



LEGAL BULLETIN #2012-02

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OFFICE OF LEGAL AFFAIRS

A Tool Against Gangs: Effective Use of the Gang Loitering Ordinance

The Gang Loitering Ordinance (section 8-4-015 of the Municipal Code of Chicago) is an effective tool in the fight against gangs.

I. Gang Loitering Ordinance Reminders

This ordinance requires that the prohibited conduct take place in a "Hot Spot" or a "High Level Gang Conflict Location."

The duration of dispersal orders are dependent on whether the Superintendent, or his appointee, designated the Hot Spot as an area associated with a Heightened Level of Violence, or the prohibited activity took place during specific days/hours in a High Level Gang Conflict Location. The initial dispersal orders are either eight or twelve hours.

Hot Spots: Areas designated by the Superintendent in which special enforcement of these ordinances are determined to be necessary because loitering has enabled subjects to establish control over the area, intimidate others, or conceal illegal activities.

- Hot Spot designations expire at the end of a six-month period (31 March and 30 September).
- All High Level Gang Conflict Locations are Hot Spots for purposes of gang loitering.
- Dispersal orders for Hot Spots without a Heightened Level of Violence designation are eight hours.

High Level Gang Conflict Locations: Areas in effect for one-week intervals which automatically become designated enforcement areas for the ordinances.

- High Level Gang Conflict Locations are found on the reverse side of the Department's Daily Bulletin by Area.
- All High Level Gang Conflict Locations become 12-hour dispersal areas commencing Fridays at 1700 hours and continuing through Sundays at 2330 hours, and then revert back to 8-hour dispersal areas.

Areas Associated with a Heightened Level of Violence: A Hot Spot or High Level Gang Conflict Location that is designated as a 12-hour dispersal area.

- Designated by the Superintendent or his designee.
- May, but need not be limited to, certain times of the day.

Penalties: Under the ordinances, any person who fails to obey a dispersal order is subject to a fine of not less than \$100.00 and not more than \$500.00 for each offense, or imprisonment for not more than six months, or both.

A *second* or subsequent offense will be punishable by a mandatory minimum sentence of not less than five days imprisonment.

Upon a *third* or subsequent conviction within a 12-month period, a court will, in addition to the penalties above, issue an order requiring the convicted person to refrain for at least 30 days, from gang loitering within sight and sound of the location of the officer's latest order of dispersal. When such an order is entered by the court, that order will serve as fair notice to the offender, so that any further gang loitering in violation of that order will automatically subject the offender to arrest under the applicable ordinance *without requiring the officer to give a dispersal warning*. Each time, they must spend five days in jail.

Note: The Gang Loitering and Narcotics-Related Loitering Ordinances are very similar, but one difference remains between the two ordinances. Narcotics-related loitering requires that only *one* person be engaged in the prohibited activity, while gang loitering requires the presence of at least *two* people, only one of whom must be a known gang member. And, the two ordinances are not mutually exclusive. You can charge an arrestee with both offenses where appropriate.

II. Identifying "Gang Loitering"

The ordinance does not prohibit membership in a gang. Nor does it prohibit a gang member from being in an area designated for enforcement under these ordinances. The ordinance does not prohibit anyone from engaging in lawful conduct in any area (including "collective advocacy" as defined by DSO S10-02-03). What the ordinance prohibits is "gang loitering" in designated enforcement areas known as "Hot Spots."

Gang Loitering is defined by the ordinance as "remaining in one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, or to conceal illegal activities." If, for instance, several *known* gang members are standing on a corner in a Hot Spot flashing gang signs, blocking the paths of pedestrians and intimidating passersby, that would qualify as "gang loitering."

III. A Quick Checklist

1. Is the area designated as a Hot Spot? All High Level Gang Conflict Locations, designated on a weekly basis, are automatically Hot Spots for purposes of gang loitering.
2. Is the Hot Spot a 12-hour dispersal area due to its association with a heightened level of violence? If not, dispersal is eight hours.
 - Pursuant to DSO 10-02-02, all High Level Gang Conflict Locations are 12-hour dispersal Hot Spots commencing Fridays at 1700 continuing through Sunday at 2330 hours, and then revert back to 8-hour dispersal areas.
3. Are two or more subjects engaging in gang loitering, and one is a known gang member?
 - For gang loitering, at least **two** people must be engaged in the prohibited conduct, although only one of the subjects must be a known member of a criminal street gang.
 - You must be able to articulate the basis for your knowledge that a subject is a member of a criminal street gang. An individual's membership in a gang must be substantiated by specific and documented information such as, but not limited to, an admission to being a gang member, a reliable informant, tattoos, markings, signals, or symbols indicative of a specific street gang. Membership may not be established solely because an individual is wearing clothing available for sale to the general public.
 - If a second or third person is not a known gang member, then you must include the name(s) of the known gang member(s) with whom he or she is loitering, on the individual's Investigatory Stop Report. An individual who is not a known gang member can still be in violation of the gang loitering ordinance because he or she is loitering with a gang member.
4. Recite a dispersal order as follows:
 - "You are engaging in loitering within an area in which such loitering is prohibited."
 - "You must disperse and remove yourselves from sight and sound of this spot."
 - "If you fail to promptly disperse, or if you engage in further loitering within sight or sound of this spot in the next eight (twelve) hours, you will be arrested and charged with gang loitering."
5. Ask for the subjects' identification and complete an Investigatory Stop Report for *each* subject, noting all factors that support the subject was in violation of the Gang Loitering ordinance, the time of the dispersal order, and the names of the other persons dispersed. Failure to provide identification during the stop, in and of itself, is not a basis for an arrest or further detention. Indicate the refusal to provide identification in the narrative field.
6. Contact OEMC for an Event Number and record it on the Investigatory Stop Report. Give the exact address of the dispersal to OEMC.
7. Revisit the spot of the dispersal order for the next eight (or where appropriate, twelve) hours that you are on duty. If the subjects of your dispersal order are within sight or sound of the spot when you return at any time during the eight (or where appropriate, twelve) hours following the order of dispersal, arrest the subjects and charge them with gang loitering. Probable cause for arrest exists when the subjects return to the same location and engage in the same activity for which the dispersal order was given.

Note: The arrest can be made by a different officer than the officer who gave the original order of dispersal, provided that the arresting officer has probable cause (i.e. their identity comports with information in the previous officer's Investigatory Stop Report) to believe that the arrestee is the same person who was given a prior order of dispersal and is in violation of that order. Such arrests require communication between officers on the same or different watches.

When should the ISR be completed?

Once the officer has reasonable articulable suspicion that either the gang ordinance is being violated and approaches the suspect(s) to confirm the officer's suspicions, the ISR will be completed. The officer will also give the dispersal order. For those who are not known gang members, you note the names of the known gang members with whom they were gang loitering within their Investigatory Stop Reports. Investigatory Stop Reports are only completed at the time of the dispersal order; you do not complete Investigatory Stop Reports for those you arrest. However, any *new* subjects encountered at the time of an arrest must receive a dispersal order and have an Investigatory Stop Report submitted for each of them.

Conclusion: In short, where you have articulable knowledge that a subject is a gang member and they are loitering with others in either a "Hot Spot" or a "High Level Gang Conflict Location" in order to establish control over the area, intimidate others, or conceal illegal activities, you may use the Gang Loitering Ordinance to aid in combating gang crime. And finally, it is most important when enforcing the Gang Ordinance that you have a strong, articulable basis to believe at least one of the subjects is a gang member and a strong, reasonable, articulable basis to believe they are attempting to establish control over the area, intimidate others, or conceal illegal activities.

The contents of this bulletin are furnished for informational use only and may not reflect current legal developments or address your situation. If you have questions regarding this topic or other legal questions, please call the Office of Legal Affairs at (312) 745-6115.



LEGAL BULLETIN #2012-02
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OFFICE OF LEGAL AFFAIRS
A Tool Against Drugs: Effective Use of the Narcotics-Related Loitering Ordinance

The Narcotics-Related Loitering Ordinance (section 8-4-017 of the Municipal Code of Chicago) is an effective tool in the fight against illegal drugs.

I. Narcotics-Related Loitering Ordinance Reminders

This ordinance requires that the prohibited conduct take place in a "Hot Spot" or a "High Level Gang Conflict Location."

The duration of dispersal orders are dependent on whether the Superintendent, or his appointee, designated the Hot Spot as an area associated with a Heightened Level of Violence, or the prohibited activity took place during specific days/hours in a High Level Gang Conflict Location. The initial dispersal orders are valid for either eight or twelve hours.

Hot Spots: Areas designated by the Superintendent in which special enforcement of these ordinances are determined to be necessary because loitering has enabled subjects to establish control over the area, intimidate others, or conceal illegal activities.

- Hot Spot designations expire at the end of a six-month period (31 March and 30 September).
- All High Level Gang Conflict Locations are Hot Spots for purposes of narcotics-related loitering.
- Dispersal orders for Hot Spots without a Heightened Level of Violence designation are valid for eight hours.

High Level Gang Conflict Locations: Areas in effect for one-week intervals which automatically become designated enforcement areas for the ordinances.

- High Level Gang Conflict Locations are found on the reverse side of the Department's Daily Bulletin by Area.
- All High Level Gang Conflict Locations become 12-hour dispersal areas commencing Fridays at 1700 hours and continuing through Sundays at 2330 hours, and then revert back to 8-hour dispersal areas.

Areas Associated with a Heightened Level of Violence: A Hot Spot or High Level Gang Conflict Location that is designated as a 12-hour dispersal area.

- Designated by the Superintendent or his designee.
- May, but need not be limited to, certain times of the day.

Penalties: Under the ordinances, any person who fails to obey a dispersal order is subject to a fine of not less than \$100.00 and not more than \$500.00 for each offense, or imprisonment for not more than six months, or both.

A *second* or subsequent offense will be punishable by a mandatory minimum sentence of not less than five days imprisonment.

Upon a *third* or subsequent conviction within a 12-month period, a court will, in addition to the penalties above, issue an order requiring the convicted person to refrain for at least 30 days, from gang or narcotics-related loitering within sight and sound of the location of the officer's latest order of dispersal. When such an order is entered by the court, that order will serve as fair notice to the offender, so that any further narcotics-related loitering in violation of that order will automatically subject the offender to arrest under the applicable ordinance *without requiring the officer to give a dispersal warning*.

II. Identifying "Narcotics-Related Loitering"

The ordinance does not prohibit membership in a gang. Nor does it prohibit a gang member from being in an area designated for enforcement under these ordinances. The ordinances do not prohibit anyone from engaging in lawful conduct in any area (including "collective advocacy" as defined by DSO 10-02-03). What the ordinance prohibits is "narcotics-related loitering" in designated enforcement areas known as "Hot Spots."

Narcotics-related loitering is defined by the ordinance as "remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to facilitate the distribution of substances in violation of the Cannabis Control Act or the Illinois Controlled Substances Act." A lookout or someone standing in the street, yelling "rocks"

in a Hot Spot in order to facilitate the sale of narcotics, is engaging in narcotics-related loitering.

III. A Quick Checklist

1. Is the area designated as a Hot Spot? Hot Spots are designated as follows:
 - Pursuant to DSO 10-02-02 ("Selection of Designated Enforcement Areas") for 6-month periods.
 - All High Level Gang Conflict Locations, designated on a weekly basis, are automatically Hot Spots for purposes of gang or narcotics-related loitering.
2. Is the Hot Spot a 12-hour dispersal area due to its association with a heightened level of violence?
 - If not, dispersal is eight hours.
 - Pursuant to DSO 10-02-02, all High Level Gang Conflict Locations are 12-hour dispersal Hot Spots commencing Fridays at 1700 continuing through Sunday at 2330 hours, and then revert back to 8-hour dispersal areas.
3. Is a subject engaging in narcotics-related loitering?
 - For narcotics-related loitering, only *one* person is required to be engaged in the prohibited conduct.
4. Recite a dispersal order as follows:
 - "You are engaging in loitering within an area in which such loitering is prohibited."
 - "You must disperse and remove yourselves from sight and sound of this spot."
 - "If you fail to promptly disperse, or if you engage in further loitering within sight or sound of this spot in the next eight (or where appropriate, twelve) hours, you will be arrested and charged with narcotics-related loitering. "
5. Ask for the subjects' identification and complete an Investigatory Stop Report for *each* subject, noting all factors that support the subject was in violation of the Narcotics-Related Loitering ordinance, the time of the dispersal order, and the names of the other persons dispersed. Failure to provide identification during the stop, in and of itself, is not a basis for an arrest or further detention. Indicate the refusal to provide identification in the narrative field.
6. Contact OEMC for an Event Number and record it on the Investigatory Stop Report. Give the exact address of the dispersal to OEMC.
7. Revisit the spot of the dispersal order for the next eight (or where appropriate, twelve) hours that you are on duty. If a subject of your dispersal order is within sight or sound of the spot when you return at any time during the eight (or where appropriate, twelve) hours following the order of dispersal, arrest the subject and charge the subject with narcotics-related loitering.

Note: The arrest can be made by a different officer than the officer who gave the original order of dispersal, provided that the arresting officer has probable cause to believe that the arrestee is the same person who was given a prior order of dispersal (i.e. their identity comports with information in the previous officer's Investigatory Stop Report) and is in violation of that order. Such arrests require communication between officers on the same or different watches.

When should the ISR be completed?

Once the officer has reasonable articulable suspicion that the narcotics ordinance is being violated and approaches the suspect to confirm the officer's suspicions, the ISR will be completed. The officer will also give the dispersal order. Probable cause for arrest exists when the subject returns to the same location and engages in the same activity for which the dispersal order was given.

Conclusion: In short, where you have articulable knowledge that a subject is soliciting or buying drugs and they are loitering in either a "Hot Spot" or a "High Level Gang Conflict Location," you may use the narcotics-related ordinance to aid in combating the distribution of narcotics. It is most important when enforcing the narcotics-related ordinance that you have a strong, articulable basis to believe that a subject is attempting to facilitate the distribution of narcotics.

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