

ORDINANCE No. 2008-26-162

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, RELATING TO GANG PREVENTION IN PUBLIC PLACES; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council of the City of Miami Gardens have the authority to eradicate the ills of society caused by criminal street gangs whose members disrupt the health, safety, and welfare of all of its residents, and

WHEREAS, the crimes being committed by criminal street gang members include serious offenses such as murder by drive-by shootings, aggravated assault, robberies, burglaries and drug-related crimes, and

WHEREAS, Chapter 874, Florida Statutes was created with the intent to eradicate the terror created by criminal street gangs and their members by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities and property facilitating criminal street gang activity, including criminal street gang recruitment; and

WHEREAS, the Mayor and City Council of the City of Miami Gardens, would like to adopt an ordinance to provide protection, public order and safety in public places within the City, and

WHEREAS, Article VII, Section 2(b) of the Florida Constitution, and Section 166.021, Florida Statutes, give the City the authority to protect the health, safety and welfare of its citizens,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY

OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION OF ORDINANCE: An Ordinance relating to City Gang Prevention is hereby created in the City of Miami Gardens, as follows:

SECTION 3. **Definitions.**

For the purpose of this ordinance, the following definitions shall apply:

1. Criminal street gang: shall mean a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in or have engaged in a pattern of criminal street gang activity.
2. Criminal street gang member: shall mean a person who is a member of a criminal street gang as defined in Section (1) and who meets two or more of the following criteria:
 - a. Admits to criminal street gang membership.
 - b. Is identified as a criminal street gang member by a parent or guardian.
 - c. Is identified as a criminal street gang member by a documented reliable informant.
 - d. Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.
 - e. Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

- f. Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.
 - g. Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
 - h. Has been stopped in the company of known criminal street gang members four or more times.
3. **Gang Loitering:** shall mean to remain in a place, at a time or in a manner and under circumstances manifesting the purpose of engaging in criminal street gang activity.
4. **Gang-related incident:** shall mean an incident that, upon investigation, meets any of the following conditions:
- a. The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;
 - b. A reliable informant identifies an incident as criminal street gang activity; or
 - c. An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.
5. **Pattern of criminal street gang activity:** shall mean the commission or attempted commission of, or solicitation or conspiracy to commit, two or more felony or three or more misdemeanor offenses, or one felony and two misdemeanor offenses, or the comparable number of delinquent acts or violations of law which would be felonies or misdemeanors if committed by an adult, on separate occasions within a 3-year period.
4. **Public Place:** shall mean any public right-of-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 or business to which the public is invited, including any place of amusement, entertainment or eating place. "Public place" also includes the front yard area, driveway and walkway of any private residence, business or apartment house.

SECTION 4. Enforcement.

Whenever a police officer observes three (3) or more members of a criminal street gang loitering in any public place as defined herein, the police officer shall:

- 1.) Inform all such person that they are engaged in conduct or loitering within a designated area in which loitering by groups containing criminal street gang members is prohibited;
- 2.) Order all such person to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and
- 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 or hearing of the place at which the order was issued during the next three hours.

SECTION 5. Penalty.

Any person who fails to obey promptly an order issued in accordance with Section 4, or who engages in further loitering within sight or hearing of the place at which such an order was issued during the forty-eight (48) hour period following the time the original order was issued, shall be deemed to be in violation of this Ordinance. Any person convicted of a violation of this section shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed sixty (60) days, or both.

SECTION 4. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and

independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 7. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 25th DAY OF JUNE 2008.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 9th DAY OF JULY, 2008


SHIRLEY GIBSON, MAYOR

ATTEST:



RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

Ordinance No. 2008-26-162

SPONSORED BY: Councilman Oliver Gilbert

MOVED BY: Councilwoman Pritchett

SECOND BY: Councilman Gilbert

VOTE: 6-0

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|--------------------------------|--------------------|--------------------------------|
| Mayor Shirley Gibson | <u> X </u> (Yes) | <u> </u> (No) |
| Vice Mayor Barbara Watson | <u> </u> (Yes) | <u> </u> (No) (not present) |
| Councilman Melvin L. Bratton | <u> X </u> (Yes) | <u> </u> (No) |
| Councilman Oliver Gilbert, III | <u> X </u> (Yes) | <u> </u> (No) |
| Councilman Andre' Williams | <u> X </u> (Yes) | <u> </u> (No) |
| Councilwoman Sharon Pritchett | <u> X </u> (Yes) | <u> </u> (No) |
| Councilman Aaron Campbell | <u> X </u> (Yes) | <u> </u> (No) |

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman Oliver Gilbert III
Councilman André Williams

Agenda Cover Page

Date: **July 9, 2008**

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source: N/A

Contract/P.O. Requirement: Yes No

Sponsor Name/Department: Councilman Gilbert RFP/RFQ/Bid # _____

Public hearing

Ordinance

1st Reading

Advertising requirement:

Quasi-Judicial

Resolution

2nd Reading

Yes No

Title

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Staff Summary

Since the inception of the Miami Gardens Police Department staff has identified approximately 1300 gang members in the City. In order to address the growing criminal street gang problem the MGPD has established a Gang Unit that tracks organized criminal activity and takes a proactive approach to reducing crime committed by these gang members.

The level of sophistication and organization used in these criminal enterprises has dramatically increased and law enforcement must be equally innovative to achieve results. A multifaceted approach of aggressive enforcement along with use of advance technology and documentation has and will continue to allow the officers to successfully prosecute these organizations. Every tool available must be utilized by law enforcement officials in order to disrupt and dismantle these ever evolving groups. As the gangs themselves adapt to changes in society and police tactics so must our officers. Enabling legislation which will be an additional tool for these officers is an important and necessary part of government involvement. This process will assist in the law enforcement effort and display to the general public that the intimidation and harassment perpetrated by these criminal enterprises will no longer be tolerated.

The attached ordinance has been proposed in an effort to provide some additional tools to assist our officers in fighting the proliferation of gang related activity within the city.

Ordinance Provisions

The proposed ordinance provides guidelines for:

- What constitutes a “Criminal Street Gang”
- What criteria should be used for determining who is a “criminal street gang member”
- What constitutes gang loitering
- What is a gang-related incident
- What incidents constitute a “pattern of criminal street gang activity”
- What is a public place

In addition to the definition discussed above, the proposed ordinance provides guidelines for enforcement they are as follows:

Whenever a police officer observes three (3) or more members of a criminal street gang loitering in any public place the police officer shall:

- 1.) Inform all such person that they are engaged in conduct or loitering within a designated area in which loitering by groups containing criminal street gang members is prohibited;
- 2.) Order all such person to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and
- 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 or hearing of the place at which the order was issued during the next three hours.

Any person found in violation of the ordinance shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed sixty (60) days, or both.

Recommendations

It is recommended that Council approve the attached ordinance relating to gang prevention in public places.