



**LEGAL BULLETIN #2002-05
OFFICE OF LEGAL AFFAIRS**

NARCOTICS-RELATED LOITERING



Legal Flag:

The effectiveness of the Narcotics-Related Loitering Ordinance is directly related to an officer’s adherence to proper enforcement.

This LEGAL BULLETIN discusses Chicago’s Narcotics-Related Loitering Ordinance, chapter 8-4-017 of the Municipal Code. The aim is to ensure that Department members understand when and how to apply the ordinance.

Elements of the Ordinance

1. Whenever an officer observes *one or more persons*.....

The ordinance applies even if a single individual is present. No member of the group need be a gang member. Be aware that although closely related, the Narcotics-Related Loitering Ordinance is separate and distinct from the Gang Loitering Ordinance.

2.engaged in *narcotics-related loitering*.....

“Narcotics-related loitering” is defined within 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.”

Thus, the loiterer can be a lookout, a person standing nearby a cache of hidden drugs, someone actually in possession of drugs, or a person holding narcotics-related money. Any behavior that has a “purpose or effect” of facilitating the distribution of narcotics will qualify as narcotics-related loitering. Conversely, while behavior such as waiting for a bus, or a business to open, may initially seem suspect given the particular

area involved, observation of sufficient duration is required to rule out “innocent behavior,” which is not proscribed under the ordinance.

Accordingly, an officer must be able to articulate how the offender’s conduct facilitated the distribution of narcotics. The officer should be ready to testify as to his or her observations, experience, and knowledge of the area and narcotics transactions. Remember that a key to successful prosecution will be the reasonableness of the officer’s determination that the offender was engaged in behavior consistent with established patterns of narcotics-related loitering which contributed to the area’s designation for enforcement.

3.in any *public place* designated for enforcement of this (ordinance).....

“Public place” means the public way and any other location open to the public, whether publicly or privately owned.

Officers must remember that enforcement of this ordinance is strictly limited to those areas designated for enforcement; behavior which constitutes narcotics-related loitering is *not* prohibited when conducted beyond an area designated for enforcement.

4.the officer shall: (i) *inform all such persons that they are engaged in loitering within an area in which such loitering is prohibited*.....

This is the first step in the dispersal order. Each person must be informed by an officer that his or her conduct is prohibited as to that particular

location.

5.(ii) order all such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued;.....

The parties must not only disperse, they must remove themselves from within sight *and* sound of the location. "Sight and hearing" are not defined within the ordinance, but may be interpreted as to their every day meaning. The sight and hearing of an average person, without the use of any sensory enhancements, shall suffice as a guideline.

6.and (iii) inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further narcotics-related loitering within sight or hearing of the place at which the order was issued during the next three hours.

Thus, the parties are subject to arrest if they either fail to promptly disperse, or if they return *and re-engage in narcotics-related loitering* within three hours of the dispersal order.

Upon informing a person that his or her behavior is unlawful, that it must immediately cease and must not be resumed within a specified time period and location, the requirement of notice, a key element of prosecution, is satisfied as to the affected parties. Officers should be prepared to recite the elements of the dispersal order as given, during trial testimony, and the response of the parties ordered to disperse.

Elements of a Successful Prosecution

As indicated above, there are several important keys to a successful narcotics-loitering prosecution officers must be aware of:

1. Articulate that the conduct constituted narcotics-related loitering.

Officers must be prepared to articulate how the behavior was reasonably indicative of narcotics-loitering and how such behavior was consistent with established patterns of narcotics distribution in the area. Officers should be prepared to provide

testimony of their experience, observations, and knowledge. Such information lends credibility to the officer's determination that narcotics-related loitering occurred, and establishes that the determination was reasonable.

2. Articulate proper notice was provided the arrestee.

Officers should be prepared to testify that the arrested party was properly informed his or her conduct was unlawful as to the particular location and within sight or sound thereof. In addition, the officer must be able to testify that the arrested party was informed that a return to the area and re-engagement in the unlawful conduct within three hours of the original order would subject the party to arrest.

Summary

The Narcotics-Related Loitering Ordinance is a powerful weapon in combating street narcotics transactions, however the effectiveness of the ordinance is directly related to an officer's preparedness. Officers should familiarize themselves with narcotics-related activity within their area of patrol and remain alert for suspect conduct within areas designated for enforcement of the ordinance. Observation of the suspected behavior must be conducted for a period of time sufficient to eliminate any "innocent" explanation for the person's actions. Once reasonably certain that the conduct constitutes narcotics-related loitering, officers must make the parties aware that their behavior is unlawful and may subject them to arrest if they either refuse to cease or return to the sight or sound of the area within three hours, and re-engage in narcotics-related loitering. In the event an arrest is effected, the officer must be prepared to articulate the basis for the determination that the conduct constituted narcotics-related loitering. In addition, the officer must be prepared to recite the elements of notice given to the persons receiving the dispersal order.

This Bulletin was prepared by Legal Officer Gary Feffer, an attorney with the Office Of Legal Affairs.
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