

Sec. 16-29.2. - Loitering for the purposes of engaging in drug-related activity.

(a) *Legislative findings and intent.*

- (1) The governing authority of the city finds that the increase throughout the city of loitering in public places for the purposes of unlawful drug-related activity, or in effect, open air drug dealing, has become extremely disturbing and disruptive to residents and businesses. This activity has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear and intimidation and disorder.
  - (2) Loitering for the purposes of unlawful drug-related activity usually includes a dominate presence of those persons engaging in such activity by approaching pedestrians, encouraging the presence of vehicle and pedestrian traffic for the purpose of unlawful drug-related activity in and out of residential areas, to or from motor vehicles or in parking lots. Such presence carries with it an implicit threat to visitors and residents to avoid the use of these public places. The avoidance of such places by law-abiding citizens leads to an increased opportunity for the unlawful criminal activity and furthers the decay of the neighborhood.
  - (3) The city has a strong interest in ensuring that citizens feel safe in their neighborhoods, in safeguarding the economic vitality of its business districts, and in preserving public places for their intended purposes.
  - (4) This section is not intended to limit any person from exercising their right to assemble or engage in any other constitutionally protected activity. This section applies to all persons with the requisite intent to induce another to engage in unlawful drug-related activity.
- (b) It shall be unlawful for any person to loiter, as defined in this chapter, in or near any thoroughfare, place open to the public, or any public or private place in order to induce, entice, solicit or procure another to engage in unlawful drug-related activity.
- (1) The term "unlawful drug-related activity" means conduct which constitutes an offense defined in O.C.G.A. § Tit. 16, Ch. 13, as amended; conduct which constitutes complicity to commit such an offense by, for example, acting as a lookout; or conduct which constitutes conspiracy to commit such an offense.
  - (2) The term "public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.
- (c) A police officer who observes a person loitering under circumstances that provide the officer with a reasonable basis to believe unlawful drug-related activity is occurring or has occurred may detain the individual for the purpose of investigating whether the person is in violation of this section.
- (d) A police officer may not detain an individual under this Code section unless both of the following elements are satisfied:
- (1) The person engages in one or more of the following behaviors:
    - a. The person passes or receives from a passer-by, bystander or person in a motor vehicle money, objects having characteristics consistent with controlled substances, and/or an envelope, bag or other container that could reasonably contain such objects or money;
    - b. The person conceals or attempts to conceal an object having characteristics consistent with controlled substances and/or an envelope, bag, clear plastic baggie or other container that could reasonably contain such objects;

- c. The person flees or obscures himself upon seeing law enforcement officers;
- d. The person communicates the fact that law enforcement officers are in the vicinity to another person in a manner that suggests that the communication is a warning; or
- e. The officer observes the person in possession of any instrument or object that is designed or marketed as useful primarily for one or more of the following purposes:
  - 1. To inject, ingest, inhale or otherwise introduce marijuana or a controlled substance into the human body;
  - 2. To enhance the effect of marijuana or a controlled substance on the human body;
  - 3. To test the strength, effectiveness, or purity of marijuana or a controlled substance;
  - 4. To process or prepare marijuana or a controlled substance for introduction into the human body;
  - 5. To conceal any quantity of marijuana or a controlled substance; or
  - 6. To contain or hold marijuana or a controlled substance while it is being introduced into the human body.

(2) One of the following factors applies:

- a. The officer is aware that, within the preceding three years, the person has been convicted of an offense defined in O.C.G.A. § Tit. 16, Ch. 13, or of complicity to commit such an offense, or of conspiracy to commit such an offense with in the preceding three years;
  - b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related activity at a specific location, and the person who is found loitering is doing so at a time, in a place or in a manner that is otherwise consistent with the details provided in the tip;
  - c. The person is loitering in an area that has been designated a notorious drug-related activity area, as defined in subsection (g) of this section;
  - d. The person is in an area where he is prohibited by court order from being, and the officer is aware of the court order;
  - e. The officer knows that the person has been previously convicted of loitering with the intention of engaging in unlawful drug-related activity under this section; or
  - f. Any vehicle the person has approached or communicated through is registered to an individual who has been convicted of an unlawful drug-related activity in the previous three years, and the officer is aware of that fact.
- (e) No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be convicted of violating this section if it appears at trial that the explanation given at the scene was true and disclosed a lawful purpose.
- (f) If a police officer who detains a person pursuant to this Code section develops probable cause to believe that the person is in violation of this Code section, the officer may order the person to immediately leave the location and to remain at least 500 feet away from the location for at least five hours. In the event that person refuses to comply with such an order, the police officer may arrest the person and charge him with a violation of this section.
- (g) The City may, by written directive, clearly and publicly designate areas of the City that are frequently associated with excessive incidents of drug-related offenses, including offenses involving controlled substances, as defined

in O.C.G.A. § Tit. 16, Ch. 13, or marijuana, subject to any requirements of state law.

(Ord. No. 2018-10-03, § 16-29.2, 10-15-2018)