

Downtown Austin Community Court Jurisdiction

Recommended City Code
Amendment of Section 2-10-32 –
Offenses Adjudicated

Proposition B – May 2021

On May 1, 2021, Austin voters approved Proposition B, making it a criminal offense (Class C misdemeanor punishable by a fine) for anyone to sit, lie down, or camp in public areas and prohibiting solicitation of money or other things of value at specific hours and locations.

The above law can be found in City of Austin Code, Sections 9-4-11 (Camping), 9-4-13 (Solicitation Prohibited), 9-4-14 (Sitting or Lying down on Public Sidewalks or Sleeping Outdoors in the Downtown Austin Community Court Area Prohibited).

On Sept. 1, HB 1925 took effect creating a statewide camping prohibition that is largely compatible with Austin City Code. It is Tex. Pen. Code §48.05 Prohibited Camping (Statewide).

Tex. Penal Code 48.05 - Excerpts

- “A person commits an offense if the person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place.”
- An offense under this section is a Class C misdemeanor.
- This section does not preempt an ordinance adopted by a political subdivision, like the City of Austin, relating to prohibiting camping in a public place or affect the authority of a political subdivision to adopt or enforce an ordinance relating to prohibiting camping in a public place if the ordinance is compatible with and equal to or more stringent than the offense prescribed by this section.

Tex. Penal Code 48.05 - Excerpts

- Before or at the time a peace officer issues a citation to a person, the peace officer must make a reasonable effort to: (1) advise the person of an alternative place to lawfully camp; and (2) contact, if reasonable and appropriate, an appropriate official of the political subdivision in which the public place is located, or an appropriate nonprofit organization operating within that political subdivision, and request the official or organization to provide the person with: ... (B) any other services that would reduce the likelihood of the person continuing to camp in the public place.
- If the person is arrested or detained solely for an offense under this section, a peace officer enforcing this section shall ensure that all of the person's personal property not designated as contraband under other law is preserved by: (1) permitting the person to remove all the property from the public place at the time of the person's departure; or (2) taking custody of the property and allowing the person to retrieve the property after the person is released from custody. A fee may not be charged for the storage or release of property.

Austin City Code

§ 2-10-1 - JURISDICTION AND AUTHORITY.

"A municipal court, including the Downtown Austin Community Court has:

- (1) the general jurisdiction provided by Chapter 30 (Municipal Courts of Record) of the Texas Government Code;...."

§ 2-10-2 - MUNICIPAL COURT CLERK.

The Council shall appoint a person to serve as the municipal court clerk as prescribed by City Charter Article VI, Section 3 (Clerk of the Municipal Court).

However, there is Section 2-10-32 of the Austin City Code.

ARTICLE 4. - DOWNTOWN AUSTIN COMMUNITY COURT (DACC)

➤ § 2-10-32 - OFFENSES ADJUDICATED.

- (A) The Downtown Austin Community Court may hear cases relating to Class C misdemeanor offenses and City Code violations that occur in the following area, including the outside curb line of a street or highway:
 - (1) beginning at the intersection of 29th Street (West) and Lamar Boulevard (North);
 - (2) south on Lamar Boulevard (North) to the north shore of Town Lake;
 - (3) east along the north shore of Town Lake to the point directly south of the curve at the intersection of Bergman Avenue and Robert Martinez, Jr. Street;
 - (4) north to the curve at the intersection of Bergman Avenue and Robert Martinez, Jr. Street;
 - (5) west along Bergman Avenue to the intersection of Chicon Street;
 - (6) north on Chicon Street to the intersection of Seventh Street (East);
 - (7) west on Seventh Street (East) to the IH-35 East Frontage Road;
 - (8) north on the IH-35 East Frontage Road to the intersection of Martin Luther King, Jr. Boulevard;
 - (9) west on Martin Luther King, Jr. Boulevard to the intersection of Guadalupe Street;
 - (10) north on Guadalupe Street to the intersection of 29th Street (West); and
 - (11) northwest on 29th Street (West) to the intersection of Lamar Boulevard (North), the place of beginning.

- (B) The Downtown Austin Community Court may adjudicate Class C misdemeanor offenses, including:
 - (1) Alcoholic Beverage Code Section 105.06 (Hours of Consumption);
 - (2) Code of Criminal Procedure Article 45.026 (Jury Trial; Failure to Appear);
 - (3) Government Code Section 28.031 (Failure to Appear);
 - (4) Health and Safety Code Section 481.125(a) (Offense: Possession or Delivery of Drug Paraphernalia);
 - (5) Penal Code Sections 22.01(a)(2) and (3) (Assault);
 - (6) Penal Code Section 28.03 (Criminal Mischief);
 - (7) Penal Code Section 30.02 (Failure to Identify);
 - (8) Penal Code Section 31.03 (Theft);
 - (9) Penal Code Section 31.04 (Theft of Service);
 - (10) Penal Code Section 38.10 (Bail Jumping and Failure to Appear);
 - (11) Penal Code Section 42.01 (Disorderly Conduct);
 - (12) Penal Code Section 49.02 (Public Intoxication);
 - (13) Penal Code Section 49.031 (Possession of Alcoholic Beverage in Motor Vehicle);
 - (14) Transportation Code Section 543.009. (Compliance With or Violation of Promise to Appear); and
 - (15) Transportation Code Section 552.009 (Ordinances Relating to Pedestrians).

- (C) The Downtown Austin Community Court may adjudicate violations of the City Code, including:
 - (1) Chapter 4-9 (Restrictions on Alcoholic Beverages);
 - (2) Chapter 9-2 (Noise and Amplified Sound);
 - (3) Chapter 9-3 (Non-Emergency Curfews);
 - (4) Section 9-4-11 (Camping in Public Area Prohibited);
 - (5) Section 9-4-12 (Glass Container Prohibited in Certain Areas);
 - (6) Section 9-4-13 (Solicitation Prohibited);
 - (7) Section 9-4-15 (Urinating or Defecating in Public Prohibited).
 - (8) Section 9-4-16 (Manifesting the Purpose of Engaging in Prostitution Prohibited);
 - (9) Section 9-4-17 (Damage to, Use of, or Bathing in Public Water Source Prohibited);
 - (10) Section 9-4-20 (Curfew at Water Utility Property);
 - (11) Section 9-4-22 (Solicitation Between Certain Hours Prohibited);
 - (12) Section 9-4-43 (Graffiti Prohibited);
 - (13) Section 9-4-52 (Fictitious or False Information Prohibited); and
 - (14) Article 5 (Manifesting the Purpose of Selling an Illegal Drug or Chemical) of Chapter 9-5 (Restrictions on Drugs, Chemicals, and Controlled Substances)

- ❖ Proposition B cases inside the DACC's geographical jurisdiction may be processed, heard and adjudicated by a presiding judge and clerks serving in the capacity of a DACC judge and clerk. Yet, those outside the geographical jurisdiction have to go to Austin Municipal Court due to the jurisdictional limitation. This poses issues of court efficiency and ability for DACC to help provide services to homeless individuals who commit a violation of one of the Proposition ordinances or related state law.
- ❖ The best solution is to amend Section 2-10-32 to expand DACC's jurisdiction so that all Proposition B cases involving the homeless can be processed, heard, and adjudicated by an AMC judge and clerk while they are serving in their capacity as a judge or clerk of DACC.

City Code Amendment Requested By DACC

Either of the following amendments are best to meet expectations of DACC hearing, adjudicating and processing Proposition B cases involving the homeless. DACC has information and/or access to services referred by the state law.

- (1) Amend to Section 2-10-32 by removing 2-10-32(A) and adding the following to the jurisdiction mentioned in 2-10-32(B) and (C): Tex. Pen. Code §48.05 Prohibited Camping (Statewide) and Section 9-4-14 (Sitting and Lying) of the Austin City Code.

OR

- (2) Amend to Section 2-10-32 (A) by adding a provision specifying stating that DACC jurisdiction is City-wide for the following City of Austin Code Sections: 9-4-11 (Camping), 9-4-13 (Solicitation Prohibited), 9-4-14 (Sitting and Lying), and Tex. Pen. Code §48.05. Section 2-10-32(B) should be amended to include Tex. Pen. Code §48.05 Prohibited Camping (Statewide), and Section 2-10-32(C) of the City Code should also be amended to include 9-4-14 (Sitting and Lying).

§ 9-4-11 CAMPING IN PUBLIC AREA PROHIBITED.

(A) In this section:

- (1) PUBLIC AREA means an outdoor area accessible to the public including a street, highway, park, parking lot, alleyway, pedestrian way, and the common areas of a school, hospital, apartment building, office building, transport facility, or business.
- (2) CAMP means the use of a public area for living accommodation purposes including:
 - (a) storing personal belongings for an extended period of time;
 - (b) making a camp fire;
 - (c) using a tent or shelter or other structure for a living accommodation;
 - (d) carrying on cooking activities; or
 - (e) digging or earth breaking activities.
- (3) HOMELESS SHELTER means a supervised publicly or privately operated facility that is designed to provide temporary living accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social services and other assistance to find a home and that is designated by the city as a shelter.

(B) Except as provided in Subsection (D), a person commits an offense if the person camps in a public area that is not designated as a camping area by the Parks and Recreation Department.

- (1) camps in a public area that is not designated as a camping area by the City of Austin and the person is:
 - (a) materially endangering the health or safety of another person or of themselves; or
 - (b) intentionally, knowingly, or recklessly rendering impassable or impeding the reasonable use of a public area making usage of such area unreasonably inconvenient or hazardous.
- (2) camps, sits or lies down in a public area and the person is located:
 - (a) within the area of the Austin Resource Center for Homelessness (ARCH) and Salvation Army Downtown Shelter, so long as either is an operating homeless shelter, bordered by East Fourth Street (South), South Bound I-35 Frontage Road (East), East 11th Street (North), and Brazos Street (West); or
 - (b) within approximately one-quarter mile, with boundaries set by the City Manager and posted with signage, of an operating homeless shelter located outside of the Central Business District; or
 - (c) within 15 feet of a door jamb of a residence or a business during the business' operating hours.
- (3) camps in an area that the city designates as a high wildfire risk area.

(C) Unless a law enforcement officer determines that there is an imminent health or safety threat, a law enforcement officer must, before citing a person for a violation of this section, make a reasonable effort to:

- (1) advise the person of a lawful alternative place to camp;
- (2) advise the person, to the best of the law enforcement officer's knowledge, of available shelter or housing; and
- (3) contact, if reasonable and appropriate, a city designee who has the authority to offer to transport the person or provide the person with services.

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- (D) A person is materially endangering the health or safety of another person or of themselves, or is rendering impassable or impeding the reasonable use of a public area making usage of such area unreasonably inconvenient or hazardous if the person is camping on a sidewalk.
 - (E) A person is camping if the person engages in any of the activities listed in Subsection (A)(2) if it reasonably appears, based on the totality of the circumstances, that the person conducting the activity is using a public area for living accommodation purposes, regardless of the person's intent or engagement in other activities.
 - (F) This section does not apply to permitted camping or cooking in a park in compliance with park regulations.
 - (G) Subsection (B)(2) does not apply to a person who is sitting or lying if the person is:
 - (1) in the right-of-way because of a medical emergency;
 - (2) operating or patronizing a commercial establishment that conducts business on the sidewalk under Title 14 (*Streets and Use of Public Property*) of the Code;
 - (3) participating in or viewing a parade, festival, performance, rally, demonstration, or similar event;
 - (4) sitting on a chair or bench that is supplied by a public agency or by the abutting private property owner;
 - (5) sitting within a bus stop zone while waiting for public or private transportation; or
 - (6) waiting in a line for goods, services, or a public event.
 - (H) It is an affirmative defense to prosecution for a violation of Subsection (B)(2) for sitting or lying if a person is sitting or lying and is obstructing the right-of-way, but is seated or lying down as the result of a physical manifestation of a disability, not limited to visual observation.
 - (I) It is an affirmative defense to prosecution that a person owns the property or has secured the permission of the property owner to camp in a public area.

Source: Ord. No. 20191017-029 , Pt. 1, 10-28-19; Ord. No. 20210209-003 , Pt. 2, 5-1-21.

§ 9-4-13 SOLICITATION.

- (A) The council finds that:
 - (1) Aggressive solicitation is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder.
 - (2) Aggressive solicitation includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic.
 - (3) The presence of individuals who solicit money from persons at or near banks, automated teller machines, public transportation facilities, and crosswalks is especially troublesome because of the enhanced fear of crime in a place that is confined, difficult to avoid, or where a person might find it necessary to wait.
 - (4) This section is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation, and not to limit a constitutionally protected activity.
- (B) In this section:
 - (1) AGGRESSIVE MANNER means:
 - a. intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;

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- b. following the person being solicited, if that conduct is:
 - i. intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - c. continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
 - d. intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
 - e. using obscene or abusive language or gestures toward the person being solicited;
 - f. approaching the person being solicited in a manner that:
 - i. is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (2) AUTOMATED TELLER MACHINE means a device, linked to a bank's account records, which is able to carry out banking transactions.
- (3) AUTOMATED TELLER FACILITY means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.
- (4) BANK includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.
- (5) BUS means a vehicle operated by a transit authority for public transportation.
- (6) CHECK CASHING BUSINESS means a person in the business of cashing checks, drafts, or money orders for consideration.
- (7) PUBLIC AREA means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.
- (8) SOLICIT means to request, by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.
- (C) A person commits an offense if the person solicits:
- (1) in an aggressive manner in a public area;
 - (2) in a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;
 - (3) within 25 feet of:
 - a. an automated teller facility;
 - b. the entrance or exit of a bank; or
 - c. the entrance or exit of a check cashing business;

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- (4) at a marked crosswalk;
 - (5) on either side of the street on a block where a school attended by minors or a child care facility has an entrance or exit;
 - (6) at a sidewalk cafe authorized under Chapter 14-4 (*Sidewalk Cafes*) or the patio area of a bar or restaurant; or
 - (7) within the boundaries of the City of Austin between 7:00 p.m. and 7:00 a.m.
- (D) A culpable mental state is not required, and need not be proved, for an offense under this Chapter Subsection (C)(2), (3), or (4).
- (E) This section is not intended to proscribe a demand for payment for services rendered or goods delivered.

Source: 1992 Code Section 10-1-15; Ord. 031023-13; Ord. 031211-11; Ord. 20051215-017; Ord. No.20190620-185, Pt. 2, 7-1-19;Ord. No. 20210209-003, Pt. 3, 5-1-21.

§ 9-4-14 SITTING OR LYING DOWN ON PUBLIC SIDEWALKS OR SLEEPING OUTDOORS IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA PROHIBITED.

- (A) DISABILITY means having a physical or mental impairment which substantially limits one of more major life activities.
- (1) PHYSICAL OR MENTAL IMPAIRMENT means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - (2) MAJOR LIFE ACTIVITIES means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, learning, breathing and working.
- (B) The council finds that the City has a compelling interest in:
- (1) encouraging and preserving a vital, pedestrian-friendly urban core;
 - (2) assuring that the urban core remains accessible to individuals with disabilities and compliant with the provisions of the Americans with Disabilities Act;
 - (3) promoting tourism and business in the central business district;
 - (4) preserving the quality of urban life and in protecting its citizens from intimidating behavior; and
 - (5) encouraging businesses and neighborhoods in the central city where walking is a realistic alternative to vehicles that use fossil fuels.
- (C) The council finds that in areas with high pedestrian traffic and a high incidence of petty crime related to public disorder, individuals sitting or lying in the pedestrian right-of-way:
- (1) contribute to a sense of fear, intimidation, and disorder;
 - (2) are disruptive to residents, businesses, and customers;
 - (3) discourage, block, or inhibit the free passage of pedestrians; and
 - (4) contribute to the loss of access to and enjoyment of public places.

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- (D) This section applies in the following area, including the streets and pedestrian rights-of-way that bound the area, but does not apply on the campus of the University of Texas:
- (1) beginning at the intersection of 30th Street (West) and Lamar Boulevard (North);
 - (2) south on Lamar Boulevard (North) to the north shore of Lady Bird Lake;
 - (3) east along the north shore of Lady Bird Lake to the point directly south of the curve at the intersection of Jesse E. Segovia Street and Robert Martinez, Jr. Street;
 - (4) north to the curve at the intersection of Jesse E. Segovia Street and Robert Martinez, Jr. Street;
 - (5) west along Jesse E. Segovia Street to the intersection of Chicon Street;
 - (6) north on Chicon Street to the intersection of Seventh Street (East);
 - (7) west on Seventh Street (East) to the IH-35 East Frontage Road;
 - (8) north on the IH-35 East Frontage Road to the intersection of 14th Street (East);
 - (9) east on 14th Street (East) to the boundary of Oakwood Cemetery;
 - (10) south and east along the boundary of Oakwood Cemetery to Leona Street;
 - (11) north on Leona Street to the intersection of Manor Road;
 - (12) east on Manor Road to the intersection of Dean Keeton Street (East);
 - (13) west on Dean Keeton Street (East) to the intersection of Red River Street;
 - (14) north on Red River Street to the intersection of 381 Street (East);
 - (15) west on 38th Street (East and West) to the intersection of Guadalupe Street;
 - (16) south on Guadalupe Street to the intersection of 30th Street (West); and
 - (17) west on 30th Street (West) to the intersection of Lamar Boulevard (North), the place of beginning.
- (E) A person commits an offense if, after having been notified by a law enforcement officer that the conduct violates this section:
- (1) the person is asleep outdoors; or
 - (2) the person sits or lies down in the right-of-way between the roadway and the abutting property line or structure, or an object placed in that area.
- (F) This section does not apply to a person who:
- (1) sits or lies down because of a medical emergency;
 - (2) operates or patronizes a commercial establishment that conducts business on the sidewalk under Title 14 (*Use of Streets and Public Property*) of the Code;
 - (3) participates in or views a parade, festival, performance, rally, demonstration, or similar event;
 - (4) sits on a chair or bench that is supplied by a public agency or by the abutting private property owner;
 - (5) sits within a bus stop zone while waiting for public or private transportation; or
 - (6) is waiting in a line for goods, services, or a public event.
- (G) It is an affirmative defense to prosecution if a person sits or lies down as the result of a physical manifestation of a disability, not limited to visual observation.
- (H) A culpable mental state is not required, and need not be proven, for an offense under this section.

Source: 1992 Code Section 10-1-26; Ord. 031023-13; Ord. 031211-11; Ord. 20051215-017; 20110303-029; Ord. No.20190620-185, Pt. 3, 7-1-19;Ord. No. 20210209-003, Pt. 4, 5-1-21.

Part 5. Effectiveness and Severability.

- (A) The effective date of this ordinance shall be the earlier of (i) ten (10) days after the date of its final passage by the Austin City Council, as prescribed under Article IV, Section 4(a) of the Austin City Charter or (ii) the date upon which the results of an election required under Article IV, Section 4(b) are canvassed.
- (B) If any section, paragraph, clause, or provision of this ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance, and to this end, the provisions of this ordinance are declared to be severable. This ordinance shall supersede the Austin City Code to the extent there are any conflicts.

(Ord. No. 20210209-003 , Pt. 5, 5-1-21)

