



Legislation Text

File #: 051314, Version: 1

051314 SUBSTITUTE 1

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A substitute ordinance relating to loitering by criminal gang members.

106-32 cr

This ordinance prohibits a member of a criminal street gang from engaging in “gang loitering” with one or more persons in any public place designated by the chief of police. “Gang loitering” is defined 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 enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities”.

Whenever a police officer observes a member of a criminal street gang engaged in gang loitering, the police officer shall, subject to applicable procedures promulgated by the chief of police, order such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued. Any person who fails to obey an order shall, upon conviction, be subject to a forfeiture of not less than \$100 nor more than \$500.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 106-32 of the code is created to read:

106-32. Loitering by Gang Members.

1. DEFINITIONS: In this section:

- a. “Gang loitering” means 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 enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.
- b. “Criminal gang” means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in par. d-1 to 21; that has a common name or a common identifying sign, or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
- c. “Criminal gang activity” means the commission, attempted commission or solicitation of the offenses, listed in par. d-1 to d-21, provided that the offenses are committed by 2 or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent of promoting, furthering or assisting in any criminal conduct by gang members.
- d. “Pattern of criminal gang activity” means the commission of, attempt to commit or solicitation to commit 2 or more of the following crimes, or acts that would be crimes if the actor were an adult, at least one of those acts or crimes occurs after December 25, 1993, the last of those acts or crimes

occurred within 3 years after a prior act or crime, and the acts or crimes are committed, attempted or solicited on separate occasions or by 2 or more persons:

- d-1. Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1), Wis. Stats.
- d-2. First-degree intentional homicide, as prohibited in s. 940.01, Wis. Stats.
- d-3. Second-degree intentional homicide, as prohibited in s. 940.05, Wis. Stats.
- d-4. Battery, as prohibited in s. 940.19 or 940.195, Wis. Stats.
- d-5. Battery, special circumstances, as prohibited in s. 940.20, Wis. Stats.
- d-6. Mayhem, as prohibited in s. 940.21, Wis. Stats.
- d-7. Sexual assault, as prohibited in s. 940.225, Wis. Stats.
- d-8. False imprisonment, as prohibited in s. 940.30, Wis. Stats.
- d-9. Taking hostages, as prohibited in s. 940.305, Wis. Stats.
- d-10. Kidnapping, as prohibited in s. 940.31, Wis. Stats.
- d-11. Intimidation of witnesses, as prohibited in s. 940.42 or 940.43, Wis. Stats.
- d-12. Intimidation of victims, as prohibited in s. 940.44 or 940.45, Wis. Stats.
- d-13. Criminal damage to property, as prohibited in s. 943.01, Wis. Stats.
- d-14. Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m), Wis. Stats.
- d-15. Arson of building or damage by explosives, as prohibited in s. 943.02, Wis. Stats.
- d-16. Burglary, as prohibited in s. 943.10, Wis. Stats.
- d-17. Theft, as prohibited in s. 943.20, Wis. Stats.
- d-18. Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23, Wis. Stats.
- d-19. Robbery, as prohibited in s. 943.32, Wis. Stats.
- d-20. Sexual assault of a child, as prohibited in s. 948.02, Wis. Stats.
- d-21. Repeated acts of sexual assault of the same child, as prohibited in s. 948.025, Wis. Stats.

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

2. GANG LOITERING PROHIBITED. a. It shall be unlawful for a member of a criminal street gang to engage in gang loitering with one or more persons in any public place designated by the chief of police for the enforcement of this section.

b. Whenever a police officer observes a member of a criminal street gang engaged in gang loitering with one or more other persons in any public place designated by the chief of police under sub. 3 for the enforcement of this section, the police officer shall, subject to applicable procedures promulgated by the chief of police:

b-1. Inform all such persons that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited.

b-2. Order such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued.

b-3. Inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight and hearing of the place at which the order was issued

during the next 3 hours.

3. DESIGNATED AREAS. a. The chief of police may by written directive designate areas of the city in which the enforcement of this section is necessary because gang loitering has enabled criminal street gangs to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities. Prior to making a determination under this subsection, the chief shall consult, as he or she deems appropriate with persons who are knowledgeable about the effects of gang activity in areas in which this section may be enforced. Such persons may include, but need not be limited to, members of the police department with special training or experience related to criminal street gangs; other personnel of the department with particular knowledge of gang activities in the proposed designated area; elected and appointed officials of the area; and community-based organizations familiar with the area. The chief may develop and implement procedures for the periodic review and update of designations made under this subsection.

b. The chief of police shall by written directive promulgate procedures to prevent the enforcement of this section against persons who are engaged in collective advocacy activities that are protected by the constitution of the United States or the state of Wisconsin.

4. PENALTY. a. Any person violating this section shall, upon conviction, forfeit not less than \$100 nor more than \$500, together with the costs of prosecution and, in default of payment shall be imprisoned in the house of correction or jail not to exceed 20 days, or until such forfeiture costs are paid in full.

..LRB:

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB06037-2

TWM/cac

1/24/2006