



Legislation Text

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Int. No. 840

By Council Members Sabini, Abel, Henry, Marshall, Nelson, Provenzano, Rodriguez, Oddo and Stabile; also Council Members McCaffrey, O'Donovan and Povman

A Local Law to amend the administrative code of the city of New York in relation to prohibiting loitering by members of criminal street gangs for the purpose of enabling a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 10 of the administrative code of the City of New York shall be amended by adding a new section 10-137 to read as follows:

§ 10-137. Gang loitering

§ 1. Definitions. a. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, sidewalk, bridge, alley or alleyway, plaza, places of amusement, playgrounds, parks, driveway, parking lot or transportation facility or the doorways, lobbies and entrance way to any building which fronts on any of the aforesaid places.

b. "Criminal street gang" means any ongoing organization, association in fact or group of three or more persons, whether formal or informal,

(i) having as its substantial activity the commission of one or more of the following Penal

Law offenses:

Sections 100.00 through 100.13 relating to criminal solicitation; sections 120.00, 120.05, and 120.10 through 120.12 relating to assault; section 120.04 relating to vehicular assault; sections 120.06 and 120.07 relating to gang assault; sections 120.13 through 120.15 relating to menacing; sections 120.20 through 120.25 relating to reckless

endangerment; sections 125.10 and 125.15 through 125.27 relating to homicide; sections 130.20 through 130.80 relating to sex offenses; sections 135.20 through 135.25 relating to kidnapping; sections 135.60 through 135.65 relating to coercion; section 140.05 relating to trespass; sections 140.10 through 140.17 relating to criminal trespass; sections 140.20 through 140.30 relating to burglary; sections 145.00 through 145.12 relating to criminal mischief; section 145.25 relating to reckless endangerment of property; sections 145.60 and 145.65 relating to graffiti; article one hundred fifty relating to arson; sections 155.30 through 155.42 relating to grand larceny; article one hundred sixty relating to robbery; sections 165.09 through 165.11 relating to automobile stripping; sections 165.40 through 165.54 relating to criminal possession of stolen property; sections 215.10 through 215.13, relating to tampering with a witness; sections 215.15 through 215.17 relating to intimidating a victim or witness; article two hundred twenty relating to controlled substances; section 221.05 relating to unlawful possession of marihuana; sections 221.10 through 221.30 relating to criminal possession of marihuana; sections 221.35 through 221.55 relating to criminal sale of marihuana; sections 225.05, 225.10, 225.20, 225.30 relating to gambling; sections 230.00, 230.03 through 230.06, and 230.20 through 230.32 relating to promoting prostitution; sections 240.05 through 240.06 relating to rioting; sections 240.08 relating to inciting to riot; sections 240.20 through 240.21 relating to disorderly conduct; sections 240.25 through 240.26, and 240.30 through 240.31 relating to harassment; sections 240.45 through 240.46 relating to criminal nuisance; section 245.00 relating to lewdness; sections 265.01 through 265.04, and 265.08 through 265.10 relating to criminal possession of a weapon; and sections 265.11 through 265.14 and 265.16 relating to criminal sale of a firearm; and

- (i) there is an agreement among two or more members of the ongoing organization,

association in fact or group to act in concert so as to engage in or cause the performance of any of the offenses enumerated in subparagraph (i).

§ 2. It shall be unlawful for any member of a criminal street gang to loiter in a public place with one or more other persons for the purpose of enabling a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

§3. No arrest or conviction under this section may occur unless and until the arresting officer has probable cause that the individual to be arrested is loitering with the intent to engage in activity that would enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

(i) Prior to making an arrest under this section, the arresting officer must afford the individual to be arrested an opportunity to explain his or her conduct and purpose at the site or to remove himself or herself from the immediate area. Failure to provide an explanation to the arresting officer shall not be sufficient cause for an arrest under this section.

(ii) The objective circumstances which may be considered in determining whether a person manifests the intent to engage in activity that would enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities, are:

(a) Such person is a known member of a criminal street gang. For purposes of this section, a "known member of a criminal street gang" is an individual who within the knowledge of the arresting officer, is a member of a criminal street gang, based upon the officer's observations, investigations or information from informants;

(b) Such person is known to have been convicted in New York within a period of two years, of a

criminal act enumerated in subparagraph (ii) of paragraph (b) of section 1, and was found to have been acting in concert with another member of a criminal street gang;

(c) such person is known to be the subject of a court or administrative order of parole, probation bond, or sentence, prohibiting his or her presence in the area, or in any geographic area with a high level of criminal street gang activity.

§4. No provision of this section shall be construed or interpreted so as to prohibit expression protected by the laws of the United States or New York state, or to prohibit acts authorized by a permit issued pursuant to section 10-110 of this code or chapter one of title fifty of the rules of the city of New York.

§5. Penalties. Any person who knowingly violates any of the provisions of this section shall be guilty of a violation punishable by a fine not to exceed one hundred dollars, or imprisonment of not more than fifteen days, or both.

§6. This local law shall take effect thirty days after its enactment.