

ORDINANCE 2162

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AMENDING TITLE 9 OF THE SUNNYSIDE MUNICIPAL CODE TO ADD NEW CHAPTER 9.36 PERTAINING TO CRIMINAL STREET GANGS AND GANG-RELATED ACTIVITY

WHEREAS, the promotion, protection and preservation of the public health, safety and welfare of citizens of the City of Sunnyside is of primary importance, and serves as the fundamental responsibility of governments in the State of Washington; and

WHEREAS, the City of Sunnyside is authorized and empowered pursuant to state statutes and the state constitution to adopt and enforce laws proscribing criminal conduct occurring within the City of Sunnyside; and

WHEREAS, the City Council finds and declares that the ability to feel safe and secure in one's own home and in one's own community is of primary importance. The City Council hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, or handicap, 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 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; and

WHEREAS, the City Council, however, further finds and recognizes that criminal street gangs and gang-related activities promote crime and jeopardize the health, safety and welfare of citizens of the City of Sunnyside. The City Council finds that the City of Sunnyside is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhood. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected; and

WHEREAS, the City Council finds that there are approximately 50 adult and 200 juvenile criminal street gang members operating in the City of Sunnyside, and that the number of gang-related crimes is increasing. Criminal street gangs and gang-related activities jeopardize the life and health of residents, result in damage to property, cause public disturbances, create numerous calls for police service and assistance, and deplete the revenues available for promotion of the public welfare. It is the intent of the City Council in enacting this Ordinance to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The purpose of this chapter is to provide the community with a tool that will help residents to restore the health, safety and quiet enjoyment of their community; and

WHEREAS, the City Council finds and determines that amendment of Title 9 of the Sunnyside Municipal Code to add new Chapter 9.36 will promote the purposes stated above and will promote the general health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

Section 1. Title 9 of the Sunnyside Municipal Code is hereby amended to add new Chapter 9.36 which reads as shown on Exhibit "A" attached hereto and incorporated herein by this reference.

Section 2. Except as amended herein, Title 9 of the Sunnyside Municipal Code shall remain unchanged.

Section 3. This Ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 21st day of May, 2007.




ED PRILUCIK, MAYOR

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:



MARK A. KUNKLER, CITY ATTORNEY

EXHIBIT "A"

Chapter 9.36

CRIMINAL STREET GANGS AND GANG-RELATED ACTIVITIES

9.36.010	Purpose
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9.36.030	Criminal Street Gang Activity Prohibited – Penalty
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9.36.090	Parental Control – Penalty
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9.36.110	Powers of Law Enforcement Officers Not Limited
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9.36.010 Purpose. The City Council finds and declares that the ability to feel safe and secure in one's own home and in one's own community is of primary importance. The City Council hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, or handicap, 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 chapter 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 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.

The City Council, however, further finds and recognizes that criminal street gangs and gang-related activities promote crime and jeopardize the health, safety and welfare of citizens of the City of Sunnyside. The City Council finds that the City of Sunnyside is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhood. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

The City Council finds that there are approximately 50 adult and 200 juvenile criminal street gang members operating in the City of Sunnyside, and that the number of gang-related crimes is increasing. Criminal street gangs and gang-related activities jeopardize the life and health of residents, result in damage to property, cause public disturbances, create numerous calls for police service and assistance, and deplete the revenues available for promotion of the public welfare. It is the intent of the City Council in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street

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gangs, which together, are the chief source of terror created by street gangs. The purpose of this chapter is to provide the community with a tool that will help residents to restore the health, safety and quiet enjoyment of their community.

9.36.020 Definitions. As used in this chapter, the following terms have the following definitions:

- A. "Criminal street gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes, or whose members individually or collectively engage in or have engaged in criminal gang activity.

- B. "Criminal gang activity" means: (a) the commission, solicitation to commit, conspiracy to commit, or attempt to commit, any crime or violation of law, including but not limited to, crimes against persons, crimes against property, graffiti, creation and maintenance of public or private nuisances, threats to do harm, intimidation, robbery, burglary, assault, homicide, theft, violation of laws pertaining to controlled substances, alcohol offenses, with the intent or effect to promote, further, aid, abet, or assist any criminal street gang; (b) any intimidation of or harm to any person with the purpose or intent to cause such person to participate in criminal gang activity, or to intimidate or harm any person who has ceased to participate in criminal gang activity; or (c) any public participation or use of identifiable apparel, name, sign or symbol of any criminal street gang in a manner that creates a threat of harm or intimidation to persons or property, or that promotes, furthers, aids, abets or assists any criminal street gang or criminal gang activity.

9.36.030 Criminal Street Gang Activity Prohibited - Penalty. Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in criminal gang activity, and who willfully promotes, furthers, or assists in any criminal conduct by members of that gang, shall be guilty of a gross misdemeanor and shall be punished by imprisonment for a period not to exceed 365 days and a fine not to exceed \$5,000.00. In order to secure a conviction pursuant to this section, it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

9.36.040 Solicitation or Threats – Prohibited – Penalty.

- A. Solicitation. Any person who solicits or recruits another to actively participate in a criminal street gang, with the intent that the person solicited or recruited participate in criminal street gang activity, or with the intent that the person solicited or recruited promote, further or assist in any criminal conduct by members of the criminal street gang, shall be guilty of a gross misdemeanor and

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punished by imprisonment for a period not to exceed 365 days and a fine not to exceed \$5,000.00.

- B. Threats. Any person who threatens another person with physical violence with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, or to prevent any person from leaving any criminal street gang, or to intimidate any person who has ceased participation in any criminal street gang, shall be guilty of a gross misdemeanor and punished by imprisonment for a period not to exceed 365 days and a fine not to exceed \$5,000.00.

9.36.050 Use of Public Place by Criminal Street Gang – Prohibited – Penalty.

- A. It is unlawful for any person who is a member of a criminal street gang or who is in the company of or acting in concert with a member of a criminal street gang to loiter or idle in a “public place” as defined in this section under any of the following circumstances:
1. With the intent to publicize a criminal street gang’s dominance over certain territory in order to intimidate non-members of the gang from entering, remaining in, or using the public place or adjacent area; or
 2. With the intent to conceal ongoing commerce in illegal drugs or other unlawful activity.
- B. For purposes of this chapter, a “public place” means the public way and any other location open to the public, whether publicly or privately owned, including but not limited to, any street, sidewalk, avenue, highway, road, curb area, alley, park, playground or other public ground or public building, any common area of a school, hospital, apartment house, office building, transport facility, shop, privately owned place of business to which the public is invited, including any place of amusement, entertainment, or eating place. Any “public area” also includes the front yard area, driveway and walkway of any private residence, business, or apartment house.
- C. Any person violating this section shall be guilty of a misdemeanor and shall be punished by imprisonment up to ninety (90) days and/or a fine up to \$1,000.00.

9.36.060 Penalty for Violation – Enhanced Penalty – Sentencing.

- A. Enhanced Penalty:
1. Gross Misdemeanor. Any person who is convicted of any gross misdemeanor offense, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang

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members, shall be punished by imprisonment not to exceed 365 days, but not less than ten (10) days for a first offense. Any subsequent conviction is subject to the mandatory sentencing provisions of subsection B below.

2. Misdemeanor. Any person who is convicted of any misdemeanor offense, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment not to exceed 90 days, but not less than two (2) days. Any subsequent conviction is subject to the mandatory sentencing provisions of subsection B below.
3. Proof of Active Participation. In order to secure an enhanced penalty pursuant to this section, it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

B. Sentencing – Mandatory Minimums:

1. First Offense. In addition to any fine imposed, upon conviction of any first offense violation of any provision of this chapter, unless otherwise specifically provided in any section, the violator shall be imprisoned not less than ten (10) days for a gross misdemeanor and not less than two (2) days for a misdemeanor.
2. Second Offense. In addition to any fine imposed, upon conviction of any second offense violation of any provision of this chapter, unless otherwise specifically provided in any section, the violator shall be imprisoned not less than thirty (30) days for a gross misdemeanor and not less than ten (10) days for a misdemeanor.
3. Third and Subsequent Offense. In addition to any fine imposed, upon conviction of any third or subsequent offense violation of any provision of this chapter, unless otherwise specifically provided in any section, the violator shall be imprisoned not less than 180 days for a gross misdemeanor and not less than 45 days for a misdemeanor.

9.36.070 Declaration of Public Nuisance. Criminal street gangs and criminal gang activity are each declared to be a public nuisance in violation of applicable city codes, including but not limited to, the Uniform Code for Abatement of Dangerous Buildings and Uniform Housing Code, subject to abatement through all available means. In addition thereto and without limitation, criminal gang activity upon, and the presence and use of property by, a criminal street gang, with the owner's knowledge or consent,

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constitutes a public nuisance and grounds for revocation of any permit or license regulating or authorizing the use of such property.

9.36.080 Juvenile Offenders. Notwithstanding the sentencing provisions stated in sections 9.36.030 through 9.36.050 above, any juvenile convicted of any gross misdemeanor offense under this chapter shall be subject to the sentencing requirements of the Juvenile Court pursuant to Title 13 RCW as such now exist or are hereafter amended, in lieu of the penalties set forth in sections 9.36.030 through 9.36.050 above.

9.36.090 Parental Control – Penalty. Any parent, legal guardian, or other adult person authorized by said parent or guardian to have the care and custody of a minor, who knowingly permits or by insufficient control allows a minor to violate any provision of this chapter, is guilty of a civil infraction and subject to a monetary penalty up to \$1,000.00.

9.36.100 Exemption. This chapter does not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

9.36.110 Powers of Law Enforcement Officers Not Limited. Nothing in this chapter shall be construed in any way to limit the power or right of a law enforcement officer to make any investigation, detention or arrest as such law enforcement officer would be permitted to make in absence of this chapter.

9.36.120 Severability. If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of that part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.