

ALBUQUERQUE CODE OF ORDINANCES
CHAPTER 11: MORALS AND CONDUCT
ARTICLE 9: GANGS

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PART 1: ANTI-GANG RECRUITMENT

§ 11-9-1-1 INTENT.

The purpose of this article is to empower police officers with legal authority to cite persons who are found to be recruiting juveniles to participate in criminal gang activities.

(Ord. 35-1996)

§ 11-9-1-2 SHORT TITLE.

This article may be cited as the "Anti-Gang Recruitment Ordinance."

(Ord. 35-1996)

§ 11-9-1-3 LEGISLATIVE FINDINGS.

(A) The City Council hereby finds and declares that it is the right of every person, regardless of race, color, creed, religious, national origin, sex, age or disability 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 article 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, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(B) The City Council finds, however, that neighborhoods and schools throughout the city are being terrorized and plundered by street gangs.

(C) The Council further finds that it is prudent to institute reasonable laws so as to make it a violation of a city ordinance to solicit or recruit; conspire to solicit or recruit a juvenile as a member of a criminal street gang or to deter a juvenile from leaving a criminal street gang.

(Ord. 35-1996)

§ 11-9-1-4 DEFINITIONS.

CRIMINAL STREET GANG. Any ongoing organization, association in fact, or group of three or more persons, whether formally or informally organized, or any sub-group or affiliated group

thereof, having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity for a one-year period.

PATTERN OF CRIMINAL GANG ACTIVITY. The commission, attempt to commit, conspiring to commit, or solicitation of two or more predicate gang crimes, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same criminal street gang within a one-year period.

PREDICATE GANG CRIME.

(1) A state offense:

(a) Involving a controlled substance (as defined in Section 30-31-2 NMSA 1978, as amended, and/or Section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is imprisonment for not less than five years.

(b) That is a felony crime of violence that has an element the use or attempted use of physical force against the person on another; or

(2) Any federal or state felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense, including:

(a) Assault with a deadly weapon;

(b) Aggravated battery;

(c) Intimidation;

(d) Compelling organizational membership;

(e) Homicide or manslaughter;

(f) Shooting at an occupied dwelling or motor vehicle;

(g) Kidnapping;

(h) Car jacking;

(i) Robbery;

(j) Residential burglary;

(k) Drive-by shooting;

(l) Unlawful use or possession of weapons;

(m) Bribery;

(n) Tampering with or retaliating against a witness, victim, informant, or juror;

(o) Rape;

- (p) Torture; and
- (q) Arson; or
- (3) Any federal or state offense involving:
 - (a) Money laundering;
 - (b) Felony vandalism;
 - (c) Unlawful sale of a firearm; or
 - (d) Obstruction of justice.

(Ord. 35-1996)

§ 11-9-1-5 PROHIBITION.

(A) A person who solicits, recruits, entices, or intimidates a minor to join a criminal street gang commits a violation of this article.

(B) A person who conspires to solicit, recruit, entice or intimidate a minor to join a criminal street gang commits a violation of this article.

(C) A person who solicits, recruits, entices or intimidates a minor to join a criminal street gang or conspires to do so repeatedly from the same location commits a violation of this article.

(D) A person who expressly or impliedly threatens to do bodily harm to a minor or to that minor's family or use any other criminally unlawful means to deter any person from leaving a criminal street gang commits a violation of this article.

(Ord. 35-1996) Penalty, see § 11-9-1-99

§ 11-9-1-6 FORFEITURE PENALTY.

Any vehicle used for the purpose of recruiting or conspiring to recruit a minor to join a criminal street gang is declared a public nuisance and subject to forfeiture pursuant to the following procedures:

(A) Motor vehicles subject to forfeiture under this article may be seized by any police officer of the city upon an order issued by the District Court.

(B) Seizure without such an order may be made if seizure is incident to an arrest of the driver of the vehicle for criminal gang recruitment.

(C) A vehicle taken or detained under this article shall not be subject to replevin, but is deemed to be in the custody of the Police Department seizing it subject only to the orders and decrees of the District Court. The police officer may take custody of the vehicle and remove it to an appropriate and official location within the District Court's jurisdiction for disposition in accordance with this article.

(D) In the event of seizure pursuant to division (B) of this section, proceedings for an order for forfeiture shall be instituted promptly and not later than 30 days after seizure. Any person

who, pursuant to the records of the Motor Vehicle Division of the State Taxation and Revenue Department, has an ownership or security interest in the subject motor vehicle shall be served with notice of the forfeiture proceedings.

(E) When property is forfeited pursuant to this article, the Albuquerque Police Department shall sell the motor vehicle and the proceeds shall revert to the general fund of the city.

(Ord. 35-1996) Penalty, see § 11-9-1-99

§ 11-9-1-7 OFFICER TRAINING.

All Albuquerque Police Department sworn officers will undergo appropriate training from the Gang Unit on identification of gang members and criminal street gangs.

(Ord. 35-1996)

§ 11-9-1-99 PENALTY.

(A) Any person convicted of violating this article shall, upon conviction, be sentenced as follows:

(1) A first conviction under this article shall be punished by a fine of not more than \$500 or by imprisonment not exceeding 90 days, or both.

(2) A second conviction under this article shall be punished by a mandatory fine of not less than \$100 but not more than \$500 or by mandatory imprisonment for not less than ten days but not exceeding 90 days, or both.

(3) A third or subsequent conviction under this article shall be punished by a mandatory fine of not less than \$250 but not more than \$500, or by mandatory imprisonment for not less than 25 days but not exceeding 90 days, or both.

(B) Each separate violation shall constitute a separate offense.

(Ord. 35-1996)

PART 2: ANTI-GANG

§ 11-9-2-1 FINDINGS AND INTENT.

City Council finds that criminal street gang activity presents a serious public safety problem requiring the city to use every available resource to quell such activity and make the city safer for our inhabitants. This part (§§ 11-9-2-1 et seq.) includes criminal penalties and civil remedial measures.

(Ord. 27-2007)

§ 11-9-2-2 SHORT TITLE.

This part shall be referred to as the "Anti-Gang Ordinance" and may sometimes be referred to herein as "this part."

(Ord. 27-2007)

§ 11-9-2-3 DEFINITIONS.

For the purpose of this part, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CRIMINAL STREET GANG. Any ongoing organization, association in fact, or group of three or more persons, whether formally or informally organized, or any sub-group or affiliated group thereof, having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity for a one-year period.

GANG RELATED CRIME. A crime committed for the benefit of, at the direction of, or in association with a criminal street gang and with a specific intent to promote, further or assist in criminal conduct by gang members.

PERSON. Any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision, or agency or any other legal entity or legal representative, agent, or assign.

VIOLATION or OFFENSE. A violation of this part.

(Ord. 27-2007)

§ 11-9-2-4 VIOLATION.

It is a violation for any person to commit any gang related crime that by its nature involves a substantial risk that physical force against the person of another may be used in committing the offense including, without limitation, a predicate gang crime under the Anti-Gang Recruitment Ordinance, §§ 11-9-1-1 et seq. ROA 1994 or a conviction for one of the following crimes:

- (A) Murder, pursuant to Section 30-2-1 NMSA 1978;
- (B) Voluntary manslaughter, pursuant to Subsection A of Section 30-2-3 NMSA 1978;
- (C) Aggravated assault, pursuant to Section 30-3-2 NMSA 1978;
- (D) Assault with intent to commit a violent felony, pursuant to Section 30-3-3 NMSA 1978;
- (E) Aggravated battery, pursuant to Subsection C of Section 30-3-5 NMSA 1978;
- (F) Shooting at a dwelling or occupied building or shooting at or from a motor vehicle, pursuant to Section 30-3-8.1 NMSA 1978;
- (G) Aggravated stalking, pursuant to Section 30-3A-3.1 NMSA 1978;
- (H) Kidnapping, pursuant to Section 30-4-1 NMSA 1978;

- (I) Sexual exploitation of children by prostitution, pursuant to Section 30-A-4 NMSA 1978;
- (J) Dangerous use of explosives, pursuant to Section 30-7-5 NMSA 1978;
- (K) Possession of explosives, explosive devices or incendiary devices, pursuant to Sections 30-7-19 and 30-7-19.1 NMSA 1978;
- (L) Criminal sexual penetration in the first, second or third degree, pursuant to Section 30-9-11 NMSA 1978;
- (M) Criminal sexual contact of a minor, pursuant to Section 30-9-13 NMSA 1978;
- (N) Robbery, pursuant to Section 30-16-2 NMSA 1978;
- (O) Burglary, pursuant to Section 30-16-3 NMSA 1978;
- (P) Aggravated burglary, pursuant to Section 30-16-4 NMSA 1978;
- (Q) Extortion, pursuant to Section 30-16-9 NMSA 1978;
- (R) Aggravated fleeing a law enforcement officer, pursuant to Section 30-22-1.1 NMSA 1978;
- (S) Harboring or aiding a felon, pursuant to Section 30-22-4 NMSA 1978;
- (T) Aggravated assault upon a peace officer, pursuant to Section 30-22-22 NMSA 1978;
- (U) Assault with intent to commit a violent felony upon a peace officer, pursuant to Section 30-22-23 NMSA 1978;
- (V) Aggravated battery upon a peace officer, pursuant to Section 30-22-25 NMSA 1978;
- (W) Bribery or intimidation of a witness or retaliation against a witness, pursuant to Section 30-24-3 NMSA 1978;
- (X) Trafficking in a controlled substance, pursuant to Section 30-31-20 NMSA 1978;
- (Y) Unlawful taking of a motor vehicle, pursuant to Section 66-3-504 NMSA 1978;
- (Z) Money laundering, pursuant to the Money Laundering Act; and
- (AA) An attempt to commit any of the above felonies, pursuant to Section 30-28-1 NMSA 1978.

(Ord. 27-2007) Penalty, see § 11-9-2-99

§ 11-9-2-99 PENALTY.

Any person who violates this part is subject to the registration requirements of the Anti Gang Member Registration Ordinance (§§ 11-9-3-1 et seq.).

(Ord. 27-2007)

PART 3: ALBUQUERQUE GANG MEMBER REGISTRATION

§ 11-9-3-1 FINDINGS AND INTENT.

The City Council finds that perpetrators of gang related crimes present a significant risk to the health and safety of inhabitants of the City of Albuquerque. The Council further finds that these offenders will likely commit further crimes. The City Council finds that a local registry of these persons will promote public safety. The City Council further finds that this part is a remedial part designed to protect occupants of the City of Albuquerque.

(Ord. 28-2007)

§ 11-9-3-2 SHORT TITLE.

This part shall be referred to as the Albuquerque Gang Member Registration Ordinance.

(Ord. 28-2007)

§ 11-9-3-3 DEFINED TERMS.

For the purposes of this part, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT. Any person 18 years of age or older.

APD. The Albuquerque Police Department.

CITY. The geographical limits of the City of Albuquerque and the City of Albuquerque municipal corporation.

INTERNET. An interactive computer service or system or an information service, system or access software provider that provides or enables computer access by multiple users to a computer server and includes, but is not limited to, an information service, system or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other on-line service.

REGISTRANT. An adult convicted under the Anti- Gang Ordinance.

REGISTRATION YEAR. One year from the date of first registration.

(Ord. 28-2007)

§ 11-9-3-4 REGISTRATION REQUIREMENTS.

(A) Any person convicted of a violation of the Anti- Gang Ordinance shall register with APD.

(B) A person convicted of a violation of the Anti- Gang Ordinance shall register with APD within ten days after being released from incarceration, or ten days from the date of sentencing if not incarcerated. A registrant must provide APD with the following information:

(1) His legal name, any other names or aliases he has used or is using and any new names he has applied for in the last year.

(2) His date of birth.

(3) His social security number.

(4) The type of employment in which he is engaged and the name and telephone number of a contact person who knows his location at any and all times during employment hours or other times he performs work in the scope of his employment duties.

(5) His driver's license number and the license plate number, vehicle identification number and description by make and model of all vehicles registered to him, owned by him, driven by him during employment or otherwise available to him with regularity by consent from another.

(Ord. 28-2007)

§ 11-9-3-5 REGISTRANT REGULATIONS.

(A) Any registrant who provides inaccurate information to the city has committed a separate violation of this part.

(B) In the event of any change in registration information or addition of new information that would have been required in the initial or subsequent registration other than a change of employment governed by division (C), the registrant must notify APD and provide new valid information within three days of the time the new information becomes known or should be known by the registrant.

(C) A registrant shall notify APD ten days in advance before any voluntary change in employment occurs or five days after the change is forced or compelled. The registrant shall provide the name and telephone number of a new contact person within ten days of the time new work begins.

(D) APD shall take and retain their photograph and a set of fingerprints from each registrant. Additionally, APD may record and retain any information that aids in identification of the registrant including, without limitation, scars, tattoos, and any other feature labeling the person as a gang member.

(E) Following the initial registration, registrants are required to annually renew the registration before expiration of the registration year. Registrants shall register for two years from the date of their last conviction under the Anti-Gang Ordinance.

(F) Actual notice of the requirement to register is not required. This part is actual and constructive notice of the requirement to register. The fact that the obligation to register is not included in the judgment and sentence issued by a District Court is not a defense against a charge of a failure to register.

(G) APD shall conduct address verification checks to substantiate that registrants are living where they claim to live. The check shall verify that the claimed address exists and that the registrant in fact lives at the claimed address. Any registrant who does not live where claimed commits a violation of this part.

(Ord. 28-2007) Penalty, see § 11-9-3-99

§ 11-9-3-6 NOTIFICATION.

APD shall maintain a local registry and forward registration information to the Bernalillo County Sheriff's Office and the New Mexico Department of Public Safety. APD will maintain a data base of registrants. APD shall make available and disseminate registrant information on an Internet website which shall include photographs of the registrants. APD shall delete from the registry information about any registrant who has not been convicted of a violation of the Anti-Gang Ordinance in the preceding two years. The city shall have no liability for any delay in deleting registry information.

(Ord. 28-2007)

§ 11-9-3-7 GANG PREVENTION AND INTERVENTION PROGRAMS.

Any registrant who successfully completes a city approved program of gang prevention and intervention shall be deleted from the city's registry. The Mayor shall adopt regulations for determining minimal standards for approval of a program of gang prevention and intervention and for determining when a registrant has successfully completed such a program. The city shall have no liability for any delay in creating these regulations or for any delay in deleting registry information.

(Ord. 28-2007)

§ 11-9-3-99 PENALTY.

The penalty for a violation of this part is up to \$500 and 90 days in jail as provided by § 1-1-99 ROA 1994. Each day a registrant should have been registered but failed to register is a separate petty misdemeanor offense as provided by § 1-1-99 ROA 1994. Each day of a continuing violation is a separate offense.

(Ord. 28-2007)