

CHAPTER 40
OFFENSES BY ORGANIZED GROUPS *Amended 23-5-8*

- 40.01 Street Gang Activity
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40.01 STREET GANG ACTIVITY

A. CITY COUNCIL FINDINGS:

1. The City Council hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, gender, sexual orientation, age, or disability to be secure and protected from fear, intimidation and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Chapter 40 to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The City Council hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.
2. The City Council finds, however, that urban, suburban, and rural communities, neighborhoods, and schools throughout the State are being terrorized and plundered by street gangs. The City Council finds there are now several hundred street gangs operating in Illinois, and that while their terrorism is most widespread in urban areas, street gangs are spreading into suburban and rural areas of Illinois, including McHenry County.
3. The City Council further finds that street gangs are often controlled by criminally sophisticated adults who take advantage of our youth by intimidating and coercing them into membership by employing them as drug couriers and runners, and by using them to commit brutal crimes against persons and property to further the financial benefit to and dominance of the street gang.
4. Street gang activity presents a clear and present danger to public order and safety and is not constitutionally protected. No society is or should be required to endure such activities without redress. Accordingly, it is the intent of the City Council, by enacting this Chapter 40, to prohibit street gang-related activity.

B. For the purpose of this Section 40.01, “street gang” or “gang” is defined as any ongoing organization, association in fact, or group of three or more persons, whether formally or informally organized, or any sub-group or affiliated group thereof, having as one of its activities the commission of criminal or illegal acts, including by way of example only and not in any way limiting or specifying illegal drug distribution, and whose members individually or collectively engage in or have engaged in a pattern of criminal or illegal acts, and which group frequently, though not necessarily, claim one or more particular geographic territory or “turf” exclusively as its realm of influence and operations.

C. It shall be unlawful for any person within the City to knowingly use, display or wear colors, emblems or insignia on or about their person in public for the purpose of promoting any street gang activity.

D. It shall be unlawful for any person within the City to knowingly do or make any act, utterance, gesture, or display for the purpose of communicating membership of, affiliation with, association with, support of, identification with, sympathy toward or affront or insult toward any street gang, or with actual knowledge that the subject act, utterance, gesture or display is used and recognized as communicative of street gang membership, affiliation, association, support, identification, sympathy or affront.

E. PENALTY: Any person violating this Section 40.01 shall be fined not less than \$100 for each offense and be responsible for the City’s cost of prosecution including attorney fees incurred by the City. Each day that a violation continues shall be considered a separate offense.

40.02 ALCOHOLIC BEVERAGES

A. INTOXICATING LIQUORS: Any police officer having probable cause that intoxicating liquors are being kept in violation of law in any place, shall search such suspected place, and if the police officer finds upon the premises intoxicating liquors, they shall seize the same, together with the vessels in which they are contained, with the intent of violating this Chapter 40, and shall arrest any person or persons in charge of such place, or aiding in any manner in carrying on the business conducted in such place.

B. PUBLIC PROPERTY: Consumption or possession of any alcoholic liquors without a permit issued by the City pursuant to Chapter 33 of this Code, including beer and wine, at any time in any public park, street, alley, or public place owned, controlled or operated by the City is prohibited.

C. PENALTY: Any person violating this Section 40.02 shall be fined not less than \$100 for each offense and be responsible for the City’s cost of prosecution including attorney fees incurred by the City. Each day that a violation continues shall be considered a separate offense.

40.03 DRUG PARAPHERNALIA

A. DEFINITIONS: In addition to the terms defined in Appendix A of this Code, the definitions contained herein shall be observed and applied, except when the context clearly indicates otherwise.

The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance as defined in 720 ILCS 550/3 *et seq.* and 720 ILCS 570/202 through 212, as amended. It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or cannabis or from which a controlled substance or cannabis can be derived;
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substance or cannabis;
3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or cannabis;
4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength effectiveness or purity of controlled substances or cannabis;
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or cannabis;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use, or designed for use in cutting controlled substances or cannabis;
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or cannabis;

9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or cannabis;
 10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or cannabis;
 11. Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish oil into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - b. Water pipes;
 - c. Carburization tubes and devices;
 - d. Smoking and carburization masks;
 - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - f. Chamber pipes;
 - g. Carburetor pipes;
 - h. Electric pipes;
 - i. Air-driven pipes;
 - j. Chillums;
 - k. Bongs; and
 - l. Ice pipes or chillers.
- B. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substances;
3. The proximity of the object, in time and space, to a direct violation of this Section 40.03;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this Section 40.03; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Section 40.03, shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community; and
14. Expert testimony concerning its “use.”

- C. It shall be unlawful for any person to possess, sell, offer for sale, display, furnish, supply or give away any cocaine spoon, marijuana pipe, hashish pipe or any drug paraphernalia.
- D. The prohibition contained in this Section 40.03 shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractors and podiatrists, veterinarians, pharmacists or embalmers in the normal lawful course of their respective businesses or professions, nor to common carriers or warehouses or their employees engaged in the lawful transportation of such paraphernalia, nor to public officers or employees while engaged in the performance of their official duties, nor to persons suffering from diabetes, asthma or any other medical condition requiring self-injection. The prohibition contained in this section shall not apply to drug paraphernalia authorized by the Compassionate Use of Medical Cannabis Program Act, 410 ILCAS 130/1, et seq., or the Cannabis Regulation and Tax Act, 410 ILCS 705/1-1, et seq.
- E. PENALTY: Whoever violates any provision of this Section 40.03 shall be fined not less than \$100 for each offense and be responsible for the City's cost of prosecution including attorney fees incurred by the City. Each day that a violation continues shall be considered a separate offense. Restitution by the violator shall also be made to the owner of any property damaged or destroyed. Nothing herein shall preclude such additional civil remedies available to the person whose property has been damaged or destroyed.

40.04 PERSONS RESPONSIBLE FOR UNLAWFUL ACTIVITIES ON THEIR PREMISES

A. It shall be unlawful for any person or persons who are the owners or occupants of any premises to allow, initiate or maintain any gathering on that premises in which tenants, invitees, visitors or trespassers engage in any unlawful activity. Unlawful activity shall include, but not be limited to, violations of any sections of this Chapter 40. A person will be deemed to have permitted the gathering if that person is on the premises while the unlawful activity is occurring and has not informed the police thereof. For purposes of this Section 40.04 only, a gathering shall consist of two or more persons who are not occupants or owners of the premises.

B. Any person violating this Section 40.04 shall be fined not less than \$100 for each offense and be responsible for the City's cost of prosecution including attorney fees incurred by the City. Each day that a violation continues shall be considered a separate offense. Restitution by the violator shall also be made to any property damaged or destroyed or person injured.

40.05 PENALTY

A. Unless otherwise provided in this Chapter 40, any person, firm or corporation violating any section of this Chapter 40 shall be fined not less than \$100 for each offense and be responsible for the City's cost of prosecution. Each day that a violation continues shall be considered a separate offense. Restitution by the violator shall also be made to any property damaged or destroyed or person injured.

B. A defendant who has been found guilty and ordered to pay a fine under this Chapter 40 may petition the court to convert all or part of the fine into court-approved public or community service, to be performed as directed by and to be verified by the Department of Court Services.

C. The public or community service work assigned shall be, whenever available, for the benefit of the City, or agency or department thereof. If no public or community service work opportunities are available for the benefit of the City or agency or department thereof, the defendant shall be assigned to perform public or community service work for a not-for-profit organization or agency which provides service to or otherwise benefits the citizens of the City.

D. One hour of public or community service shall be equivalent to \$5 of fine, upon conversion.

E. Neither restitution obligations nor mandatory court costs or attorney's fees may be converted to or discharged by public or community service work.

F. Neither the City nor any agency or department thereof, the Department of Court Services, public or community service programs or site, nor any official or employee thereof acting in the course of their official duties shall be liable for any injury or loss a person may receive while performing public or community service as ordered by the court pursuant to this Section 40.05, nor shall they be liable for any tortious acts of any person performing public or community service, except for willful wanton misconduct or gross negligence on the part of such governmental unit, official or employee.

G. No person assigned to a public or community service program shall be considered an employee for any purpose, nor shall the City, McHenry County or not-for-profit organization or agency be obligated to provide any compensation to such person.