



## MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager

DATE: May 4, 2020

SUBJECT: Response to Resolution No. 20191205-062

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The purpose of this memo is to provide the response to Resolution No. [20191205-062](#), which directed the City Manager to prepare a report about the City's restriction on consuming alcoholic beverages on public streets or sidewalks within certain areas in Austin.

### Municipal History of No-Public Consumption Ordinances

The Resolution requested the municipal history of no-public consumption ordinances in Austin, outlining who enacted the ordinances, why they were enacted, and indicate if there is any public safety function they serve. City Council meeting minutes and adopted ordinances provided pertinent information about the six Designated Areas, which may be viewed on the attached map. Although their placement in the City Code has changed over the years, the boundaries of the six designated areas/zones have remained materially unchanged since their initial adoption, except as specifically noted below. It should be noted that Council meetings occurring before 2004 did not have closed caption transcripts; therefore, these transcripts were not available for staff's review.

#### Designated Area 1

On August 16, 1990, City Council approved [Ordinance No. 900816-D](#) which prohibits the consumption of alcoholic beverages on public streets, sidewalks and pedestrian ways in, Zone 1/Designated Area 1. The ordinance became effective ten days after the date of approval. The item was approved on Council Member Max Nofziger's motion, Council Member Bob Larson's second, with a 4-3 Vote, Mayor Pro Term Charles Urdy, Council Members Smoot Carl-Mitchell and Louise Epstein voting no.

#### Designated Area 2

On September 20, 1990, City Council approved [Ordinance No. 900920-F](#) adding Designated Area 2 to the City Code. The ordinance became effective ten days after the date of approval. The item was approved on Council Member Bob Larson's motion, Mayor Lee Cooke's second, 4-

3 vote, with Mayor Pro Tem Charles Urdy, Council Members Smoot Carl-Mitchell and Louise Epstein voting no.

Council expanded Designated Area 2 in 1999, when it adopted Designated Areas 5 and 6.

### Designated Area 3

On April 20, 1995, City Council approved [Ordinance 950420-D](#), which became effective ten days after the date of approval. The ordinance amended Chapter 8-3-9, Alcohol Consumption, and Section 10-1-19 by adding Designated Area 3. The item was approved with amended boundary to edge of right of way on Council Member Eric Mitchell's motion, Council Member Jackie Goodman's second, 5-0 vote, Mayor Bruce Todd and Mayor Pro Tem Max Nofziger absent.

### Designated Area 4

On June 29, 1995, City Council approved [Ordinance 950629-G](#), which became effective ten days after the date of approval. The ordinance amended City Code Section 8-3-9, Alcohol Consumption, and Section 10-1-19 by adding an area west of the University of Texas, Designated Area 4. The item was approved on Mayor Pro Term Gus Garcia's motion, Council Member Jackie Goodman's second, 5-0-1 vote, Council Member Eric Mitchell abstaining, Council Member Brigid Shea absent.

Council expanded Designated Area 4 in 1999, when it adopted Designated Areas 5 and 6.

### Designated Areas 5 and Area 6.

On June 3, 1999, City Council approved [Ordinance 990603-107](#), which became effective immediately. The ordinance amended City Code Chapter 8-3, Alcohol Consumption and City Code Section 10-1-19, by expanding Designated Areas 2 and 4 and adding two new areas, Designated Areas 5 and 6. In adopting this ordinance, the Council declared an emergency for the immediate preservation of the public peace, health and safety. The item was approved on Council Member Willie Lewis' motion, Council Member Gus Garcia's second on a 7-0 vote.

Because contemporaneous Council meeting transcripts were unavailable, staff reviewed news articles from the Austin American-Statesman, spanning from July, 20, 1990 through July 22, 1995, for the purpose of determining Council's motivation for adopting the ordinances. The articles, which include statements from Council members and others who were both supportive of and opposed to the ordinances, highlighted varying reasons why Council supported the creation of the designated areas. The articles reveal that merchants and residents in the downtown area, South Congress, and the UT area advocated for the ban of alcohol on streets, sidewalks and other public areas. In addition, there was a desire to decrease alcohol-related crime, violence, and vagrancy.

However, a November 9, 1990 article, regarding the approval of Designated Area 2, indicates that passage of these early ordinances was controversial and divided the Council.<sup>1</sup> In another article dated October, 2, 1990, the Austin American-Statesman reported that the approval of Designated Area 2, which included an East Austin neighborhood adjacent to downtown, caused discord and concerns for residents in East Austin.<sup>2</sup>

## Arrest and Citations

The Austin Police Department conducted research on the number of arrests made for violations of Chapter 4-9-1, Restrictions on Alcoholic Beverages, in the past 10 years per Designated Area. The attached table provides the ethnicity and average age of the individuals arrested for violations of Chapter 4-9-1. Over the past 10 years, Designated Area 1, which is located in the downtown area, has had the highest number of arrests, with Designated Area 2 being the next highest.

Based on the information available to the department, the Austin Municipal Court provided the number of citations given for violations of Chapter 4-9-1 in the past five years, by the ethnicity and average age. The table below indicates that there were 571 citations given in 2015; however, the Citation count decreased substantially each subsequent year.

Race/Ethnicity	2015	2016	2017	2018	2019
White	296	15	17	5	2
Black	132	14	8	2	3
Hispanic	125	11	4	4	1
Blank	8	0	0	0	0
American Indian	5	0	0	0	0
Other	4	0	0	0	0
Middle Eastern	1	1	0	0	0
Asian	0	1	0	0	0
<b>Count of Citations</b>	<b>571</b>	<b>42</b>	<b>29</b>	<b>11</b>	<b>6</b>

Average Age	2015	2016	2017	2018	2019
	<b>48</b>	<b>40</b>	<b>48</b>	<b>47</b>	<b>43</b>

## Conclusion

Given the evidence (including the ordinances, and news articles) reviewed, it is likely that Council adopted these Designated Areas for safety purposes. Specifically, to reduce public

<sup>1</sup> Carlos Cardova. "Alcohol ban on South Congress." Austin American-Statesman, Nov. 9, 1990, B3

<sup>2</sup> Michelle T. Johnson, "Drink-in taps Cooke, Alcohol ban – East Austin." Austin American-Statesman, Oct. 1990, B1

alcohol consumption and the associated issues. No state law, either now or in the past, required a city to adopt an ordinance or other provision that would prohibit the public consumption of alcohol. At the time Austin adopted the initial Designated Areas in 1990, no state law existed to prevent cities from prohibiting public consumption.<sup>3</sup> Since 1993, state law has restricted the ability of cities to create these no-consumption areas.<sup>4</sup> Specifically, a city must find “that the possession of an open container or the public consumption of alcoholic beverages in the central business district of the municipality is a risk to the health and safety of the citizens of the municipality” prior to adopting an ordinance. Moreover, cities are permitted to restrict public consumption only in the “central business district.” In sum, Council has the authority to amend the City Code to remove any or all of the Designated Areas.

This information will be provided to the Public Safety Commission for their review and recommendations to the Council. Please do not hesitate to contact me should you have questions.

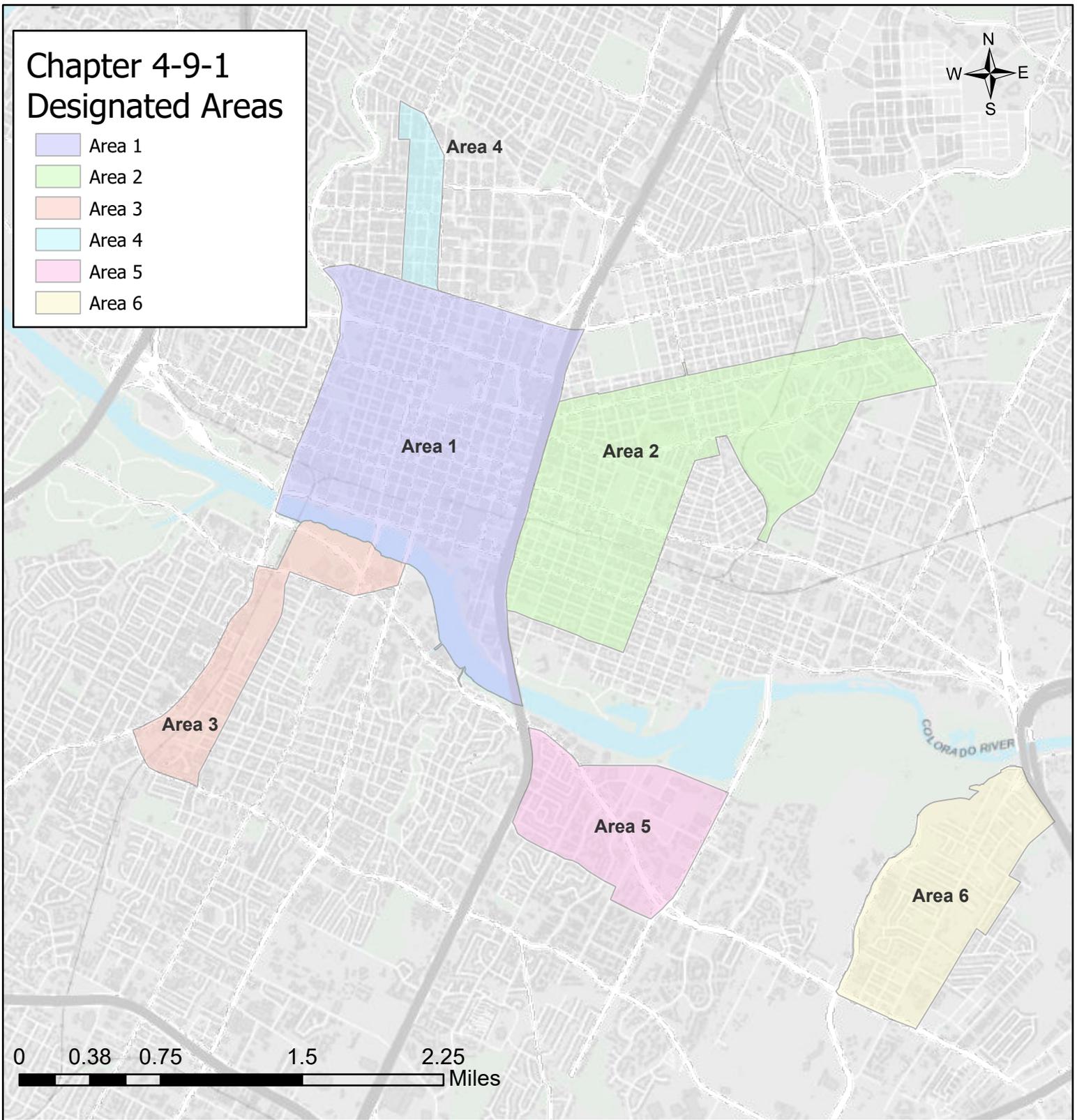
cc: Spencer Cronk, City Manager  
CMO Executive Team  
Anne Morgan, City Attorney  
Chief Brian Manley, Austin Police Chief  
Mary Jane Grubb, Municipal Court Clerk

Attachments: Map of Chapter 4-9-1 Designated Areas  
Table of Chapter 4-9-1 Arrests by Designated Area (Ethnicity and Age)

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<sup>3</sup> A federal court rejected a constitutional challenge to Austin’s initial Designated Areas brought by several merchants who sold beer to pedestrians on Sixth Street from “to-go” windows. *See Glasheen v. City of Austin*, 840 F.Supp. 62 (W.D. Tex. 1993).

<sup>4</sup> The state law adopted by HB 1445 did not affect the validity of ordinances adopted prior to September 1, 1993.



# Austin Ordinance - Chapter 4-9

## Restricted Areas for Alcoholic Beverages

Date Saved: 4/22/2020  
Created by: AP8854



INFORMATION SYSTEMS

This map was created by the Info Systems - Business Technology Unit of the Austin Police Department for the sole purpose of the geographic display of crime. No warranty is made with regards to its accuracy or completeness. Map was created using ESRI ArcGIS Pro 2.0. Data is projected using North American Datum 1983, Texas State Plane Central. Units are measured in US. Feet. Data sources: Austin Police Department, City of Austin Corporate GIS.

	Arrest Year	2010		2011		2012		2013		2014	
Chapter 4-9-1 Area	Race/Ethnicity	Count of Arrests	Average Age at Arrest	Count of Arrests	Average Age at Arrest	Count of Arrests	Average Age at Arrest	Count of Arrests	Average Age at Arrest	Count of Arrests	Average Age at Arrest
Area 1	Totals	23	34.1	28	38.5	54	41.9	43	42.3	35	40.4
	Asian	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	Black	7	37.6	9	40.0	15	43.4	7	48.6	12	41.8
	Hispanic or Latino	3	38.0	5	43.6	11	37.6	12	42.1	8	35.8
	Middle Eastern	0	0.0	0	0.0	0	0.0	1	45.0	1	46.0
	White	13	31.4	14	35.6	28	42.8	23	40.4	14	41.6
Area 2	Totals	3	37.7	1	47.0	10	43.9	6	48.8	7	37.3
	Black	1	51.0	1	47.0	4	46.5	3	40.7	3	38.7
	Hispanic or Latino	2	31.0	0	0.0	3	37.3	3	57.0	0	0.0
	White	0	0.0	0	0.0	3	47.0	0	0.0	4	36.3
Area 3	Totals	2	51.5	0	0.0	1	47.0	0	0.0	0	0.0
	White	2	51.5	0	0.0	1	47.0	0	0.0	0	0.0
Area 4	Totals	2	48.5	0	0.0	0	0.0	0	0.0	0	0.0
	Hispanic or Latino	1	49.0	0	0.0	0	0.0	0	0.0	0	0.0
	White	1	48.0	0	0.0	0	0.0	0	0.0	0	0.0
Area 5	Totals	1	46.0	3	50.3	4	49.8	0	0.0	0	0.0
	Black	0	0.0	1	43.0	1	32.0	0	0.0	0	0.0
	Hispanic or Latino	0	0.0	2	54.0	1	41.0	0	0.0	0	0.0
	White	1	46.0	0	0.0	2	63.0	0	0.0	0	0.0
Area 6	Totals	1	28.0	0	0.0	1	64.0	0	0.0	0	0.0
	Black	0	0.0	0	0.0	1	64.0	0	0.0	0	0.0
	Hispanic or Latino	1	28.0	0	0.0	0	0.0	0	0.0	0	0.0

	Arrest Year	2015		2016		2017		2018		2019		2010-2019 Total Count of Arrests
Chapter 4-9-1 Area	Race/Ethnicity	Count of Arrests	Average Age at Arrest									
Area 1	Totals	22	32.9	14	37.1	8	38.1	8	41.3	1	41.0	236
	Asian	1	18.0	1	20.0	0	0.0	0	0.0	0	0.0	
	Black	2	48.0	3	32.7	3	46.7	3	46.7	1	41.0	
	Hispanic or Latino	7	30.9	2	52.5	0	0.0	1	50.0	0	0.0	
	Middle Eastern	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
	White	12	32.8	8	37.1	5	33.0	4	35.0	0	0.0	
Area 2	Totals	2	44.5	1	56.0	1	46.0	2	55.5	1	45.0	34
	Black	1	49.0	0	0.0	0	0.0	2	55.5	1	45.0	
	Hispanic or Latino	1	40.0	1	56.0	1	46.0	0	0.0	0	0.0	
	White	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
Area 3	Totals	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3
	White	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
Area 4	Totals	0	0.0	1	51.0	0	0.0	0	0.0	0	0.0	3
	Hispanic or Latino	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
	White	0	0.0	1	51.0	0	0.0	0	0.0	0	0.0	
Area 5	Totals	0	0.0	0	0.0	0	0.0	1	52.0	0	0.0	9
	Black	0	0.0	0	0.0	0	0.0	1	52.0	0	0.0	
	Hispanic or Latino	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
	White	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
Area 6	Totals	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
	Black	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	
	Hispanic or Latino	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	