M.R.S.A. § 854.

### **Sec. 50-10. Police supervision of public gatherings; fee.**

- (a) The chief of police when notified of the plans for any public gathering shall, if in his judgment police supervision of such public gathering shall be required in order to maintain and preserve the public health, safety and morals, assign such number of police officers to supervise such public gathering as may be necessary in his judgment to carry out the provisions of this section.
- (b) The fee to be paid any officer acting in accordance with this section shall be determined by the city council and shall be paid by the person conducting the event causing such public gathering.

(Code 1982, § 19-15)

**Cross references:** Outdoor pageants, music festivals, concerts, etc., § 10-3.

### **Sec. 50-11. Improper conduct; dispersing of assembly.**

If a policeman at a public gathering has probable cause to believe any illegal or unlawful conduct is occurring in the place of assembly, he shall order the assembly dispersed.

(Code 1982, § 19-16)

### **Sec. 50-12. Fire supervision of public gatherings; fee.**

- (a) The Fire Chief when notified of the plans for any public gathering shall, if in his judgment fire supervision of such public gathering shall be required in order to maintain and preserve the public health, safety and morals, assign such number of fire guards to supervise such public gathering as may be necessary in his judgment to carry out the provisions of this section.
- (b) The fee to be paid any fire guard acting in accordance with this section shall be determined by the city council and shall be paid by the person conducting the event causing such public gathering.

(Ord. No. 11-11, 10-20-11)

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### **Sec. 50-13. Unlawful noise.**

It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the City of Lewiston. The following acts are declared to be loud, disturbing, injurious, unnecessary, and unlawful noises in violation of this section, but this enumeration shall not be exclusive:

- (a) Radio, Phonograph, Amplified Sound, Musical Instruments, Television, and other Electronically Generated Sound. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort, or repose of persons in any dwelling, hotel, hospital, or other type of residence or in any office of any persons in the vicinity.
- (b) Shouting and Singing. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises on the public streets between the hours of 11:00 pm and 7:00 am, or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence or in any office or of any person in the vicinity.
- (c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.
- (d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or a duly licensed parade or who has been otherwise authorized by the City to engage in such activity or to safety devices required for the safe operation of equipment or machinery and which are operated in accordance with manufacturers' instructions.

If the person or persons responsible for the activity that violates section 50-13 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee, or occupant of the property on which the activity is located, shall be deemed responsible for the violation. (Ord. 17-16, 11-02-17)

### **Sec. 50-14. Exemptions.**

None of the terms or prohibitions of the previous sections shall apply or be enforced against:

- (a) Any police or fire vehicle or any ambulance while engaged in necessary emergency business.
- (b) Necessary excavation in or repairs of bridges, streets, or highways, or any utility installation by or on behalf of the City, the State of Maine, or any public utility.

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- (c) The reasonable use of amplifiers or loud speakers for public addresses for which a city permit has been granted.
- (d) Noise caused by agricultural, farm-related, or forestry-related activities including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.
- (e) Noise associated with non-residential uses that conform to the performance standards of Appendix A, Zoning and Land Use Code, Article XII, Section 19 (2), Noise.

(Ord. 17-16, 11-02-17)

### **Sec. 50-15. Penalties.**

A violation of this section shall be subject to a minimum fine as established by a policy adopted by the City Council. For purposes of Section 50-13, each such act, which either continues or is repeated more than one-half hour after issuance of a written notice of violation, shall be a separate offense and shall be subject to escalating penalties as established by the City Council.

(Ord. 17-16, 11-02-17)

### **Sec. 50-16. Nuisance parties.**

- (a) A nuisance party is defined as a social gathering or party which is conducted on premises within the City and which, by reason, in whole or in part, of the conduct of the persons in attendance, results in any one or more of the following conditions or events occurring at the site of the party or social gathering, or on neighboring public or private property:
  - (1) disorderly conduct;
  - (2) illegal open container;
  - (3) outdoor urination or defecation in a public place;
  - (4) unlawful sale, furnishing, dispensing or consumption of beer or intoxicating liquor or controlled substance to an underage person;
  - (5) illegal use of a controlled substance;
  - (6) public indecency in violation of applicable laws;
  - (7) unlawful deposit of litter or refuse;
  - (8) damage or destruction of property without the consent of the property owner;
  - (9) unlawful pedestrian or vehicular traffic;
  - (10) unlawful standing or parking of vehicles that obstructs the free flow of traffic on the public streets and sidewalks or that impedes the ability to render emergency services;
  - (11) unlawfully loud noise;
  - (12) or any other unlawful conduct or condition that threatens injury, inconvenience, or alarm to persons or damage to property.

Such parties are hereby declared to be an unlawful public nuisance.

- (b) *Duty to Control Premises.* Any person who is an owner, occupant, tenant, or otherwise has rightful possession or possessory control, individually or jointly with others, of any premises, who either sponsors, conducts, hosts, invites, or permits a social gathering or party on said premises which is or becomes a nuisance party, as defined in part (a) of this Section,



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and which nuisance is either the intentional result of, or within the reasonable expectations of, the person or persons having such possessory control is deemed to be in violation of this Section.

- (c) *Order to Cease and Disperse.* A party or social gathering that is or becomes a nuisance party, as defined in part (a) of this Section, shall cease upon the order of the Police Chief, or the Police Chief's designee; and all persons not residing in the site of such social gathering or party shall leave the premises immediately. Any person who fails or refuses to obey and abide by such an order shall be guilty of a violation of this section.
- (d) *Retaliation.* No person shall direct a verbal, physical, or electronic act against the person, family, or property of any individual who complains of or witnesses a violation of the Nuisance Party regulations for the purpose of intimidating or retaliating against that person for the exercise of the right to complain or testify to a violation of this code.

(Ord. No. 17-17, 11-02-17)

### **Sec. 50-17. Owners failure to prevent a second nuisance party.**

- (a) Within ten (10) days of a nuisance party declaration, the police department shall send the premises owner a notice of nuisance party ordinance violation. The notice shall set forth the date, place, names of occupants/tenants involved, and nature of the violation and shall inform the premises owner of the necessity to take action to prevent future nuisance parties on the premises. Notice shall be given by first class mail using the premises owner's address on file with the City Assessor.
- (b) If a subsequent nuisance party is declared at the same premises within a six (6) month period and the same occupant(s)/tenant(s) are responsible for the second nuisance party, the police department shall send the premises owner a second notice of nuisance party ordinance violation within ten (10) days of the party and the premises owner shall be charged with violating this ordinance and shall be subject to a forfeiture established by the City Council.
  - 1. If the premises owner meets with the Chief of Police or his/her designee within ten (10) days of the issuance of the second notice of nuisance party violation and presents an acceptable abatement plan to abate future nuisance party activity at the premises, the premises owner will not be subject to a forfeiture for the nuisance party that was the subject of the meeting.
- (c) If a third or subsequent party is declared at the same premises within a six (6) month period and the same occupant(s)/tenant(s) are responsible for this party, the Police Chief or his/her designee shall send the premises owner a second notice of nuisance party ordinance violations within ten (10) days of the party, and the premises owner shall be charged with violating this ordinance and shall be subject to a forfeiture as established by the City Council.
- (d) It shall be an affirmative defense to a charge of violating Section 50-18 (b) or (c) above that the premises owner has evicted or is diligently attempting to evict all tenants and occupants

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of the property who were responsible for the nuisance parties and/or it can be confirmed that the premises owner was the original complainant to emergency dispatch.

- (e) The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the City Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

(Ord. No. 17-17, 11-02-17)

### **Sec. 50-18. Penalty.**

A violation of sections 50-16 and/or 50-17 shall be subject to minimum fines as established by a policy adopted by the City Council. (Ord. No. 17-17, 11-02-17)

### **Sec. 50-19. Prohibiting tobacco use in designated public rights of way.**

Smoking and all other use of tobacco products, including vaping and e-cigarette use, is prohibited on certain designated public rights of way, including public streets and sidewalks, with the exception of the use of such products by occupants of motorized vehicles traveling through the designated area. "Tobacco Products" is defined to include all tobacco-derived or containing products including, but not limited to, cigarettes, cigars, spit and smokeless tobacco, dip, chew, snuff, snus, electronic cigarettes, vape products, and other electronic nicotine delivery systems, excluding products specifically approved by the US Food and Drug Administration (FDA) for the purpose of cessation or nicotine replacement therapy. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar, or pipe, or a lighted or heated tobacco or plant product intended for human consumption through inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this policy." The designated prohibited areas are:

- (a) Campus Avenue from Sabattus Street to Central Avenue, both sides.
- (b) Lisbon Street from Adams Avenue to Main Street, both sides
- (c) Main Street from Hammond Street to High Street, west side
- (d) High Street from Main Street to Hammond Street, both sides
- (e) Hammond Street from High Street to Main Street, both sides

(Ord. No. 17-22, 01-04-18; Ord. No. 19-11, 12-19-19; Ord. No. 19-16, 01-09-20)

### **Sec. 50-20. Penalty.**

A violation of section 50-19 shall be subject to minimum fines as established by a policy adopted

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by the City Council. (Ord. No. 17-22, 01-04-18)

**Secs. 50-21--50-35. Reserved.**

### ARTICLE II. CITATION SYSTEM OF CODE ENFORCEMENT

**Sec. 50-36. Purpose.**

The purpose of this article is to provide additional and alternative methods and processes to enforce the provisions of this Code in a just, speedy and inexpensive manner, to improve compliance with the provisions of this Code and thereby to protect, preserve and enhance the public health, safety and general welfare. (Code 1982, § 2-700)

**Sec. 50-37. Applicability.**

This article shall provide a method for enforcing and securing compliance with the various provisions of the Code of Ordinances, which is in addition to those methods otherwise contained in the Code. Any and all inspectors and enforcement officials under the various provisions of this Code are referred to in this article collectively as enforcement officials.

(Code 1982, § 2-701)

**Sec. 50-38. Investigations.**

Upon receipt of information indicating the likelihood of a violation of any provision of this Code, the enforcement official shall investigate the facts and may make an inspection of the premises when legally authorized to do so.

(Code 1982, § 2-702)

**Sec. 50-39. Notice of violation.**

If an investigation reveals that a code violation has occurred, the enforcement official shall give written notice of such violation to the person (hereinafter "violation") having control of any land, building, structure, sign, licensed or permitted business or operation which is in violation and order that the violation be corrected. Notice of the violation may be served in hand to the violator or left with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to his last known address. If the return receipt is not returned, a notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service. If the enforcement official finds that the violation is one which requires immediate correction to protect the public health or safety, he may provide notice under this article by means of telephone or facsimile transmission to the violator or to a person of suitable age and discretion at the residence or place of business of the violator. Any notice under this article shall describe the violation, including a reference to the ordinance section violated, specify that reasonable period within which the violation must be corrected, and state the potential consequences if the violation is not corrected. The notice shall also advise the violator of any right to appeal to the board of appeals with respect to the enforcement official's determination that a violation exists for which the violator is responsible.

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(Code 1982, § 2-703)

### **Sec. 50-40. Civil proceedings.**

If the violation has not been corrected within the period established in the notice, the enforcement official or city attorney may initiate appropriate legal proceedings to compel the violator to correct the violation and seek whatever other relief to which the city may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to Rule 80K of the Maine Rules of Civil Procedure and 30-A M.R.S.A. § 4452 et seq., as amended.

(Code 1982, § 2-704)

### **Sec. 50-41. Citations--Issuance.**

If the violation has not been corrected within the period established in the notice, the enforcement official may issue, as an alternative to initiating a civil proceeding pursuant to section 50-40, a citation to the violator.

(Code 1982, § 2-705)

### **Sec. 50-42. Same--Contents.**

The citation shall be in writing, describe the nature of the violation, including the ordinance section violated, state the date by which the violation must be corrected, that a civil penalty set in accordance with the city's policy manual as approved by the city council is imposed for the violation, the date by which the penalty must be paid and to whom and the consequences of failing to pay the penalty within the period stated. The time period allowed by the enforcement official within which the violation must be corrected shall be reasonable and shall take into consideration any notice period previously given to the violator, the nature of the violation to be corrected and the time which the enforcement official estimates will be reasonably required to correct the violation. The citation shall state the penalties which may be imposed if the violation is not corrected within the time period set forth in the first citation and shall also state the penalties which may be imposed if any additional citation must be issued for the same violation. The citation shall also state that all additional penalties are cumulative.

(Code 1982, § 2-706; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-43. Same--Service of.**

A citation may be served upon the violator by giving the citation to the violator in hand, by leaving it with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to his last known address. If the return receipt is not returned, the citation shall be conclusively presumed to have been served if it is also sent by regular mail postage prepaid, which has not been returned as undeliverable by the postal service.

(Code 1982, § 2-708)

### **Sec. 50-44. Time limits for corrective action.**

The time period specified in a citation within which a violation must be corrected shall be

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reasonable in consideration of:

- (1) The threat posed by such violation to the health, safety and welfare of the public;
- (2) The nature of the work required to correct the violation; and
- (3) Any notice period given to the violator in a previous citation for the same violation or pursuant to section 50-39.

(Code 1982, § 2-707)

### **Sec. 50-45. Penalty.**

The civil penalty set in accordance with the city's policy manual as approved by the city council shall be imposed for the issuance of citations. The civil penalties imposed are cumulative.

(Code 1982, § 2-709; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-46. Further violations.**

If the violation has not been corrected within the time specified in the first citation, the enforcement official may issue a second citation. The second citation shall contain the same information set forth in the first citation regarding the nature of the violation but may do so by reference to the first citation. It shall also state that, in addition to the civil penalty imposed for the first citation, as set in accordance with the city's policy manual as approved by the city council, a civil penalty has been imposed for the second citation as set in accordance with the city's policy manual as approved by the city council. The second citation shall also state that the continued failure to correct the violation may result in the issuance of further citations and shall indicate the penalties provided for the issuance of subsequent citations. The time limits specified for correcting the violation may be the same as that allowed in the first citation or may be altered if there has been a change in circumstances. The same procedure shall be followed with regard to the issuance of subsequent citations.

(Code 1982, § 2-710; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-47. Penalty for nonpayment of penalty; collection proceedings.**

All civil penalties imposed by citation shall be due within five days after the date by which the violation was ordered to be corrected. All civil penalties not paid when due shall bear interest at the rate of 18 percent per annum. The failure to pay when due any civil penalty imposed for violation of any of the laws, ordinances or rules set forth in 30-A M.R.S.A. § 4452(5), as amended, shall itself constitute a violation of such law, ordinance or rule for which the violator shall be liable for the penalties provided for in 30-A M.R.S.A. § 4452(3). The enforcement official or city attorney may initiate appropriate proceedings to collect any civil penalty which is not timely paid together with all interest thereon. Such legal action may include proceedings pursuant to 30-A M.R.S.A. § 4452.

(Code 1982, § 2-711)

### **Sec. 50-48. Repeat violations.**

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If a violator has been previously served with a notice of violation with regard to a specific violation, he shall not be entitled to receive any further notice of the same violation if it is repeated. If the enforcement official determines that a violator has repeated the same violation, he may proceed in accordance with section 50-43 without further notice.

(Code 1982, § 2-712)

### **Sec. 50-49. Appeals.**

Appeals from a determination by the enforcement official that a violation of the Code has been committed may be taken to the board of appeals in accordance with the specific provisions of the particular ordinance alleged to have been violated. (Code 1982, § 2-713)

### **Sec. 50-50. Effect of article on other ordinances.**

This article does not supersede or repeal any other provision of the Code, nor preclude the initiation of any other legal proceeding which may be provided by applicable state or federal law. (Code 1982, § 2-714)

### **Sec. 50-51. Severability of provisions.**

If any provision of this article is declared invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to that provision of this article directly involved in the controversy which gave rise to the judgement and shall not affect or impair the validity of any other provision of this article. (Code 1982, § 2-715)

### **Secs. 50-52--50-70. Reserved.**

## ARTICLE III. MINORS

### DIVISION 1. GENERALLY

### **Sec. 50-71. Employment of underaged persons in alcoholic beverage establishments.**

- (a) No licensee for the sale of liquor to be consumed on licensed premises may employ any person under the age of 17 years in the serving or selling of liquor on the premises where liquor is sold. The licensee may employ a person who is 17 years of age but less than 21 years of age in the serving or selling of liquor only in the presence of an employee who is at least 21 years of age and is in a supervisory capacity or who was at least 18 years of age prior to January 1, 1994 and was employed in a supervisory capacity by the employer before that date.
- (b) If upon complaint and investigation by the police department, the chief of police reasonably believes that any provision of subsection (a) of this section has been or is being violated, or upon conviction for any violation of subsection (a), the city council may, upon recommendation of the chief of police, revoke its approval of such special permit for dancing or entertainment, and direct the city clerk to communicate such fact to the state liquor commission, with recommendation that such special license or permit, issued by it, be revoked; provided, however, that the revocation of any license as above

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set forth, or of its approval by the city council, shall not prevent any criminal prosecution under section 1-8.

(Code 1982, § 19-7)

**State law references:** Similar provisions, 28-A M.R.S.A. § 704(1).

**Secs. 50-72--50-80. Reserved.**

### DIVISION 2. CURFEW\*

**\*Editor's note:** Ord. No. 96-12, effective Oct. 31, 1996, amended this division in its entirety, in effect repealing former §§ 50-81--50-84 and enacting similar new provisions as herein set out. Formerly, such sections derived from §§ 19-51--19-54 of the city's 1982 Code.

#### Sec. 50-81. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Curfew hours* means 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day, and 12:01 a.m. on any Saturday or Sunday until 5:00 a.m. of the following day.

*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, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

*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.

*Guardian* means a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom a minor has been placed by a court.

*Minor* means any person under 18 years of age.

*Operator* means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

*Parent* means a person who is a natural parent, adoptive parent, or step-parent of another person, or at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

*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, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

*Remain* means to linger or stay, or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

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*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 or organ.

(Ord. No. 96-12, 10-31-96)

**Cross references:** Definitions and rules of construction, § 1-2.

### **Sec. 50-82. Offenses.**

- (a) A minor commits an offense if he 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 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.

(Ord. No. 96-12, 10-31-96)

### **Sec. 50-83. Defenses.**

- (a) It is a defense to prosecution under subsection 50-82(b) that the minor was:
  - (1) Accompanied by the minor's parent or guardian;
  - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
  - (3) In a motor vehicle involved in interstate travel;
  - (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - (5) Involved in an emergency;
  - (6) 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;
  - (7) Either; (i) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor; or (ii) within 45 minutes after the termination of an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, going to or returning home from such activity;
  - (8) 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;
  - (9) Exercising rights protected under Article I, Section 2, 3, 4 or 5 of the Maine



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Constitution; or

- (10) Married or had been married or had disabilities of minority removed in accordance with 15 M.R.S.A. § 3306A.
- (b) It is a defense to prosecution under subsection 50-82(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.
- (Ord. No. 96-12, 10-31-96)

### **Sec. 50-84. Enforcement.**

Before taking any enforcement action under this section, a police 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 subsection 50-83(a) is present. (Ord. No. 96-12, 10-31-96)

### **Sec. 50-85. Penalties.**

A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a civil penalty set in accordance with the city's policy manual as approved by the city council. (Ord. No. 96-12, 10-31-96; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-86. Severability.**

The terms and provisions of this division are severable and are governed by chapter 1 of the Lewiston Code of Ordinances, as amended. (Ord. No. 96-12, 10-31-96)

### **Sec. 50-87. Effective date.**

This division shall take effect in accordance with the provisions of subsection 2.11(c) of the Charter of the City of Lewiston. (Ord. No. 96-12, 10-31-96)

### **Secs. 50-88--50-105. Reserved.**

## **ARTICLE IV. WEAPONS AND EXPLOSIVES\***

\*Cross references: Fire prevention and protection, ch. 38.

State law references: Authority to regulate the discharge of firearms, 25 M.R.S.A. § 2011(3).

### **Sec. 50-106. Permit to carry concealed weapons.**

The chief of police is designated as the issuing authority for permits issued under 25 M.R.S.A. § 252. (Ord. No. 92-23, § 30, 10-15-92)

### **Sec. 50-107. Discharging firearms.**

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- (a) *Purpose.* The purpose of this section is to regulate the discharge of firearms within the city in order to promote and enhance the safety and welfare of its inhabitants. This section is intended to protect the rights of landowners and the interests of persons who use firearms in work and recreation while meeting these objectives.
- (b) *Zones created.* For the purposes of this section, the city is divided into two zones denominated as zone 1 and zone 2. The boundaries of the zones are as follows:
- Zone 1.* Zone 1 includes the area between the corporate boundaries of the City of Lewiston and lying southeasterly, easterly and northeasterly of a line delineated by the centerline of the Maine Turnpike from the point where the turnpike crosses the Androscoggin River to the point where Grove Street crosses the turnpike; then northwesterly on Grove Street to the point where the Central Maine Power Company double transmission lines cross Grove Street; then by the centerline of the right-of-way of the double transmission lines northerly and then northwesterly to the point where they cross the Androscoggin River.
- Zone 2.* Zone 2 is that area within the corporate bounds of the City of Lewiston and not included in zone 1.
- (c) *Zone 1 discharge restrictions.* In zone 1, no person shall discharge a firearm unless that person is in possession of the written permission of the owner of the land on which such discharge occurs. The form of such written permission shall contain the following information:
- (1) Name of landowner;
  - (2) Name of permittee;
  - (3) General description of size and location of land; and
  - (4) Dates and times for which such permission is valid.
- (d) *Zone 2 discharge restrictions.* In zone 2, no person shall discharge any firearm.
- (e) *Exceptions.* No provision of this section shall be construed to limit the authority to discharge a firearm by a person who is:
- (1) A law enforcement officer, or a government official, acting within the scope of his official duties.
  - (2) Acting in lawful defense of person.
  - (3) Within the physical confines of a duly authorized firing range, rifle range, pistol range, target range or shooting gallery.
  - (4) A member of the National Guard, veterans' organizations and similar organizations in connection with public ceremonials.
  - (5) Discharging a firearm for signalling purposes.
  - (6) Discharging a firearm with blank cartridges for theatrical purposes or for signal purposes in athletic contests or sport events.
  - (7) A property owner, or his authorized agent, engaged in commercial agriculture acting in lawful defense of his own crops from damage or destruction by wild

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animals.

- (f) *"Firearm" defined.* A "firearm" includes any instrument used in the propulsion of pellet, shot, slug, or bullet by the action of gunpowder, compressed air or gas exploded or released within it.
- (g) *Penalties for violation.* Violations of this section shall be punishable by a penalty set in accordance with the city's policy manual as approved by the city council.
- (h) *Prima facie evidence of violation.* It shall be prima facie evidence of a violation of this section if a person carries a firearm on his person, the discharge of which is prohibited in the zone in which the person is located, unless that firearm is unloaded and rendered incapable of firing without further assembly or is unloaded and enclosed in a case. Nothing in this subsection shall be construed to limit the authority to carry a concealed firearm by a person licensed to do so.

(Ord. No. 92-23, § 30, 10-15-92; Ord. No. 95-13, 10-19-95; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-108. Blasting restricted; permit.**

- (a) No person shall blast any rock or other substance at any time within the city limits without first obtaining a written permit from the fire prevention bureau, which permit shall specify the terms and conditions on which it is granted. Such permit shall be granted if the blasting will be conducted in accordance with all laws and ordinances. The remedy of persons injured by a blast of rocks shall not be affected by this section or any permit granted thereunder, nor shall it be construed as applying to the superintendent of streets in the discharge of his official duties.
- (b) As provided by 17 M.R.S.A. § 2791, persons engaged in blasting limerock or other rocks shall, before each explosion, give reasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of such explosion; and no such explosion shall be made after sunset. Whoever violates the provisions of this section shall be punished as provided by 17 M.R.S.A. § 2791.

(Code 1982, § 30-3)

### **Sec. 50-109. Storage limit on gunpowder unless licensed.**

No person shall keep or have in any shop, store, dwelling house or tenement in the city, at any one time, a larger quantity of gunpowder than one pound, unless he is licensed by the bureau of fire prevention to keep and sell gunpowder, or except as provided in this article.

(Code 1982, § 30-4)

**State law references:** State regulation of the keeping, dispensing or transporting of gunpowder, 25 M.R.S.A. § 2441.

### **Sec. 50-110. License to sell gunpowder; appeal.**

It shall not be lawful for any person to sell at retail or wholesale gunpowder in any form (bulk or cartridges, etc.) without having first obtained from the bureau of fire prevention a license to sell gunpowder. Every such license shall be in force for one year from the date thereof, unless revoked by the bureau. Any person aggrieved by any decision of the bureau shall have the

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right of appeal to the city council, such appeal to be in writing and filed with the city clerk.

(Code 1982, § 30-5)

**State law references:** Municipal authority to regulate the keeping, dispensing or transporting of explosives, 25 M.R.S.A. § 2441.

### **Sec. 50-111. Exception.**

This article shall not apply to any person on military duty in the public service of the United States or of this state. (Code 1982, § 30-6)

### **Secs. 50-112--50-160. Reserved.**

## ARTICLE V. OBSCENITY

### **Sec. 50-161. Definitions.**

As used in this article, the following words shall have the following meanings:

*Material* means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.

*Obscene* means material or a performance that:

- (1) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- (2) Depicts or describes:
  - a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy and sexual bestiality; or
  - b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
- (3) Taken as a whole, lacks serious literary, artistic, political or scientific value.

*Obscene device* means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

*Patently offensive* means so offensive on its face as to be intolerable to the average person, applying contemporary community standards.

*Performance* means a play, motion picture, dance, or other exhibition performed before an audience.

*Promote* means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer,

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transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

*Prurient interest in sex* means a shameful or morbid interest in sex.

*Wholesale promote* means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(Ord. No. 03-06, 7-3-03)

### **Sec. 50-162. Wholesale promotion of obscene material or devices.**

- (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.
- (b) A person commits an offense if, knowing its content and character, he:
  - (1) Promotes or possesses with intent to promote any obscene material or obscene device; or
  - (2) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
- (c) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.
- (d) A person who possesses six or more obscene devices or six or more obscene articles, whether such devices or articles are similar or identical, is presumed to possess them with intent to promote the same.
- (e) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

(Ord. No. 03-06, 7-3-03)

### **Sec. 50-163. Validity.**

If any of the depictions or descriptions of sexual conduct described in this article are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this article as to other patently offensive sexual conduct included herein.

(Ord. No. 03-06, 7-3-03)

### **Sec. 50-164. Penalty.**

The violation of any provision of this article shall be punished by a fine set in accordance with the city's policy manual as approved by the city council. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit

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including reasonable experts' fees, reasonable attorneys' fees and reasonable investigative costs.  
(Ord. No. 03-06, 7-3-03; Ord. No. 08-06g, 8-14-08)

### **Sec. 50-165. Application of violations to liquor licenses and special amusement permits.**

Any violation of this article may result in the nonrenewal by the city council of the liquor license held by the violator at the time the council first considers the liquor license following adjudication under this article. Additionally, any violation of this article may result in suspension or revocation of any special amusement permit pursuant to the provisions of 28A MRSA § 1054(7).

(Ord. No. 03-06, 7-3-03)

### **Secs. 50-166--50-180. Reserved.**

## **ARTICLE VI. OPERATION OF NOISE-CREATING DEVICES UPON PUBLIC RIGHTS-OF-WAY\***

\***Editor's note:** Ord. No. 04-04, effective April 1, 2004, provided for the inclusion of art. V, §§ 50-130--50-135. Inasmuch as Ord. No. 03-06, effective July 3, 2003, provided for the inclusion of art. V, currently codified as §§ 50-161--50-165, the provisions of Ord. No. 04-04 have been included as art. VI, §§ 50-181--50-185 at the discretion of the editor.

### **Sec. 50-181. Purpose.**

The City of Lewiston City Council finds that excessive noise on public ways may:

- (1) Cause distraction to other drivers which impairs the safe operation of motor vehicles;
- (2) Unreasonably disturb the quiet and normal functioning of the city's residential neighborhoods;
- (3) Threaten and/or intimidate pedestrians; and
- (4) Project a negative image of the city, all to the detriment of the health, welfare and safety of Lewiston's citizens and guests.

Accordingly, it is the policy of the City of Lewiston to prohibit unnecessary, excessive, annoying or distracting noise on any public right-of-way within the City of Lewiston Maine.

(Ord. No. 04-04, 4-1-04)

### **Sec. 50-182. Definitions.**

For the purposes of this article, the following words and phrases shall have the following meanings:

- (1) *City* means the City of Lewiston, Maine.
- (2) *Noise-creating device* means any electrical, mechanical or chemical device or instrument, or combination thereof that creates noise during its operation.

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- (3) *Motorcycle* means an unenclosed motor vehicle, having a saddle/seat for the use of the operator, with two or three wheels in contact with the ground, including, but not limited to, motorcycles, motorscooters and minibikes.
- (4) *Operation* means actual control by a person.
- (5) *Public right-of-way* means any street, roadway, alley, sidewalk or any other area deeded or dedicated for public travel or transportation purposes.
- (6) *Straight pipe exhaust system* means any muffler that does not contain baffles, including, but not limited to, glass packs, steel packs, straight pipes, modified baffle systems, and drag pipes.
- (7) *Internal combustion engine vehicle* means a vehicle that uses a mechanical engine of any type that requires fuel combustion to propel the vehicle.
- (8) *Vehicle*. For the purpose of this section, a vehicle will include, and is not limited to, an automobile, a truck, a motorcycle, a snowmobile, an ATV, a go-cart, a minibike, an engine-propelled skateboard, and any other propelled unit that falls into this category.

(Ord. No. 04-04, 4-1-04)

### **Sec. 50-183. Creation of certain noises upon a public right-of-way prohibited.**

- (a) No person, while occupying any public right-of-way in the city, shall operate any noise-creating device in such a manner that the level of noise causes the public's attention to be drawn to the source of the noise, subject to the exceptions hereafter provided.
- (b) The prohibition of this section shall include, but not be limited to, the following activity or conduct:
  - (1) Discharging fireworks or any exploding device;
  - (2) Firing a starter pistol or firearm;
  - (3) Sounding a bell or whistle, alarm or horn for so extended a period of time as to cause annoyance to others;
  - (4) Rapid throttle advance, rapid acceleration and/or revving of an internal combustion engine resulting in increased noise from the engine and exhaust system, to include, but not limited to the practice of motorcycle "blipping"; and
  - (5) Operation of an unmuffled motor vehicle or vehicle, including motorcycles, with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to 29-A M.R.S.A. subsection 19.

(Ord. No. 04-04, 4-1-04)

### **Sec. 50-184. Exceptions.**

The provisions of this section shall not apply to the following activity or conduct:

- (1) Expression or communication protected by the United States Constitution,

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including the First Amendment, or the Maine Constitution.

- (2) Any activity or conduct the regulation of which has been preempted by Maine Statute.
- (3) Any noise created by a governmental entity in the performance of an official duty.
- (4) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit, or any noise that is allowable under other sections of the City Code.
- (5) The sounding of any signaling device permitted by law.
- (6) Properly licensed common carriers and service vehicles in the performance of their customary duties.
- (7) Any vehicle equipped with a factory installed, original and untampered with exhaust system, not being operated in such a fashion as to accentuate the sound of the exhaust.

(Ord. No. 04-04, 4-1-04)

### **Sec. 50-185. Penalty.**

Violations of this article constitute civil violations, punishable in accordance with the city's policy manual as approved by the city council.

(Ord. No. 04-04, 4-1-04; Ord. No. 08-06g, 8-14-08)

### **Secs. 50-186--50-199. Reserved.**

## ARTICLE VII. GRAFFITI VIOLATIONS

### **Sec. 50-200. Purpose.**

The city council has determined that graffiti creates a visual blight and can adversely impact property owners financially as well as their enjoyment and value of property. This article is intended to deter graffiti and to establish penalties for graffiti.

(Ord. No. 07-08, 10-04-07)

### **Sec. 50-201. Definitions.**

*Graffiti* means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the prior authorization of the owner of the property regardless of the content or nature of the material used.

*Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

*Graffiti removal* means the removal or attempted removal or painting over of graffiti by



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the owner of the affected property or by another person with the consent of the owner or owner's designee or by court order.

*Immediately adjacent* means near enough to the property to apply graffiti.

*Owner* means the person listed on the assessor's records for the City of Lewiston as the owner of property.

*Property* means any real or personal property, including, but not limited to, any portion of any premises, structure, house, building, fence or vehicle.

(Ord. No. 07-08, 10-04-07)

### **Sec. 50-202. Prohibited acts.**

The following acts are prohibited:

- (1) Applying graffiti to any private or public property without the permission of the owner;
- (2) Soliciting or commanding another person to apply graffiti to any private or public property without the permission of the owner; or
- (3) Aiding or abetting or agreeing to aid or abet another person in planning to apply or applying graffiti to any private or public property without the permission of the owner.

(Ord. No. 07-08, 10-04-07)

### **Sec. 50-203. Prohibited possession of graffiti implements.**

Possession of graffiti implements in the following situations and under reasonable suspicion is deemed to be evidence of an intent or attempt to commit a prohibited act and is prohibited:

- (1) By minors on or near school facilities. No person under the age of 18 years may possess any graffiti implement while on or within 50 feet of any school property. Notwithstanding this provision, a person under 18 may possess a broad-tipped marker if traveling to or from a school in which the minor is participating in a class or activity that requires the possession of a broad-tipped marker. The burden of proof shall be on the minor to demonstrate that possession was required for a school class or activity.
- (2) By any person on or immediately adjacent to private property without the permission of the owner of the property.
- (3) By any person in any public facility, park, playground, swimming pool, recreational facility, or other public building, structure, premises or vehicle without the city's permission, or within 50 feet of any underpass, bridge abutment, or similar infrastructure without permission of the owner.

(Ord. No. 07-08, 10-04-07)

### **Secs. 50-204--50-210. Reserved.**

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### **Sec. 50-211. Penalties.**

- (a) Any person violating this article shall be subject to a fine set in accordance with the city's policy manual as approved by the city council. Each day any violation shall continue shall constitute a separate violation.
- (b) In addition to the fine stated in subsection (a), any person found to have committed a violation of section 50-202 shall be subject to restitution for all costs of graffiti removal, and/or to perform community service to the City of Lewiston.

(Ord. No. 07-08, 10-04-07; Ord. No. 08-06g, 8-14-08)

## **ARTICLE VIII. SALE AND USE OF CONSUMER FIREWORKS**

### **Sec. 50-220. Definitions.**

The following definitions shall apply in this section:

- (1) *Consumer fireworks* shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3<sup>rd</sup>-party testing laboratory as conforming with United States Consumer Product Safety Commission standards in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:
  - a. Missile-type rockets, as defined by the State Fire Marshal by rule;
  - b. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
  - c. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability, that rise into the air upon ignition, and that may produce a burst of color or sound at or near the height of flight.
- (2) *Display* means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects.

(Ord. No. 12-02, 04-05-2012)

### **Sec. 50-221. Fireworks Restricted Use.**

The use, discharge or ignition of fireworks within the City of Lewiston's restricted fire arms zone, Zone 2 as defined in Chapter 50, Section 107 of this Code, is prohibited.

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The use, discharge or ignition of fireworks within the City of Lewiston's restricted fire arms zone, Zone 1 as defined in Chapter 50, Section 107 of this Code, is permitted on and only on the dates of December 31, January 1, and July 4 provided, however, that:

- (1) The use, discharge, or ignition of fireworks is prohibited on all public property, including all public parks, public rights of way, and School Department property;
- (2) The use, discharge, or ignition of fireworks is prohibited on any day specified by the Fire Chief as presenting a high fire danger as identified by posting such designation on the City website;
- (3) The use, discharge, or ignition of fireworks shall not be permitted in close proximity to any building in the City of Lewiston by maintaining a distance of no less than 75' from said building;
- (4) No fireworks will be permitted before 10 a.m. and after 10 p.m. on July 4<sup>th</sup>;
- (5) No fireworks will be permitted before 10 a.m. on December 31<sup>st</sup>; and
- (6) No fireworks will be permitted between the hours of 1 a.m. and 10 a.m. or after 10 p.m. on January 1<sup>st</sup>.
- (7) The use of fireworks must be approved by the owner of the property where they are to be used.

(Ord. No. 12-02, 04-05-2012)

### **Sec. 50-222. Exception.**

This section does not apply to a person issued a fireworks display permit by the City of Lewiston and/or the State of Maine pursuant to 8 M.R.S.A. §227-A.

(Ord. No. 12-02, 04-05-2012)

### **Sec. 50-223. Violations.**

- (1) Any person who uses consumer fireworks or possesses consumer fireworks with the intent to use in the City of Lewiston in violation of this ordinance shall receive a citation.
- (2) The civil penalty set in accordance with the city's policy manual as approved by the city council shall be imposed for the issuance of citations. The Civil penalties imposed are cumulative.

(Ord. No. 12-02, 04-05-2012)

### **Sec. 50-224. Sale of Fireworks.**

The sale of fireworks in the City of Lewiston shall be prohibited within the City of Lewiston.

(Ord. No. 12-02, 04-05-2012)

### **Sec. 50-225. Seizure and disposal of fireworks.**

The City may seize consumer fireworks that the City has probable cause to believe are used, possessed, or sold in violation of this section. Seized consumer fireworks shall be forwarded to the State for disposal.

(Ord. No. 12-02, 04-05-2012)

### **Secs. 50-226--50-250. Reserved.**

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### ARTICLE IX. SYNTHETIC DRUGS

#### Sec. 50-251. Purpose.

The purpose of this article is to regulate the availability of products which are enhanced with synthetic chemicals, which chemicals mimic the effects of controlled substances on users, because these products are a danger to the public health, safety and welfare.  
(Ord. No. 13-06, 07-18-13)

#### Sec. 50-252. Definitions.

For purposes of interpreting this article, the following terms, phrases, words and their derivatives shall have the meanings given herein unless the context clearly indicates or requires a different meaning:

*Spice, synthetic cannabinoids, synthetic marijuana* means any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express, Hayze. This definition shall include any plant material to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

*Bath salts, synthetic cathinones, synthetic stimulants* means any crystalline or powder product in crystalline, loose-powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightning, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, MCAT. This definition shall include any product to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

*Drug* means an article that is intended to affect the function of the body of humans.

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*Misbranded drug* means any drug for which the label is in any way false or misleading.

*Illicit synthetic drugs* means spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, and misbranded drugs as defined herein.

*Synthetic chemical or synthetic chemical compound* means any chemical or chemical compound whose molecular make up is similar to those substances listed as controlled substances in 17-A M.R.S. § 1101(16-A) (including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such substances) or to those substances listed in 17-A M.R.S. § 1102(4) (F) and whose intended use when introduced into the human body is to mimic or simulate the effects of a controlled substance.

(Ord. No. 13-06, 07-18-13)

### **Sec. 50-253. Prohibition of illicit synthetic drugs.**

- (a) It is unlawful for any person to possess, use, provide, sell, produce, manufacture, or distribute, or to offer, display, market, or advertise for sale, any illicit synthetic drug.
- (b) In determining whether a product is prohibited by this article, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this article. Other relevant factors that may be used to determine whether a product or sale is prohibited by this article include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggesting that the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.
- (c) Defense. It shall be a defense to the prosecution of a violation of this article that a product is specifically excepted by, or regulated within and in compliance with, state or federal law. For the purposes of this section, it shall not be a defense that a product is not subject to regulation unless the product is specifically excepted from regulation; mere "non-regulation" by these acts without a specific regulatory exemption does not render a product exempt under this section.

(Ord. No. 13-06, 07-18-13)

### **Sec. 50-254. Sale of certain products for human consumption prohibited.**

It is unlawful for any person to provide, sell, or offer for sale a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

(Ord. No. 13-06, 07-18-13)

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### **Sec. 50-255. Violation and seizure.**

- (a) Each package shall be a separate violation. The fine for each violation shall be \$500.
- (b) Any products found in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required.

(Ord. No. 13-06, 07-18-13)

### **Secs. 50-256--50-2650. Reserved.**

## **ARTICLE X. AGGRESSIVE PANHANDLING**

### **Sec. 50-266. Purpose.**

The purpose and intent of this ordinance is: to prevent dangers to persons and property, to prevent delays, and to avoid interference with traffic flow caused by persons soliciting employment, business, contributions, or sales of any kind, or collecting monies for the same, in or on a publicly maintained street, road or highway used primarily for the conveyance of motorized vehicle traffic; to ensure unobstructed pedestrian travel within the public right of way, including sidewalks; and to protect the safety of the general public by imposing reasonable manner and place restrictions on the conduct of persons engaged in solicitation while respecting their constitutional rights of free speech. These purposes are derived from the following findings:

- (1) Actively soliciting from occupants of vehicles distracts drivers from their primary duties to watch traffic and avoid potential hazards, including pedestrians, in the roadway, to observe all traffic control signals or warnings, and to prepare to move through the City's travel ways and intersections.
- (2) When persons approach vehicles to solicit from occupants, traffic flow is impeded, delays result due to obstruction of the free flow of travel, and congestion and blockage of travel ways, driveways to parking areas, and sidewalks results.
- (3) Distracted drivers are more prone to accidents, which constitute a serious traffic safety problem and impede and prevent the orderly flow of traffic. Distracted drivers constitute a threat to the safety of the person engaging in solicitation as well as that of other pedestrian traffic and traffic in general.
- (4) Aggressive solicitation creates fear and intimidation and results in a loss of access to and enjoyment of public places.
- (5) The State Statute dealing with divided highways, *Title 29-A M.R.S. §2052(5)*, authorizes a municipality to limit the use of travel ways and to prohibit pedestrians from those ways. The State Statute addressing pedestrian traffic, *Title 29-A M.R.S. §2056(2)*, clarifies how pedestrians are expected to conduct

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themselves on a public way. The State Statute dealing with offenses against public order, *Title 17-A M.R.S.A. §505*, addresses obstruction of a public way. (Ord. No. 13-08, 10-17-13)

### **Sec. 50-267. Definitions.**

For the purposes of this article, the following words and phrases shall have the following meanings:

- (1) “City” means the City of Lewiston, Maine.
- (2) “Curb” means the lateral lines of a street, road or highway, whether constructed above grade or not, beyond which vehicular travel is not intended.
- (3) “Median” means the area within a street, road or highway, generally in the middle, which separates traffic traveling in one direction from traffic traveling in another direction or which, at intersections, separates traffic turning left or right from traffic proceeding straight. A median may be physically separated from the area used by motor vehicles by curbing, landscaping, or other physical obstacles. A median may also be delineated by traffic control markings which prohibit use of a portion of the pavement of a street, road or highway by motor vehicles other than to drive generally perpendicularly across them or to idle on them awaiting the opportunity to cross or merge with opposing lanes of traffic (also known as “painted medians”, which are wider than a double yellow line). Medians also include other areas of a street, road or highway that are separated from motor vehicle traffic lanes by curbing, landscaping, or other physical obstacles designed to exclude motor vehicles (also known as an “island”).
- (4) “Public right-of-way” means real property:
  - a. Owned by a governmental entity or by a non-governmental entity or person and deeded, used, reserved or dedicated to or for public use for travel, transportation, or public utility purposes, including but not limited to, sidewalks, medians, curbs, shoulders, improved shoulders, walkways, paths and any other area so owned, dedicated, used, or reserved; and
  - b. The public right-of-way includes the area extending from the right and left of the center line of a public street, road, highway, sidewalk or walkway to the nearest property line which marks the juncture of private property and the public right-of-way.
- (5) “Shoulder” means the portion of a street, road or highway that is:
  - a. Adjacent to the travel way;
  - b. Designed or ordinarily used for parking, standing, or stopping;

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- c. Distinguished from the travel way by different design, construction, or markings; and
  - d. Not intended for normal vehicular travel.
- (6) “Sidewalk” means an improved surface which is located between the curb or lateral lines of a street, road or highway and the adjacent property line and which is designed, intended, and ordinarily used for pedestrian travel.
- (7) “Solicitation” means the act of asking another for money or other items of value, whether or not in exchange for a service or item of value.
- (8) “Street, road or highway” means that portion of the public way open to vehicular travel, including shoulders but excluding sidewalks.
- (9) “Traveled portion” means that portion of the publicly maintained street, road or highway which is improved, designed or ordinarily used by moving motor vehicle traffic.
- (Ord. No. 13-08, 10-17-13)

### **Sec. 50-268. Prohibited acts generally.**

- (1) It is unlawful for any person to solicit a ride, employment, business, contributions or sales of any kind, or collect monies for the same, from the occupant of any motor vehicle traveling upon any publicly maintained street, road or highway, when the person, while actively soliciting:
- a. Enters onto the traveled portion of a publicly maintained street, road or highway;
  - b. Is located on or within any median;
  - c. Is located on a sidewalk or shoulder intended for or capable of pedestrian travel such that the free passage of foot traffic is unreasonably obstructed or where such solicitation results in vehicles stopping within the travel lane to respond to the solicitation; or
  - d. Is located such that vehicles are unreasonably obstructed from moving into or out from a legal parking area into the travel way.
- (2) A person may not stand on or near any publicly maintained street, road or highway to solicit payment for watching or guarding a vehicle parked or to be parked on the public right of way.
- (Ord. No. 13-08, 10-17-13)



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### **Sec. 50-269. Invasively aggressive solicitation.**

- (1) It is unlawful for a person to intentionally or recklessly position his or her self or any held or placed sign or object in such a manner as to interfere with the line of sight of a vehicle operator while actively engaging in solicitation.
- (2) A person may not intentionally or recklessly block, follow, accompany without consent, or threaten another person on a public right-of-way during a solicitation or after the solicited individual has declined the request.
- (3) A person may not use abusive or profane language, or make a statement, gesture, or other communication that is inherently likely to provoke an immediate violent reaction, before, during or after engaging in solicitation.
- (4) A person may not intentionally or recklessly block another person's entrance to a building or vehicle while engaging in solicitation.
- (5) A person who is making a solicitation request may not intentionally or recklessly touch or cause physical contact with another person without that person's consent.

(Ord. No. 13-08, 10-17-13)

### **Sec. 50-270. Penalty.**

The civil penalty imposed for a citation issued for a violation of Chapter 50 Article X shall be in accordance with the city's policy manual as approved by the city council. The civil penalties imposed are cumulative. (Ord. No. 13-08, 10-17-13)

### **Secs. 50-271-279. Reserved.**

## **ARTICLE XI. SEX OFFENDER RESTRICTED ZONE**

### **Sec. 50-280. Purpose.**

The city of Lewiston recognizes that it has an obligation to protect the health, safety, and welfare of its children by prohibiting convicted sex offenders from residing in identified areas within the city where there is a significant concentration of children. The city recognizes that sex offenders who prey upon children may have a high rate of recidivism. Notwithstanding that certain persons convicted of sex offenses or sexually violent offenses are required to register with the state, the city finds that further protective measures are necessary and warranted to safeguard places where children congregate. The purpose of the ordinance is to provide such further protective measures, while balancing the interests and residential needs of sex offenders.

(Ord. No. 17-19, 12-21-17)

### **Sec. 50-281. Authority.**

This ordinance is adopted in accordance with the provisions of 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 3014, as may be amended from time to time as outlined below.

(Ord. No. 17-19, 12-21-17)

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### Sec. 50-282. Definitions.

- A) Registered Sex Offender – An individual convicted of a crime against a person under the age of 14 years and, as a result, is required to register pursuant to Title 34-A MRSA Chapter 15.
  - B) Sex Offender Restricted Residing Zones – The city has identified the areas of where significant concentrations of children exist under city ordinance 54-8 “Public drinking of alcoholic beverages prohibited.” Also, city ordinance 54-9 “Designation of Drug-Free “Safe Zones” further identifies the locations listed in ordinance 54-8 as “Safe Zones.”
  - C) Residence – the temporary or permanent occupation or use of a place, including but not limited to a domicile, for the purpose of living, residing, or dwelling.
  - D) Domicile - the status or attribution of being a permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after they have left it, if they have maintained sufficient links with that jurisdiction or have not displayed an intention to leave permanently.
  - E) Premises – shall mean the building structure and any accessory buildings attached to or detached from the primary structure, playground area, playing field, or courts.
  - F) Radius – distance shall be measured from the property line of the school, as defined above, closest to a registered sex offender’s residence.
- (Ord. No. 17-19, 12-21-17)

### Sec. 50-283. Restrictions.

- A) Any person, who is a registered sex offender, as defined above, shall not reside within a 750 foot radius of the property line of a school, “safe zone”, or premise as defined above.
- (Ord. No. 17-19, 12-21-17)

### Sec. 50-284. Exceptions.

- A) A designated Sex Offender maintaining a residence within the radius from a school, “safe zone”, or premise as defined above is not in violation if the residence was established and consistently maintained as a residence prior to the date of passage of this ordinance.  
A designated Sex Offender is not in violation of this ordinance if the school, “safe zone”, or premise as defined above is created, moved or enlarged which results in a designated Sex Offender residing within the radius of a school, “safe zone”, or premise as defined above as long as the residence was in place and consistently maintained prior thereto.
- B) A property owner leasing or renting a residence for use by a designated Sex Offender within the radius of a school, “safe zone”, or premise as defined above is not in violation if the residence was established and consistently maintained as a residence prior to the passage of this ordinance.  
A property owner is not in violation of this ordinance if the school, “safe zone”, or premise as defined above is created, moved or enlarged which results in a designated Sex Offender residing within the radius of a school, “safe zone”, or premise as defined above as long as the residence was in place and consistently maintained prior thereto.
- C) A designated Sex Offender shall not be in violation of this ordinance for residing in a

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residence within the 750 foot radius of the property line of a school, “safe zone”, or premise as defined above if all of the following conditions are met: (1) the residence in question is owned by the offender or an immediate family member, (2) it is not the residence of anyone who was victimized by the offender, and (3) no probation conditions restrict the offender from living in a residence within the safe zone radius. For purpose of this exception, immediate family is defined as a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent, or grandchild.

(Ord. No. 17-19, 12-21-17)

### **Sec. 50-285. Violation; injunctive relief and penalties.**

- A) A designated Sex Offender who, thirty (30) days after written notice from the city of Lewiston, is in violation of Section 50-283(A) of this Ordinance shall be subject to an action brought by the city of Lewiston in District Court or Superior Court to enforce the requirements of this Ordinance.

The city of Lewiston may seek a penalty in the minimum amount of \$500 per day, for each day of violation of Section 50-283(A) of this Ordinance after thirty (30) days.

In the event the city of Lewiston is the prevailing party in any action under this Ordinance, it shall be entitled to an award of its reasonable attorney’s fees, court costs and the costs of any expert witness fees incurred by the city of Lewiston.

- B) Property Owners who, thirty (30) days after written notice from the city of Lewiston, leases or rents any residence to a designated Sex Offender within the radius of school, “safe zone”, or premise as defined above shall be subject to an action brought by the city of Lewiston in District Court or Superior Court to enforce the requirements of this Ordinance.

The city of Lewiston may seek a penalty in the minimum amount of \$500 per day, for each day of violation of Section 50-283(A) of this Ordinance after thirty (30) days.

In the event the city of Lewiston is the prevailing party in any action under this Ordinance, it shall be entitled to an award of its reasonable attorney’s fees, court costs and the costs of any expert witness fees incurred by the city of Lewiston.

(Ord. No. 17-19, 12-21-17)

### **Secs. 50-286 –50-289. Reserved.**