

Vargas wants ban on gangs | He urges city to set employment hurdles

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San Diego City Councilman Juan Vargas called on the city yesterday to defy state law and use police gang records in doing background checks on city workers and those applying for city jobs.

The city should refuse to hire current or past gang members and should fire city workers found to have been gang members, Vargas said.

"I don't have any respect for a gang member. If you want to be a gang member, we have a place for you. It's called jail," Vargas said in a news conference in front of police headquarters.

"There are a lot of unemployed people out there who would love to have jobs with the city of San Diego who haven't done anything wrong," Vargas said.

But a deputy city attorney said the policy advocated by Vargas is illegal and the city's assistant personnel director said it was unnecessary.

Including police gang records in employment background checks violates state labor laws, state laws on juvenile records and the California Constitution, deputy city attorney Sharon Marshall said in a "memorandum of law" released by Vargas at the news conference.

Assistant personnel director Kent Lewis said denying city jobs to people simply because they at one time belonged to a gang was "guilt by association."

"We do not discriminate against people by association," Lewis said. "I think there's a way to arrive at where the councilman is trying to get without doing anything illegal or violating people's rights."

Vargas said he made the proposal in response to the Oct. 27 slaying of 52-year-old Juan Avitia near Memorial Community Park. Avitia was killed allegedly by six men with ties to a Logan Heights gang, one of whom worked part-time as a recreation leader at the park.

Arath Avila Blanco, 19, had worked at the park since July 1995. Prosecutors identified Blanco and five other men as gang members. They have been charged in the killing of Avitia.

"Under the current situation of laws, there's no way we could have known that person was a current gang member or if we had known, we couldn't have fired him," Vargas said.

Avitia -- a father of eight -- was walking near 30th Street and Ocean View Boulevard with one of his sons when six men approached, demanding \$5. When Avitia said he did not have the money, the men beat, kicked and clubbed him to death.

Vargas said he was shocked by the deputy city attorney's memo that stated that including police gang records in employment background checks violates state law and the state constitution.

"To me, this is ridiculous," said Vargas, who studied law at Harvard University.

The city should take its chances, do the background check of police gang records and defend its actions in court if anyone challenges them, Vargas said.

"We're being sued for everything else in this city," Vargas said. "I think this is something we can win on."

American Civil Liberties Union lawyer Michael Crowley said Vargas "has shown his irresponsibility when it comes to the Constitution."

Police gang records "are the most notoriously inaccurate records there are," Crowley said. "We have had situations where just because people live on a certain street or buy milk at a store frequented by gang members, they are listed as gang members."

Crowley said it's unlikely that the policy advocated by Vargas would withstand a court challenge.

"I never underestimate the ability of our courts to ignore the Constitution, but I do know the law is very clear on this," Crowley said.

The personnel department has sought more money to do thorough background checks on job applicants -- including checking with past employers and even with neighbors and friends in some cases, Lewis said.

"It's something we think we ought to be doing. The city, being in the budget crunch it is, we just haven't gotten the funds," Lewis said. "I don't disagree with him (Vargas). I just wish he were more forthcoming when we were asking for funding on this."

With insufficient money, Lewis said, "we do relatively little" in background checks on most city workers.

By state law, Lewis said parks and recreation workers are fingerprinted and subjected to criminal background checks which tell if they have ever been convicted of a crime.

Police, firefighters, lifeguards and other peace officers are subjected to a more rigorous check mandated by state law, including interviews with past employers and others, Lewis said.

Vargas said some exceptions could be made for the no-gang policy he seeks.

For example, he said the city should continue a program in which former gang members are used on neighborhood cleanup projects. Those people are highly supervised, Vargas said.

"Do I think it's OK for these same people to watch my kids? Hell no," Vargas said. "We want to rehabilitate people but not by putting other people in jeopardy."

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Abstract (Document Summary)

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