

**ORDINANCE NO. 2008-\_\_\_\_\_**

**AN ORDINANCE** relating to Public Safety and Morals; adopting portions of the newly adopted Washington State Criminal Street Gangs law (HB 2712), effective June 12, 2008, including definitions for the terms, “criminal street gang”, “criminal street gang associate or member”, “criminal street gang–related offense”, and “pattern of criminal street gang activity”; adopting HB 2712 Section 306, which will be codified as RCW (number to be assigned), dealing with criminal street gang tagging and graffiti; and imposing mandatory minimum sentences for misdemeanor and gross-misdemeanor criminal street gang-related offense; and creating a new Chapter 6.11 of the City of Yakima Municipal Code.

**BE IT ORDAINED BY THE CITY OF YAKIMA:**

**Section 1.** Chapter 6.11 entitled, “Criminal Street Gangs”, of the City of Yakima Municipal Code is hereby adopted as a new chapter to read as follows:

:

**Chapter 6.11**

**CRIMINAL STREET GANGS**

- 6.11.010 Purpose**
- 6.11.020 Definitions**
- 6.11.025 Criminal Street Gang Tagging and Graffiti**
- 6.11.060 Penalty for Violation – Mandatory Minimum – Sentencing**
- 6.11.080 Juvenile Offenders**
- 6.11.120 Severability**
- 6.11.130 Adoption by Reference Includes Subsequent Amendments**

**6.11.010 Purpose.** The Yakima 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 Yakima 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 Yakima City Council hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject, to lawfully associate with others who share similar beliefs on any lawful subject, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for redress of perceived grievances, and to participate in the electoral process.

The Yakima City Council, however, further finds and recognizes that criminal street gangs promote crime and jeopardize the health, safety, and welfare of citizens of the City of Yakima. The Yakima City Council finds that the City of Yakima 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 Yakima City Council finds that there are approximately 600 criminal street gang members operating in the City of Yakima, and that the number of criminal street gang related offenses is

increasing. Criminal street gang 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 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.

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

**“Criminal street gang”** means any ongoing organization association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their member or agents.

**“Criminal street gang associate or member”** means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

**“Criminal street gang–related offense”** means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

- (a) To gain admission, prestige, or promotion within the gang;
- (b) To increase or maintain the gang’s size, membership, prestige, dominance, or control in any geographic area;
- (c) To exact revenge or retribution for the gang or any member of the gang;
- (d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- (e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- (f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

**“Pattern of criminal street gang activity”** means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any “serious violent” felony offense as defined in RCW 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any “violent” offense as defined by RCW 9.94A.030, excluding Assault of a Child 2 (RCW

- 9A.36.130);
- (iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);
  - (iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);
  - (v) Theft of a Firearm (RCW 9A.56.300);
  - (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
  - (vii) Malicious Harassment (RCW 9A.36.080);
  - (viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020 (2)(b));
  - (ix) Criminal Gang Intimidation (RCW 9A.46.120);
  - (x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under section 302 of this act;
  - (xi) Residential Burglary (RCW 9A.52.025);
  - (xii) Burglary 2 (RCW 9A.52.030);
  - (xiii) Malicious Mischief 1 (RCW 9A.48.070);
  - (xiv) Malicious Mischief 2 (RCW 9A.48.080);
  - (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
  - (xvi) Possession of a Stolen Motor vehicle (RCW(9A.56.068);
  - (xvii) Taking A Motor Vehicle Without Permission 1 (RCW 9A.56.068);
  - (xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);
  - (xix) Extortion 1 (RCW 9A.56.120);
  - (xx) Extortion 2 (RCW 9A.56.130);
  - (xxi) Intimidating a Witness (RCW 9A.72.110);
  - (xxii) Tampering with a Witness (RCW 9A.72.120);
  - (xxiii) Reckless Endangerment (RCW 9A.36.050);
  - (xxiv) Coercion (RCW 9A.36.070)
  - (xxv) Harassment (RCW 9A.46.020); or
  - (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
- (b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;
- (c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and
- (d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

### **6.11.025 Criminal Street Gang Tagging and Graffiti**

HB 2712 Section 306 which will be codified as RCW (number to be assigned) is adopted by reference which reads as follows:

- (1) A person is guilty of criminal street gang tagging and graffiti if he or she commits malicious mischief in the third degree under RCW 9A.48.090 (1) (b) and he or she:
  - (a) Has multiple current convictions for malicious mischief in the third degree offenses under RCW 9A.48.090 (1) (b); or
  - (b) Has previously been convicted for malicious mischief in the third degree offense under RCW 9A.48.090 (1) (b) or a comparable offense under a municipal code provision of any city or town; and
  - (c) The current offense or one of the current offenses is a “criminal

street gang-related offense” as defined in RCW 9.94A.030.

(2) Criminal street gang tagging and graffiti is a gross misdemeanor offense.

**6.11.060      Penalty for Violation – Enhanced Penalty – Sentencing.**

**A.      Mandatory Minimums - First Offense.**

1.      Gross Misdemeanor. Any person who is convicted of any gross misdemeanor criminal street gang-related offense, in addition to any fine imposed, shall be punished by imprisonment not to exceed 365 days, but not less than thirty (30) 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 criminal street gang-related offense shall be punished by imprisonment not to exceed 90 days, but not less than ten (10) days. Any subsequent conviction is subject to the mandatory sentencing provisions of subsection B below.

**B      Mandatory Minimums - Subsequent Offenses.**

1.      Second Offense. In addition to any fine imposed, upon conviction of any second criminal street gang-related offense unless otherwise specifically provided in any section, the violator shall be imprisoned for not less than ninety (90) days for a gross misdemeanor and not less than thirty (30) days for a misdemeanor.

2.      Third and Subsequent Offense. In addition to any fine imposed, upon conviction of any third criminal street gang-related offense the violator shall be imprisoned not less than 180 days for a gross misdemeanor and not less than 45 days for a misdemeanor.

**C.      Other-Sentencing.**

1.      Where a state imposed mandatory minimum imposes a greater sentence, the state mandatory minimum shall control.

2.      The imposition of a mandatory minimum sentence, pursuant to this Chapter, shall not prevent the court from setting appropriate probation conditions, such as, but not limited to, orders to stay away from certain locations, to complete appropriate treatment, to perform community restitution hours, and/or pay restitution to crime victims.

**D.      Application of Mandatory Minimum.**

1.      Following a finding of guilt for a criminal offense by a judge or jury, if the sentencing judge determines that the crime/s is a criminal street gang-related offense, the mandatory minimum shall be imposed.

2.      Notwithstanding any other provision of law, the sentencing judge may refuse to impose the mandatory minimum jail sentence prescribed in this Chapter, in an extraordinary case where the interests of justice would best be served by a different disposition. The sentencing judge shall enumerate on the record the reasons for any deviation from the mandatory minimum sentence.

**6.11.130      Adoption by Reference Includes Subsequent Amendments.**

All RCW sections referred to in this chapter shall include the current version and any subsequent amendments thereto.

**Section 2.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 10th day of June, 2008.

\_\_\_\_\_  
David Edler, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Publication Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_