

Chapter 26
OFFENSES BY ORGANIZED GROUPS

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26.01 ASSEMBLY

A. Permitting Unlawful Assembly: Whoever shall knowingly permit any assembly of people for the purpose of committing any unlawful act or breach of the peace, or any riot, offense or disorderly conduct, in or upon any premises owned or occupied by him or under his control shall be guilty of disorderly conduct.

(Ord. 94-147, 1994)

B. Disturbing Lawful Assembly: Whoever shall interrupt or disturb 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, shall be guilty of disorderly conduct.

26.02 CURFEW (Amended Ordinance 2004-118)

A. Definitions: In addition to those terms defined in Appendix A of this Code, the following definitions are applicable to this Section 26.02:

Emergency: An unforeseen combination of circumstances for the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment: 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: 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: A person less than 17 years of age.

Operator: 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: A person who is (1) a natural parent, adoptive parent or step-parent or another person; or (2) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place: 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: 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.

Serious bodily injury: 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.

B. Curfew: Except as provided in Section 26.02-C herein, it is unlawful for any person less than 17 years of age to be present at, in or upon any public assembly, building, place, street or highway at the following times:

1. Between 12:01 a.m. and 6 a.m. Saturday;
2. Between 12:01 a.m. and 6 a.m. Sunday; and
3. Between 11 p.m. on Sunday to Thursday, inclusive, and 6 a.m. on the following day.

C. Exceptions: The following shall constitute valid exceptions to the operation of the curfew:

1. At any time when accompanied by his or her parent, guardian or other adult person responsible for or having the legal care, custody and control of the individual, or an authorized adult;
2. If participating in, going to or returning from, without any detour or stop:
 - (a) an emergency as defined herein;

- (b) lawful employment;
 - (c) attending an official school, religious or other social or recreational activity supervised by adults and sponsored by a unit of government, civic organization or other similar entity that takes responsibility for the attendees;
 - (d) an errand at the direction of a parent or guardian;
 - (e) an activity involving the exercise of First Amendment rights protected by the United States Constitution (or those similar rights protected by the State of Illinois Constitution), such as free exercise of religion, freedom of speech, the right to peaceably assemble, freedom of the press and the right to petition the government for a redress of grievances.
3. Is married or had been married or is an emancipated minor under the Emancipation of Mature Minors Act, as amended (750 ILCS 30/1 *et seq.*).
 4. If in a motor vehicle when the travel begins and ends outside the corporate limits of the City;

D. Establishments: The owner, operator or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours or fails to promptly notify the Police Department that a minor is present on the premises of the establishment during curfew hours and refuses to leave.

E. Enforcement: Before taking any enforcement action under this Section 26.02, a police officer shall ask the suspected offender's age and reason for being in the public place or on the premises. The police officer shall not issue a citation or make an arrest under this Section 26.02 unless the police officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no exception in Section 26.02-C applies.

F. Penalty : Any person violating this Section 26.02 shall be fined not more than \$500.00 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.

26.03 DISORDERLY CONDUCT

A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or knowing his conduct is likely to cause public danger, alarm, disorder or nuisance, he commits any of the following acts in a public place: (Ord. 94-147, 1994)

1. Commits an act in a violent manner toward another whereby that other is placed in danger of his life or health;
2. Commits an act in a violent manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;
3. Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, health or property of another;
4. Interferes, or threatens to interfere, with another's pursuit of a lawful occupation by acts of violence;
5. Obstructs, either singly or together with other person or persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by the Police Department or other lawful authority;
6. Resists or obstructs the performance of duties by the Police Department or any other authorized City official;
7. Incites, attempts to incite or is involved in attempting to incite a riot or unlawful disturbance;
8. Uses abusive language or threats toward any member of the Police Department, any other authorized City official who is engaged in the lawful performance of his duties, or toward 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;
9. Damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition;
10. Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance 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;
11. Fails to obey a lawful order to disperse by a police officer where one or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is threatened;
12. Uses abusive or obscene language or makes an obscene gesture in public;
13. Assembles with three or more persons for the purpose of using force or violence to disturb the public peace;

14. Appears in any public place and is manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or alarm or disturb other persons in his vicinity;
15. Transmits in any manner to any police 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; or
16. Uses paint or other medium in any way to deface, damage or destroy property.

26.04 DISORDERLY STREET GANG CONDUCT
(Amended Ord. 2018-112)

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, 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 Ordinance 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. (Ord. 94-147, 1994)
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 that 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. (Ord. 94-147, 1994)
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. (Ord. 94-147, 1994)
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 Ordinance, to prohibit street gang related activity. (Ord. 94-147, 1994)

B. For the purpose of this Section 26.04, "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. (Ord. 94-147, 1994)

C. Prohibit Active Promotion of Criminal Gang Activity.

1. No person shall actively and knowingly participate in a street gang which promotes, sponsors, assists in, or participates in the commission of a crime and which requires as a condition of membership the same criminal conduct with the intent to further, facilitate, or accomplish the substantive criminal conduct.

D. Prohibit Gang Communication which rises to Disorderly Conduct.

1. It shall be unlawful for any person within the City to:
 - (i) do or make any act, use any words or gestures;
 - (ii) with the intent of communicating membership or support of, affiliation, association or identification with, or insult toward any street gang;
 - (iii) with actual knowledge that the subject act, word(s) or gesture(s) are used and recognized as a means of communicating street gang membership, affiliation, association, support, identification, or insult; and
 - (iv) in such an unreasonable manner that the act, word(s) or gestures(s) alarm or disturb another and provoke a breach of the peace.

E. Penalty. Any person violating this section shall be fined not less than \$400.00 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. (Ord. 94-147, 1994)

F. Sentencing Enhancement.

1. If a person does all of the following, the penalties for the underlying crime are increased as provided in Paragraph 2 below.
 - (i) Commits one of the following offenses:

- a) All crimes defined as “predicate activity” in 720 ILCS 5/33G-3(e) of the Illinois Racketeer Influenced and Corrupt Organizations Law;
- b) Battery (720 ILCS 5/12-3)
- c) Aggravated Battery (720 ILCS 5/12-3.05)
- d) Assault (720 ILCS 5/12-1 or Chapter 26.09(B) of Harvard Municipal Code)
- e) Aggravated Assault (720 ILCS 5/12-2)
- f) Mob Action (720 ILCS 5/25-1 or Chapter 26.07 of Harvard Municipal Code)
- g) Fighting (Chapter 26.09(C) of Harvard Municipal Code)
- h) Criminal Damage to Property (720 ILCS 5/21-1 or Chapter 26.05 of Harvard Municipal Code)
- i) Criminal Defacement (720 ILCS 5/21-1.3)
- j) Armed Violence (720 ILCS 5/33A-2)
- k) Robbery (720 ILCS 5/18-1)
- l) Theft (720 ILCS 5/16-1)
- m) Possession of Stolen Property (720 ILCS 5/16-1)
- n) Disorderly Conduct (720 ILCS 5/26-1)
- o) Compelling Organized Membership (720 ILCS 5/12-6.5)
- p) Unlawful Assembly (Chapter 26.01(A) of Harvard Municipal Code)
- q) Offenses Against Public Peace (Chapter 26.09 of Harvard Municipal Code)
- r) Weapons (Chapter 27.13 of Harvard Municipal Code)

and

- (ii) In furtherance of communication of membership in or support of any street gang, affiliation, association or identification with any street gang, or insult toward any street gang.

- 2. The maximum fine prescribed by the Municipal Code shall be increased by \$350.00.

26.05 DAMAGING PROPERTY

A. No person shall damage, befoul, disturb, destroy or deface any City property or any public or private property without permission of the owner. (Ord. 94-147, 1994)

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. (Ord. 94-147, 1994)

C. 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 or structures described above and to which is affixed. (Ord. 94-147, 1994)

D. Graffiti Removal. It shall be the duty of the Chief of Police to serve or cause to be served, a notice upon the owner or party in possession of any such object or structure upon which graffiti is present and to demand the abatement of the nuisance within three days. All exterior surfaces shall be kept clean and free of graffiti. Surfaces which have been exposed to graffiti shall be cleaned, painted or in some manner covered, so as to effect the complete removal of the graffiti from that surface and return the surface to its prior condition within three days of receipt of the violation notice to the owner unless extenuating circumstances prevent work from being done, in which case the Chief of Police may give an extension for the removal of graffiti. (Ord. 94-147, 1994)

26.06 INTOXICATING LIQUORS

A. Any officer having personal knowledge or reasonable information that intoxicating liquors are being kept in violation of law in any place, shall search such suspected place, and if such officer or person finds upon the premises intoxicating liquors he shall seize the same, together with the vessels in which they are contained, and all implements and furniture used in connection with such liquors in the illegal keeping, bargaining, selling, exchanging, giving away or carrying the same, and any wagon, automobile, vehicle, contrivance, thing or device used in conveying said liquors or kept for the purpose of violating this Ordinance, 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. Consumption or possession of any alcoholic liquors, including beer and wine, at anytime in any public park, street, alley or public place owned, controlled or operated by the City is prohibited. (Ord. 94-147, 1994)

C. Penalty. Any person violating this section shall be fined not less than \$400.00 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. (94-147, 1994)

26.07 MOB ACTION

A. Mob action consists of any of the following:

1. The use of force or violence disturbing the public peace by two or more persons acting together and without authority of law;

2. The assembly of two or more persons to do an unlawful act; or
 3. 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.
- B. It is unlawful for any person to be involved in mob action.
- C. Any participant in a mob action who does not withdraw on being commanded to do so by any police officer shall be guilty of disorderly conduct.

26.08 LOITERING

A. Loitering Prohibited. It shall be unlawful for any person to loiter in or near any thoroughfare, place open to the public or near any public or private place in a manner under circumstances manifesting the purpose to engage in drug related activity contrary to any of the provisions of this Code or the State of Illinois Criminal Code of 1961, as amended. (Ord. 94-147)

B. Among the circumstances which may be considered in determining whether such purpose is "manifested" shall include but not be limited to:

1. Such person is a known unlawful drug user, possessor or seller. For purposes of this provision, a "known unlawful drug user, possessor or seller" is a person who has, within the knowledge of the arresting officer, been convicted in any court within this state of any violation involving the use, possession or sale of any of the controlled substances referred to in the Illinois Criminal Code of 1961, as amended, or such person who has been convicted of any violation of the provisions of said Illinois Criminal Code of 1961, as amended, or substantially similar laws of any political subdivision of this state or of any other state; or a person who displays the physical characteristics of drug intoxication or usage, such as "needle tracks" or a person who posses drug paraphernalia as defined in the Illinois Municipal Code of 1961, as amended; or (Ord. 94-147, 1994)
2. Such person is currently subject to an order prohibiting his presence in a high drug activity geographic area; or (Ord. 94-147, 1994)
3. Such person behaves in a manner as to raise reasonable suspicion that he is about to engage in or is then engaged in any unlawful drug related activity including, by way of example only, such person acting as a "lookout"; or (Ord. 94-147, 1994)

4. Such person is physically identified by the officer as a member of a "gang" or association which has, as one of its purposes, illegal drug activity; or (Ord. 94-147, 1994)
5. Such person transfers small objects or packages for currency in a furtive fashion; or (Ord. 94-147, 1994)
6. Such person takes flight upon the appearance of a police officer; or (Ord. 94-147, 1994)
7. Such person manifestly endeavors to conceal upon himself or herself any object which reasonably could be involved in an unlawful drug related activity; or (Ord. 94-147, 1994)
8. The area involved is by public repute known to be an area of unlawful drug use and trafficking; or (Ord. 94-147, 1994)
9. The premises involved have been reported to law enforcement as a place of suspected gang activity. (Ord. 94-147, 1994)
10. Such person possesses any instrument, article or thing whose customary or primary purpose is for the sale, administration or use of controlled substances such as, but not limited to, crack pipes, push wires, chore boys, hand scales, hypodermic needles, razor blades or other cutting tools. (Ord. 94-147, 1994)
11. Any vehicle involved is registered to a known unlawful drug user, possessor or seller, or a person for whom there is an outstanding warrant for a crime involving drug-related activity. (Ord. 94-147, 1994)

26.09 OFFENSES AGAINST PUBLIC PEACE

No person in the City shall:

A. Unlawful Conduct: Disturb, tend to disturb or aid in disturbing the peace of others by violent, tumultuous, offensive or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control.

B. Assault: Assault, beat, strike, wound, imprison or inflict violence on another where the circumstances show malice, or assault another with intent to commit any misdemeanor or felony. Nor shall any person assault another with a lethal weapon, instrument or thing with intent to commit upon the person of another any bodily injury where no considerable provocation appears or where the circumstances of the assault show malice.

C. Fighting Another Person: Unless authorized by an officially recognized sanctioning authority or conducted as part of bona fide physical training, no person(s) shall engage in mutual

physical combat, also known as armed or unarmed hand to hand combat, which may include striking, hitting, punching, kicking, pushing, grappling, or chokeholds. (Ord. 2015-129, §1)

26.10 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 permit said minor to commit any violation of a City ordinance or state statute concerning vandalism, battery, fireworks, obscene conduct, trespass, possession of alcoholic liquor, curfew, disorderly street gang conduct, or any other offense or willful or malicious acts to persons or property. (Ord. 94-147, 1994)

B. It shall be unlawful for any parent, legal guardian or other person who knowingly permits a child in his or her custody or control, under the age of 18 years, to associate with known thieves, burglars, felons, narcotic addicts or other persons of ill repute, visit a place of prostitution, commit a lewd act or commit an act intending to break the peace. (Ord. 95-104,§1, 1995)

C. The parent or guardian responsible for the willful or malicious acts of the minor child pursuant to Section 26.10 shall make full restitution to the injured or damaged party or parties within 10 days after notification of liability as provided for herein. Parents and guardians shall be responsible individually and jointly. Any person who fails or refuses to make payment in full of any amount found due from them to an injured or damaged party, as provided for herein, or who violates any of the provisions this section shall be fined in accordance with Section 26.13 of this Ordinance. (Ord. 95-104,§2, 1995; Ord. 94-147, 1994)

26.11 RESERVED

26.12 RESERVED

26.13 PERSONS RESPONSIBLE FOR UNLAWFUL ACTIVITIES ON THEIR PREMISES

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, invites, visitors or trespassers engage in any unlawful activity. Unlawful activity shall include, but not be limited to, violations of any sections of Chapters 26 or 27 of this Code. 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 only, a gathering shall consist of two or more persons who are not occupants or owners of the premises. (Ord. 94-104, §2, 1994)

26.14 TELECOMMUNICATIONS DEVICES

A. Unlawful Transfer of Telecommunications Device to a Minor: A person commits the unlawful transfer of a telecommunications device to a person under 18 years of age when he gives, sells or otherwise transfers possession of a telecommunications device to a person under 18

years of age with the intent that the device be used for unlawful purposes or as a means of communication between gang and gang members. (Ord. 94-158, §2, 1994)

B. Seizure: Any telecommunications device possessed by a person under 18 years of age, or used in the commission of an unlawful act, or used as a means of communication between gang and gang members, or which constitutes evidence of the commission of such offenses, may be seized by City police officers. Forfeiture of a telecommunications device shall be in accordance with 720 ILCS 5/44-3. (Ord. 94-158, §2, 1994)

C. Purchase, Acceptance or Possession of a Telecommunications Device: Any person under 18 years of age shall not purchase, accept or possess a telecommunications device. (Ord. 94-158, §2, 1994)

26.15 PENALTY

Unless otherwise provided in this Chapter, any person, firm or corporation violating any Section of this Chapter 26 shall be guilty of a misdemeanor, punishable by incarceration in the McHenry County Jail, not to exceed six months and shall be fined not less than \$400.00 nor more than \$500.00 for each offense and shall be obligated to pay for the City's costs of prosecution. Each day a violation continues to exist shall be considered a separate offense. Restitution by the violator shall also be made with respect to any property damaged or destroyed or person injured. (Ord. 95-104, §3, 1995; Ord. 94-158, §2, 1994; Ord. 94-147, 1994; Ord. 94-104, §1 & 2, 1994)