



LEGAL DIVISION
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DATE: October 19, 2020
TO: City Council
CC: Diane Wolfe Marlin, Mayor; Carol Mitten, City Administrator,
FROM: James L. Simon, City Attorney

RE: Amendments to Cannabis and Drug Paraphernalia Ordinances.

In 2008, the City Council adopted Ordinance No. 2008-09-103 which provided that, henceforth, the possession and use of cannabis in any form and its associated drug paraphernalia would constitute ordinance violations. The codification of Ordinance No. 2008-09-103 can be found at UCC Secs. 15-66 and 15-67. In addition, in 2010 the City Council adopted an aggravated public nuisance ordinance (Ord. No. 2010-02-011 that has since been amended by Ordinance Nos. 2011-10-117 and 2015-10-109. The aggravated public nuisance ordinance is codified at UCC Sec. 15-80. The nuisance ordinance classifies the possession and use of cannabis as an aggravated public nuisance.

More recently, the State of Illinois legalized the possession and use of cannabis for medicinal purposes and, thereafter, legalized the possession and use of up to 30 grams of cannabis for adult use generally. Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.) (formerly known as the Compassionate Use of Medical Cannabis Pilot Program Act); the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.). In addition to legalizing the possession and use of cannabis, these acts also legalized possession of paraphernalia used for the introduction of cannabis into the human body.

The recent state legislation regarding cannabis and its associated paraphernalia include home rule preemption provisions that prohibit home rule units of local government from enacting and/or enforcing ordinances that are more restrictive than state law. 410 ILCS 130/140; 410 ILCS 705/55-25, 55-90. Thus, UCC Sections 15-66, 15-67 and 15-80 must be amended to reflect the current status of state law. The attached proposed ordinance would bring the City's ordinances concerning possession and use of cannabis and its associated paraphernalia and what constitutes an aggravated public nuisance in line with current state law.

The Legal Division recommends that the City Council adopt the Ordinance included with this memorandum.

ORDINANCE NO. 2020-10-057

AN ORDINANCE AMENDING CERTAIN URBANA CITY CODE SECTIONS

(To Reflect Changes in Laws Governing Cannabis and Cannabis Paraphernalia Use and Possession)

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the Cannabis Control Act (720 ILCS 550/1 *et seq.*) provides that it is unlawful for any person to knowingly possess cannabis and that possession of more than 30 grams of cannabis constitutes a felony (720 ILCS 550/4); and

WHEREAS, the Illinois Controlled Substances Act (720 ILCS 570/1) provides that, unless otherwise authorized by the said Act, it is unlawful for any person to knowingly possess a controlled or counterfeit substance and that such violation (other than an anabolic steroid) will constitute a felony (720 ILCS 570/402); and

WHEREAS, the Drug Paraphernalia Control Act (720 ILCS 600/1 *et seq.*) declares that the knowing possession of an item of drug paraphernalia with the intent to use it in order to ingest, inhale, or otherwise introduce cannabis or a controlled substance into the human body or for preparing cannabis or a controlled substance for such use constitutes a misdemeanor; and

WHEREAS, the City Council adopted a landscape management ordinance (Ord. No. 2001-04-040, as amended by Ord. Nos. 2011-11-134, 2016-08-067) (UCC Sec. 11-62; *et seq.*) that prohibits the growing of certain types of nuisances including cannabis; and

WHEREAS, the City Council adopted a cannabis ordinance (Ord. No. 2008-09-103) (UCC Sec. 15-66) that prohibits the possession of cannabis; and

WHEREAS, the City Council adopted an ordinance (Ord. No. 2008-09-103, as amended by Ord. No. 2016-05-036) (UCC Sec. 15-67) that, *inter alia*, prohibits the possession of drug paraphernalia with intent to use it in ingesting, inhaling, or otherwise introducing cannabis into the human body or in preparing cannabis for that use; and

WHEREAS, the City Council adopted an aggravated public nuisance ordinance (Ord. No. 2010-02-011, as amended by Ord. Nos. 2011-10-117 and 2015-10-109) (UCC Sec. 15-80) that classifies the possession and use of cannabis as an aggravated public nuisance; and

WHEREAS, since adoption of the above-referenced ordinances and their amendments, the Illinois General Assembly has adopted legislation and the Governor of the State of Illinois has signed into law the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 *et seq.*) (formerly known as the Compassionate Use of Medical Cannabis Pilot Program Act) and the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et seq.*) that, *inter alia*, legalizes the possession and use of cannabis and cannabis paraphernalia in the manner provided for in the Compassionate Use of Medical Cannabis Program Act and the Cannabis Regulation and Tax Act; and

WHEREAS, given the enactment of the Compassionate Use of Medical Cannabis Program Act and the Cannabis Regulation and Tax Act, the City Council deems it necessary and appropriate to amend the above-identified ordinances in the manner hereinafter provided; and

WHEREAS, the City Council finds that the public health, safety, and welfare will best be protected by bringing the above-identified ordinances in compliance with the Compassionate Use of Medical Cannabis Program Act and the Cannabis Regulation and Tax Act.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

The following sections of the Urbana City Code shall be and hereby are amended as more fully provided on Exhibit A appended hereto and incorporated herein with “strike-through” language indicating language to be deleted and “underlined” language indicating language to be added.

Chapter 11, “Health and Sanitation”, Article IV, “Nuisances”, Division 3, “Landscape Management”, Section 11-62, “Nuisances, specifically defined.”

Chapter 15, “Miscellaneous Offenses and Provisions”, Article IV, “Offenses Affecting Public Health, Safety and Decency,” Division 1, “Generally”, Section 15-66, “Possession of cannabis prohibited.”

Chapter 15, “Miscellaneous Offenses and Provisions”, Article IV, “Offenses Affecting Public Health, Safety and Decency”, Division 1, “Generally”, Section 15-67, “Drug paraphernalia control.”

Chapter 15, “Miscellaneous Offenses and Provisions”, Article IV, “Offenses Affecting Public Health, Safety and Decency”, Division 3, “Nuisances”, Section 15-80, “Aggravated public nuisance.”

Chapter 23, “Local Traffic Control”, Article XIX, “Towing”, Section 23-277, “Vehicles used in the commission of certain offenses.”

Section 2.

Those sections, subsections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance, as indicated on Exhibit A appended hereto and made a part hereof, are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance, including Exhibit A appended hereto and made a part hereof. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court nor shall it apply retroactively to any cannabis and/or cannabis-related offense that was committed or charged prior to the effective date of this Ordinance. Further, this Ordinance shall not be construed to affect any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance. Nothing herein shall be deemed, construed or interpreted as providing any direction insofar as how the City enforces and charges offenses under the State of Illinois Cannabis Control Act (720 ILCS 550/1 *et seq.*).

Section 4.

This Ordinance shall become effective immediately.

Section 5.

The City Clerk is directed to take such steps as are reasonable and appropriate to incorporate or arrange for incorporation of the above-referenced changes, including those reflected on Exhibit A appended hereto and made a part hereof, into the Urbana City Code as maintained by the City and as hosted by MuniCode.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Diane Wolfe Marlin, Mayor

EXHIBIT A

Sec. 11-62. - Nuisances, specifically defined.

Under this division, public nuisances shall include, but not be limited to the following acts, conducts, omissions, conditions or things found on any premises:

- (a) Vegetation, trees or shrubs which may reasonably be expected to injure other forms of life such as: jimson weed (*Datura stramonium L.*), poison hemlock (*Conium maculatum L.*), poison oak (*Rhus toxicodendron L.*), poison sumac (*Rhus vernix L.*), or poison ivy (*Rhus radicans L.*);
- (b) The occurrence of plants defined as noxious plants in the Illinois Noxious Weed Law: Johnson grass and all perennial sorghums (*Sorghum halepense (L.) Pers.*), Canada thistle (*Cirsium arvense (L.) Scop.*), musk thistle (*Carduus nutans L.*), marijuana (*Cannabis sativa L.*) (except as provided in subsection (g)(4) of this section), perennial sow thistle (*Sonchus arvensis L.*), giant ragweed (*Ambrosia trifida L.*), and common ragweed (*Ambrosia artemisiifolia, L.*);
- (c) Vegetation or shrubs which aids in the breeding or harboring of rats, or other vermin, or insects which may reasonably be expected to injure or harm human life;
- (d) Vegetation, trees and shrubs which hinders the expedient removal of municipal waste or any nuisance abatement measures;
- (e) Vegetation, trees or shrubs, or portions thereof, constituting an imminent hazard;
- (f) Vegetation, shrubs or trees, except city owned and maintained trees, which prevent the free and unobstructed travel of pedestrians within a sidewalk corridor, such corridor is defined as being the full horizontal width of a paved sidewalk and seven (7) feet in vertical height above the sidewalk, or which otherwise negatively affect (1) the free and unobstructed travel upon alleys, streets, or bicycle lanes; (2) traffic or pedestrian safety by impairing the visibility of pedestrians or vehicle operators; or (3) a vehicle operator's ingress or egress to a driveway.
- (g) The occurrence of vegetation in excess of eight (8) inches in height, on premises except the following:
 - (1) Trees, shrubs, vines and annual and perennial herbaceous ornamental plants which are maintained in such a manner so as to not be considered a nuisance as provided herein;
 - (2) Edible vegetation that constitutes part of a managed crop or vegetable garden, provided such crop or vegetable garden is not considered a nuisance as provided herein;
 - (3) ~~Vegetation allowed under the managed landscape plan permit;~~

(43) Land zoned agriculture (AG) or conservation-recreation-education (CRE) as shown and designated on the official zoning map of the city, provided however, that the portions of those lands exempted by this subsection which are within twelve (12) feet of the property line or the right-of-way of a street or alley, must be maintained at a height of eight (8) inches or less;

(54) Marijuana (*Cannabis sativa*) grown in a manner permitted by the Cannabis Regulation and Tax Act (410 ILCS 705/1-1, et seq.) or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

(h) Vegetation or shrubs which is aggressively invasive, or by way of growth or maturity clearly encroach upon neighboring property owners property, such as: Japanese honeysuckle (*Lonicera japonica*), ribbongrass (*Pharlaris arundinacea*) or purple loosestrife (*Lytbrum salicaria*);

(i) Vegetation, tree or shrub debris, or accumulations thereof, which by reason of the manner, location, or condition of such results in visual blight or constitutes a health or safety concern.

Violation(s) of this section is declared to be a class 1 offense.

Sec. 15-66. - Possession of cannabis prohibited.

(a) Cannabis shall have the same meaning as provided in section 1-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/1-10).~~mean 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 the sterilized seed of such plant which is incapable of germination.~~

(b) No person shall knowingly possess or consume cannabis, or any product or substance containing cannabis or any derived from cannabis unless authorized otherwise legally permitted to do so pursuant to the Cannabis Control Act Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.), as amended from time to time.

(c) Any person who violates this section shall be subject to a fine as provided in the minimum fine schedule for certain violations adopted by the city council by ordinance.

Sec. 15-67. - Drug paraphernalia control.

(a) Definitions.

(1) Cannabis shall ~~time~~ have the same meaning as provided in section 1-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/1-10), ~~have the meaning ascribed to it in section 15-66 of this article, as amended from time to~~

(2) *Controlled substance* shall have the meaning ascribed to it in section 102 of the Illinois Controlled Substances Act, 720 ILCS 570/100 *et seq.*, as amended from time to time, as if that definition were incorporated herein.

(3) *Drug paraphernalia* shall mean all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in section 10 of the Methamphetamine Control and Community Protection Act, which are intended to be used unlawfully 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 ~~methamphetamine~~ cannabis or a controlled substance in violation of the ~~Cannabis Control Act~~, the Illinois Controlled Substances Act (720 ILCS 570/101 et seq.); or the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 et seq.), as these acts are amended from time to time.

(4) *Cannabis paraphernalia* shall have the same meaning as provided in section 1-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/1-10).

(5) Drug paraphernalia and cannabis paraphernalia shall include but shall not be limited to:

- a. Water pipes;
- b. Carburetion tubes and devices;
- c. Smoking and carburetion masks;
- d. Miniature cocaine spoons and cocaine vials;
- e. Carburetor pipes;

- f. Electric pipes;
- g. Air-driven pipes;
- h. Chillums;
- i. Bongs;
- j. Ice pipes or chillers;
- k. Any item whose purpose, as announced or described by the seller, is for use in violation of this Act;
- l. Any item which is defined as drug paraphernalia in the Drug Paraphernalia Control Act (720 ILCS 600/1 et seq.).

(b) *Possession of drug paraphernalia prohibited.* No person shall knowingly possess an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing a controlled substance into the human body or in preparing ~~cannabis~~ or a controlled substance for that use, unless otherwise exempt under subsection (d) of this section.

(c) Sale of cannabis paraphernalia prohibited. No person shall knowingly sell an item of cannabis paraphernalia unless otherwise authorized to do so as provided in the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.).

~~(e)~~ *Exemptions.* This section shall not apply to the following:

(1) A person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act, 720 ILCS 635/0.01 et seq., as amended from time to time.

(2) A person who is legally permitted to possess or sell cannabis paraphernalia pursuant to the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.), as those acts are amended from time to time. Items marked for use in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching or chemical analysis and not for sale or personal use.

(3) Items marketed for, or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco

or any other lawful substance. Items exempt under this subsection include, but are not limited to, garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette-rolling papers.

(4) Items described in subsection (a)(5) that are marketed for decorative purposes, where such items have been rendered completely inoperable or incapable of being used as drug paraphernalia.

~~(5) Items which are necessary for ingesting, inhaling, or otherwise introducing medical cannabis into the human body pursuant to a lawful prescription issued pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.~~

~~(6) Items which are used in the operation of a medical cannabis cultivation center which is registered by the Illinois Department of Agriculture pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.~~

~~(7) Items which are used in the operation of a medical cannabis dispensing organization which is registered by the Illinois Department of Financial and Professional Regulation to dispense medical cannabis pursuant to Compassionate Use of Medical Cannabis Pilot Program Act as amended from time to time.~~

~~(d)~~ *Considerations for trier of fact.* In determining whether or not a particular item is an item of drug paraphernalia, as defined in subsection (a)(3) or is an item exempt under subsection (d) of this section, the trier of fact may consider, in addition to all other logically relevant factors and facts, the following:

- (1) The general, usual, customary, and historical use to which the item involved has been put;
- (2) Expert evidence concerning the ordinary or customary use of the item;
- (3) Descriptive materials accompanying the object that explain or depict its use;
- (4) National and local advertising concerning its use;
- (5) 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;
- (6) The manner, place, and circumstances in which the item is possessed;
- (7) Statements by an owner or by anyone in control of the object concerning its use;

(8) 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 substance or cannabis; or

(9) The proximity of the object to ~~cannabis or~~ controlled substances.

~~(10) The existence of any residue of cannabis or controlled substances on or in the object.~~

Notwithstanding anything to the contrary contained in subsection (d) of this section, possession of cannabis paraphernalia in a manner permitted by the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et seq.*) and/or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 *et seq.*) shall not be considered negatively or as unlawful by the trier of fact.

~~(e)~~ *Penalties.*

(1) *Forfeiture.* All unlawfully possessed cannabis paraphernalia and drug paraphernalia as defined subsections (a)(3) and (4) of this section, unless otherwise exempt as provided in subsection (d) of this section, shall be subject to forfeiture as provided in 720 ILCS 550/12 and 720 ILCS 570/505 as amended from time to time.

(2) *Fines.*

~~a. Any person who is in possession, custody or control of drug paraphernalia which is used, has been used, or is intended for use to personally ingest, inhale or otherwise introduce cannabis into the human body shall be subject to a cannabis paraphernalia minimum fine as provided in the minimum fine schedule for certain violations (section 1-18) as amended from time to time by city council ordinance.~~

~~b. Any person who is in possession, custody or control of drug paraphernalia which is used, has been used, or is intended 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 other than cannabis and which would otherwise be classified as a misdemeanor violation of the Illinois Controlled Substances Act or the Methamphetamine Control, as amended from time to time, shall be subject to a controlled substances paraphernalia fine as provided in the minimum fine schedule for certain violations ([section] 1-18) as amended from time to time by city council ordinance.~~

Sec. 15-80. - Aggravated public nuisance.

(a) *Definitions.*

(1) The following words or phrases shall, when used in this article, have the following meanings:

a. *Cannabis* ~~means any substance as defined in Section 3(a) of the Illinois Control Cannabis Control Act, 720 ILCS 550/1 et seq.~~ shall have the same meaning as provided in section 1-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/1-10).

b. *Commit or commission* means knowingly causing, allowing, aiding or concealing the fact of such act or activities.

c. *Contact* means any communication made by a tenant, landlord, guest, neighbor, or other individual to police or other emergency services.

d. *Controlled substance* means any substance as defined in Article II of the Illinois Controlled Substance Act (~~720 ILCS 570/201 et seq.~~).

e. *Deliver or delivery* means the actual, constructive or attempted transfer of possession of a controlled substance, or cannabis (except where permitted by the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) or the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.)) with or without consideration, whether or not there is an agency relationship.

f. *Dwelling* means a house, apartment building, mobile home, trailer or other structures used or intended for use for human habitation, and includes common areas within the structure which houses more than one (1) dwelling unit.

g. *Dwelling unit* means one (1) or more rooms, designated occupied or intended for occupancy as separate living quarters, for the exclusive use of a person or persons.

h. *In or on the premises of any dwelling* means a dwelling or the area within the boundary lines of any real property of the same ownership on which such dwelling is located.

i. *Knowledge* means a person knows, or acts knowingly or with knowledge of:

1. The nature or attendant circumstances of his/her conduct, described by the section defining the offense, when he/she is consciously aware that his/her conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

2. The result of his/her conduct, described by the section defining the offense, when he/she is consciously aware that such result is practically certain to be caused by his/her conduct.

3. Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a section using the latter term, unless the section clearly requires another meaning.

j. *Manufacture* shall have the same meaning as set forth in Section 102(z) of the Illinois Controlled Substance Act, 720 ILCS 570/~~204~~100 *et seq.*

k. *Methamphetamine* means any substance as defined in Section Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 *et seq.*

l. *Negligence* means a person is negligent, or acts negligently, when he/she fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, described by the section defining the offense; and such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.

m. *Occupant* means any person who lives in or has possession or holds an occupancy interest in a dwelling, dwelling unit or real property, or any person residing or frequenting the premises of the dwelling with the actual or implied permission of an owner, tenant or lessee. For purposes of this division, the term "occupant" shall also include employees, patrons and clients of real property.

n. *Owner* means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

o. *Recklessness* means a person is reckless or acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the section defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in that situation. An act performed recklessly is performed wantonly, within the meaning of the section using the latter term, unless the section clearly requires another meaning.

(2) *Aggravated public nuisance.*

a. *Nuisance defined* . An "aggravated public nuisance" is:

1. A dwelling, dwelling unit or real property;
2. Where the owners or occupant of the dwelling, dwelling unit or real property conduct or commit the following activities within a dwelling unit, on the premises of a dwelling or real property, or within one hundred (100) feet of the property line of the premises of the dwelling, dwelling unit or real property of which the owner or occupant has control within a three-hundred-sixty-five-day period:
 - (i) Two (2) or more forcible felonies, with the exception of state or federal criminal sexual offenses or crimes of sexual violence; or
 - (ii) Two (2) or more state or federal criminal offenses related to the illegal sale, possession or manufacture of controlled substances, methamphetamine, ~~cannabis~~—or drug paraphernalia; or
 - (iii) Two (2) or more violations of 720 ILCS 5/11 *et seq.*, entitled "Prostitution"; or
 - (iv) Two (2) or more violations of 720 ILCS 5/11 *et seq.*, entitled "Solicitation"; or
 - (v) Two (2) or more violations of 720 ILCS 5/11 *et seq.*, entitled "Keeping a Place of Prostitution"; or
 - (vi) Two (2) or more violations of 720 ILCS 5/28 *et seq.*, entitled "Illegal Gambling" or "Keeping or Maintaining a place of Illegal Gambling"; or
 - (vii) Two (2) or more violations of 720 ILCS 5/20-1 *et seq.*, entitled "Arson"; or
 - (viii) Five (5) or more of any combination of the following:
 1. Any of the offenses described in paragraphs (i), (ii), (iii), (iv), (v), (vi), and (vii) above;

2. Any of the following offenses as defined in the Illinois Criminal Code: Disorderly conduct; battery; assault; aggravated assault; criminal damage to property; mob action; unlawful use of weapons; street gang terrorism; and/or any offenses as defined in the Illinois Criminal Code and/or the City of Urbana Code of Ordinances as "animal cruelty."

(ix) Five (5) or more violations of Chapter 16 of the Code of Ordinances regulating noise within or on the premises of a single dwelling, dwelling unit or real property.

Notwithstanding anything to the contrary contained in subsection (a)(2) of this section, the purchase, possession, handling, and/or use of cannabis or cannabis paraphernalia in accordance with the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.) or the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.) shall not constitute or be considered an aggravated public nuisance.

b. *Violation.* No owner of real property shall recklessly, knowingly, or negligently allow or permit an aggravated public nuisance or allow or permit an aggravated public nuisance to exist upon real property or part thereof, including individual dwelling units, owned by that person.

(b) *Written notice of aggravated public nuisance.* Before the filing of a complaint alleging a violation of subsection (a)(2)b., "violation", above, the city attorney shall, by certified mail, provide to the owner of the place at which the aggravated public nuisance is located, or the agent of the owner, written notice of the following:

(1) That an aggravated public nuisance, as defined in this article, exists at the place specified in the notice;

(2) That the owner of the place at which the aggravated public nuisance is located, or the owner's agent has twenty-one (21) days from the mailing of the notice to schedule and appear at the city attorney's office at the address provided in the notice for a nuisance abatement conference with said city attorney or said attorney's representative and other appropriate city staff to discuss the possibility of entering into a written agreement to take action to abate the nuisance; and

(3) That failure to appear at the city attorney's office for said conference within the time indicated may result in the city attorney filing a complaint alleging a violation under subsection (a)(2)b.

(c) *Nuisance abatement conference.* At the nuisance abatement conference, the city attorney or said attorney's representative, any other appropriate city staff members, and the property owner or owner's agent, shall discuss the facts constituting the aggravated public nuisance and shall attempt to agree on specific actions that the property owner or the owner's agent can take to abate said aggravated public nuisance. At said conference, the city attorney or said attorney's representative shall provide to the property owner or the owner's agent available information from investigations by employees of the city regarding the commission of acts constituting the aggravated public nuisance, including the identity and last known addresses of individuals who have committed or witnessed the commission of said acts.

(d) *Nuisance abatement agreement.*

(1) At the conclusion of the nuisance abatement conference, the city attorney or said attorney's representative shall submit to the property owner or his or her agent a proposed written nuisance abatement agreement. If at the conclusion of the conference the city attorney or said attorney's representative needs more time to draft said proposed nuisance abatement agreement, then a follow-up conference shall be scheduled with the property owner or property owner's agent within ten (10) days of the initial conference for submittal and review of the completed proposed nuisance abatement agreement.

(2) Any nuisance abatement agreement under this division shall include a list of specific actions and a specific schedule of deadlines for said actions to abate the aggravated public nuisance. It may also include provisions for a periodic assessment of the agreement's effectiveness, and procedures for modification to the agreement. A nuisance abatement agreement or any written modification to said agreement may impose conditions or requirements on the property owner for a period of up to twenty-four (24) months from the date the original agreement is entered into by the property owner or owner's agent and the city. A nuisance abatement agreement may impose one (1) or more of the following conditions or requirements on the property owner:

a. Eviction of identified individuals from the dwelling, dwelling unit or real property in question based upon criminal activity identified in subsections (a)(2)(a)(2)(i) through (ix) committed by those identified individuals.

b. Written notification from the property owner to an identified individual or individuals that they are prohibited from entering onto the property that is the location of the aggravated public nuisances based upon the criminal activity identified in subsections (a)(2)(a)(2)(i) through (ix) committed by the particular individual or individuals.

c. Utilization of written leases containing a provision or provisions requiring eviction of a tenant or lessee for the commission of criminal activity identified in subsections (a)(2)(a)(2)(i) through (ix) by that tenant or lessee.

d. The completion of improvements upon the property which have the impact of mitigating crime, including but not limited to the erection of fences, installation of security devices upon the entrances and/or increased lighting.

e. Any other reasonable conditions or requirements designed to abate the aggravated public nuisance.

(3) Once a proposed written nuisance abatement plan or written modification to nuisance abatement plan has been submitted to the property owner or the owner's agent, said property owner or owner's agent shall have three (3) business days to review it and enter into said agreement by signing it and returning it to the office of the city attorney.

(e) *Filing a complaint.* The city attorney may file a complaint alleging a violation of subsection (a)(2)b. under any of the following circumstances:

(1) The owner or his or her agent does not schedule and attend a conference with the city attorney or said attorney's representative within the time period prescribed in subsection (b), "written notice of aggravated public nuisance."

(2) The owner or his or her agent fails to sign a proposed written nuisance abatement agreement or proposed written modification to said agreement within the prescribed time period set forth in subsection (d)(3), "nuisance abatement agreement."

(3) The owner or the owner's agent subsequently fails to comply with any conditions or requirements set forth in a nuisance abatement agreement, including any prescribed deadlines for taking particular actions.

(f) *Evidence.*

(1) *State of mind.* In any proceeding brought under subsection (a)(2) alleging an aggravated public nuisance, the court shall consider at least the following in determining whether or not the defendant has recklessly, knowingly or negligently allowed or permitted an aggravated public nuisance to exist:

a. Evidence of notice by the city or by any person to the defendant, notifying the defendant of the existence of any of the activities set forth in subsection (a)(2).

b. Actions taken by the owner to mitigate criminal activity or the existence of nuisances upon and in the vicinity of the property.

c. Actions taken by the owner to remove persons who commit criminal offenses or nuisances from tenancy or occupancy or to prohibit the entry of such persons onto the premises of the dwelling, dwelling unit or real property.

d. Actions taken by the owner to respond to notices sent by the city or residents.

(2) *Evidence of commission.* Proof the commission of any of the offenses or existence of any of the circumstances set forth in subsection (a)(2) shall be by a preponderance of the evidence.

(3) *Convictions.* The finding of or judgment of guilty in any court against an individual for a crime enumerated in subsection (a)(2) shall be prima facie evidence of the commission.

(g) *Action to abate; penalties.* In addition to prosecution of the offense defined by subsection (a)(2) or pursuing any other remedies available under this Code, the city attorney, upon receipt of reliable information that any real property within the corporate limits of the city is being maintained as an aggravated public nuisance, may prosecute an action for equitable relief, in the name of the city, to abate the nuisance and to enjoin any person who shall own, rent, or occupy the real property, dwelling or dwelling unit in question from using or permitting its use contrary to the provisions of subsection (a)(2).

(h) *Judgment.* No judgment finding a violation under subsection (a)(2)b., "violation", shall be entered against an owner if an owner or his or her agent has, in good faith, endeavored to prevent the nuisance. An owner or agent who has complied with all conditions or requirements of a nuisance abatement agreement and any modifications to said agreement, as defined in subsection (d), "nuisance abatement agreement", shall be deemed to have endeavored in good faith to prevent the nuisance.

(i) *Remedies.*

(1) Upon a finding of guilt under subsection (a)(2)b., "violation", the court may, in addition to other remedies permitted by this Code, impose a term of court supervision or conditional discharge for a term of up to three (3) years, conditioned on any or all of the following:

a. The completion of improvements upon the property which have the impact of mitigating crime including, but not limited to, the erection of fences, installation of security devices upon the entrances or increased lighting;

b. Requirement of a written lease for occupants which includes provisions requiring eviction for criminal activity;

c. Posting a cash bond of no less than the minimum fine and up to the amount of the maximum fine for the period of court supervision or conditional discharge imposed by the court, such bond to be retained by the city in an interest bearing account and conditioned on successful completion of the period of court supervision or conditional discharge;

d. Any other condition reasonably related to the objective of abating the aggravated public nuisance.

(2) The court shall, upon a finding of guilt with respect to subsection (a)(2)b., "violation," fine the defendant a sum of no less than one hundred dollars (\$100.00) per day that the nuisance existed, beginning on the date that the defendant first received notice of the conditions which constitute an aggravated public nuisance under subsection (b), "written notice of aggravated public nuisance."

(j) *Performance review.* The legal department of the city shall conduct a thorough evaluation of this division eighteen (18) months after its effective date. The review process shall include public input and comment on the aggravated public nuisance ordinance's strengths, weaknesses and effectiveness. The department shall tender a written report to the mayor and council summarizing its findings and recommendations. This report shall be tendered in a timely manner but not later than three (3) months after the commencement of the review and evaluation process.

(k) *Protection.*

(1) No municipality shall enact or enforce an ordinance or regulation that penalizes tenants or landlords based on:

a. Contact made to police or other emergency services, if (i) the contact was made with the intent to prevent or respond to domestic violence or sexual violence; (ii) the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or (iii) the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

b. An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises; or

c. Criminal activity or a local ordinance violation occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual

violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member, guest, or other party.

(l) *Compliance with state law.* This section shall not be construed, interpreted or enforced in any manner which conflicts with Illinois Municipal Code section 1-2-1.5 (65 ILCS 5/1-2-1.5).

Sec. 23-277. - Vehicles used in the commission of certain offenses.

(a) Violations authorizing impoundment; fees.

(1) A motor vehicle used in violation of the any of the statutes hereinafter set forth, as amended, shall be declared a public nuisance and shall be subject to seizure and impoundment under this subsection:

a. Any felony violation of the Cannabis Control Act (720 ILCS 550/1 *et seq.*), the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et seq.*), the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 *et seq.*), Article IV of the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.*), the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 *et seq.*), as those acts may be amended from time to time;

b. Driving while under the influence of alcohol, other drug or drugs, cannabis, intoxicating compound or compounds or any combination thereof (625 ILCS 5/11-501);

c. Driving while driver's license, permit or privilege to operate a motor vehicle is revoked (625 ILCS 5/6-303);

d. Operation of vehicle when registration cancelled, suspended or revoked (625 ILCS 5/3-702 or 625 ILCS 5/3-708); or

e. Fleeing or attempting to elude a peace officer (625 ILCS 5/11-204).

(2) The above references to provisions of state law shall not be interpreted to require that prosecution of the specific charge is a necessary prerequisite to enforcement of this subsection, nor shall this subsection require proof of the violation beyond a reasonable doubt.

(3) The owner of record of a vehicle impounded under this subsection shall be liable to the city for such administrative impoundment and police ordered tow fees as provided in the schedule of fees adopted by the city council by ordinance. Provided, however, that the administrative impoundment fee shall not apply if: (A) the motor vehicle used in the violation was stolen at the time, and the theft was reported to the

appropriate police authorities within twenty-four (24) hours after the theft was discovered or reasonably should have been discovered; or (B) the motor vehicle was operating as a common carrier, and the violation occurred without the knowledge of the person in control of the motor vehicle.