

CHAPTER 40
OFFENSES BY ORGANIZED GROUPS

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40.01 DISORDERLY CONDUCT

No person shall engage in disorderly conduct in the City. A person commits disorderly conduct when he knowingly:

1. Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace;
2. Transmits in any manner to the fire department of any municipality or fire protection district a false alarm or fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists;
3. Transmits in any manner to another a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that its explosion would endanger human life, knowing at the time of such transmission that there is no reasonable ground for believing that such bomb or explosive is concealed in such place.
4. Transmits in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense has been committed.
5. Enters upon the property of another and for a lewd or unlawful purpose and deliberately looks into a dwelling on the property through any window or other opening in it.
6. With the purpose of causing public danger, alarm, disorder, nuisance, he commits any of the following acts in a public place:

- a. Commits an act in a violent manner toward another whereby that other person is placed in danger of his life or health;
- b. Commits an act in a violent manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;
- c. Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, health or property of another;
- d. Interferes with another's pursuit of a lawful occupation by acts of violence;
- e. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic on a public way and refuses to clear such public way when ordered to do so by a peace officer or other lawful authority;
- f. Incites, attempts to incite or is involved in attempting to incite a riot or unlawful disturbance;
- g. Uses abusive language or threats to any peace officer or any other person when such words have a direct tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment are not prohibited;
- h. Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance in a public place or affecting a public place or another person's premises to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square or common, whereby the public peace is broken or disturbed, or the traveling public annoyed;
- i. Fails to obey a lawful order to disperse by a peace officer where one or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is threatened;
- j. Uses abusive or obscene language or makes an obscene gesture in public;
- k. Assembles with three or more persons for the purpose of using force or violence to disturb the public peace;
- l. Assembles with three or more persons for the purpose of violating any provision of this Code; and
- m. Appears in any public place and is under the influence of alcohol or controlled substance, to the degree that he may endanger himself or other persons or property, or alarm or disturb other persons in his vicinity.

7. Permits any assembly of two or more persons for the purpose of committing any unlawful act or breach of the peace, or any riotous, offense or disorderly conduct, in or upon any premises owned or occupied by him or under his control.
8. Interrupts or disturbs any lawful assembly of people by making any loud or unusual noise, or by rude or indecent behavior, or by profane, obscene or improper discourse or conduct.
9. Engages in Mob Action: Mob action consists of any of the following:
 - a. The use of force or violence disturbing the public peace by two or more persons acting together and without authority of law;
 - b. The assembly of two or more persons to commit an unlawful act; or
 - c. The assembly of two or more persons, without authority of law, for the purpose of doing violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.
10. Disturbs, tends to disturb or aid in disturbing the peace of others by violent, tumultuous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control.
11. Uses paint or other medium in any way to deface, damage or destroy property.
12. PENALTY: Any person violating this Section 40.01 shall be fined not less than \$100 for each offense and be responsible for reimbursing 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.

40.02 CURFEW

A. It shall be unlawful for any person less than 17 years of age to be present or upon any public road, street, alley or park, or other lands used for public purposes or in any public place of business or amusement in the City at the following times unless such person is accompanied and supervised by a parent, legal guardian or other responsible companion at least 18 years of age approved by a parent or legal guardian or unless engaged in a business or occupation which the statutes of the state authorize a person less than 17 years of age to perform:

1. Between 12:01 a.m. and 6 a.m. Friday;
2. Between 12:01 a.m. and 6 a.m. Saturday; and

3. Between 11 p.m. on Sunday to Thursday, inclusive, and 6 a.m. on the following day.

B. It shall be unlawful for a parent, legal guardian or other person to knowingly allow or permit a person in his custody or legal control to violate this Section 40.02.

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. Restitution by the violator shall also be made to any property damaged or destroyed or person injured.

40.03 DAMAGING PROPERTY

A. **GRAFFITI DEFINED:** Graffiti is any permanent display of any name, identification, letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, illustration, symbol or any combination thereof, which without authorization is marked, written, drawn, painted, scratched, inscribed or affixed, and which is a different color from the color of the exterior of those objects of structures described above and to which is affixed.

B. **PROHIBITED:** It shall be unlawful, and is hereby declared a nuisance to place graffiti, or permit graffiti to remain upon any public or private curb stone, flagstone, brick, sidewalk or any portion of any part of any sidewalk or street, or upon any tree, lamp post, telephone pole, utility box, utility pole, stanchion, postal mail receptacle, sign, hydrant, fence, door, wall, window, garage or enclosure, vehicle, bridge, pier or upon any other public or private structure or building.

C. No person shall damage, befoul, disturb, destroy or deface any City property or any public or private property without permission of the owner.

D. **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. Each day any violation or any provision of this Section 40.03 shall continue shall constitute a separate violation.

40.04 PARENTAL RESPONSIBILITY

A. It shall be unlawful for a parent or legal guardian of an unemancipated minor residing with such parent or legal guardian to knowingly allow or permit said minor to commit any violation of a City ordinance or state statute concerning vandalism, battery, fireworks, obscene conduct, trespass, possession of weapons or alcoholic liquor, curfew, disorderly street gang conduct, suspicious activity, or any other offense or willful or malicious acts to persons or property.

B. The parent or guardian responsible for the willful or malicious acts of the minor child pursuant to this Section 40.04 shall make full restitution to the injured or damaged party or parties within 10 days after notification by mail. Parents and guardians shall be responsible individually and jointly.

C. PENALTY: Whoever violates any provision of 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 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. Each day any violation or any provision of this Section 40.05 shall continue shall constitute a separate violation.

40.05 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, religious, 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 40.05, “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 anyway 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 40.05 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.

40.06 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, he 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 anytime 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 40.06 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.

40.07 WEAPONS *Amended, 13-6-4, 13-5-4*

A. WEAPONS: Unless authorized by law, no person shall wear under his clothing, or conceal about his person, or display in a threatening like manner, any dangerous or deadly weapon including, but not limited to any pistol, revolver, sling shot, knuckles, any bowie or similar knife, or any knife with a switch-blade or device whereby the blade or blades can be opened by a button, pressure on the handle or other mechanical contrivance.

B. DISCHARGE OF FIREARMS: Except as provided in Section 40.07-C, no person shall discharge any firearms in the City. In addition to those firearms defined by the Illinois Compiled Statutes, for purposes of this Section, firearms shall include pump air rifles, potato guns, CO₂ pellet guns and any other device capable of discharging a projectile if used with intent to inflict harm to person or property or to assault or threaten harm to a person or property or when used in a reckless manner.

C. EXCEPTIONS: For the purpose of protecting livestock against wildlife predators and hunting, the discharge of firearms is permitted in the AT Agricultural Transition District in the City, provided that persons discharging firearms are not in violation of 720 ILCS 5/24-1 *et seq.* as amended, and the Illinois Department of Natural Resources hunting regulations.

D. EXCEPTIONS: For the purpose of protecting livestock against wildlife predators, the discharge of firearms is permitted in the AT Agricultural Transition District in the City, provided that persons discharging firearms are not in violation of 720 ILCS 5/24-1 *et seq.*

E. DISPLAY AND SALE OF SPECIFIED WEAPONS: No pawnbroker, second-hand dealer or other person engaged in business in the City shall display or place on exhibition in any show window or other window facing upon any street, any pistol, revolver or other firearm, with a barrel less than 12 inches in length, or any brass or metal knuckles, or any club loaded with lead or other weight, or any blackjack or billy club. Weapons displayed for sale shall be incapable of firing. In non-business hours said weapons shall be stored in a secured and locked vault, safe or security box.

F. PENALTY. Any person violating this Section 40.07 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.

40.08 DRUG PARAPHERNALIA; DEFINITIONS *Amended, 09-4-5*

A. 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.

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 40.08;
- 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 40.08; the innocence of an owner, or of anyone

in control of the object, as to a direct violation of this Section 40.08, 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."

B. 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.

C. The prohibition contained in this Section 40.08 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 warehousemen 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.

D. PENALTY: Whoever violates any provision of this Section 40.08 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. Each day any violation or any provision of this Section 40.08 shall continue shall constitute a separate violation.

40.09 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 40.09 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 40.09 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.

40.10 UNLAWFUL POSSESSION OF CANNABIS *09-4-5*

A. A person commits unlawful possession of cannabis if he or she, while in the Village, has in his or her possession any substance containing cannabis.

B. For the purpose of this Section, cannabis includes marijuana, hashish and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or sterilized seed of such plant which is incapable of germination.

C. Whoever violates any provision of this Section shall be fined not less than \$100 or more than \$750.

40.11 PENALTY (ALTERNATIVE)

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 attorneys 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 40.10, 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.