

ORDINANCE NO. 20180426-027

AN ORDINANCE AMENDING CITY CODE CHAPTER 14-9 (*TRAFFIC OR SIDEWALK OBSTRUCTIONS*) TO EXPAND THE TYPES OF ACTS THAT ARE PROHIBITED; CREATING A CITY-WIDE SERVICES LICENSE; CREATING OFFENSES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 14-9-1 (*Merchandise over or on Sidewalks Prohibited*) is amended as follows:

§ 14-9-1 – COMMERCIAL USE OF [MERCHANDISE OVER OR ON] SIDEWALKS OR CITY RIGHT-OF-WAY PROHIBITED.

- (A) Except as provided in Subsection (B) or otherwise authorized by ordinance, a person may not:
- (1) display, cause to be displayed, suspend, or offer merchandise or dockless transportation services for sale, lease, or rental in the public right-of-way or on a [ever-the] sidewalk in front of a business, residence, or other premises within the person's control; or
 - (2) place a container on the sidewalk adjoining a business, residence, or other premises within the person's control.
- (B) This section does not apply to specific permanent containers for ornamental trees or shrubs placed in accordance with a permit authorized by Council.

PART 2. City Code Section 14-9-3 (*Placing Vehicle or Bulky Objects on Street, Alley, or Sidewalk*) is amended to prohibit the placing of any objects in the street, alley, or sidewalk, and to read as follows:

§ 14-9-3 - PLACING [VEHICLE OR BULKY] OBJECTS ON STREET, ALLEY, OR SIDEWALK.

- (A) A person may not place, store, or park, or allow [permit] another person to place, store, or park, a vehicle, machinery, dockless transportation item or other bulky item on a street, alley, or sidewalk [for more than one hour]:
- (1) to sell, purchase, rent, or lease the item;
 - (2) to use the object or item for work or business; or
 - (3) as waste, refuse, or junk.

- (B) ~~[This section does not apply to lumber or other building materials that are being used to construct or repair a building.]~~

~~[(C)]~~ This section does not apply to an individual's automobile or other vehicle that is being used or is temporarily parked at the curb to be used for the individual's personal use.

PART 3. City Code Section 14-9-11 (*Restriction on Street Sales in Certain Areas*) is amended to prohibit the sale, exchange, or taking of orders for the sale or exchange of goods or services within the City right-of-way and to read as follows:

§ 14-9-11 - RESTRICTION ON SALES AND OTHER TRANSACTIONS IN CITY RIGHT-OF-WAY [STREET SALES IN CERTAIN AREAS].

- (A) Except as provided in Subsection (B), a person may not display, sell, offer for sale, exchange, or take orders for the sale or exchange of merchandise, or dockless transportation goods services, rentals or lease within City right-of-way adjacent to schools, hospitals, convention centers, City owned or controlled buildings, streets, highways, bridges, alleys, sidewalks, and any places deemed detrimental to safety and mobility as determined by the director of the Austin Transportation Department (director), ~~[in an area described in this section]~~ unless the person has obtained a license from the City[:].

~~[(1) — An area that begins at the intersection of the north line of Riverside Drive (West) with the east line of South First Street;~~

~~(a) — South along the east line of South First Street to a point in the south line of Barton Springs Road;~~

~~(b) — West along the south line of Barton Springs Road to a point in the west line of Dawson Road;~~

~~(c) — North along the west line of Dawson Road to a point in the north line of Riverside Drive (West); and~~

~~(d) — East along the north line of Riverside Drive (West) to the point of beginning.~~

~~[(2) — An area that begins at the intersection of the south line of 15th Street (East) with the west line of Trinity Street;~~

~~(a) — North along the west line of Trinity Street to a point in the north line of Martin Luther King, Jr. Boulevard;~~

~~(b) — East along the north line of Martin Luther King, Jr. Boulevard to a point in the west line of Red River Street;~~

- ~~(c) — North along the west line of Red River Street to a point in the north line of Manor Road;~~
 - ~~(d) — East along the north line of Manor Road to a point on the face of the west curb of IH 35 West Frontage Road;~~
 - ~~(e) — South along the face of the west curb of the IH 35 West Frontage Road to a point in the south line of 15th Street (East); and~~
 - ~~(f) — West along the south line of 15th Street (East) to the point of beginning.~~
- ~~(3) — An area that begins at the intersection of the north right-of-way line of Third Street (East) with the west right-of-way line of Trinity Street;~~
- ~~(a) — East along the north right-of-way line of Third Street (East) to a point in the west right-of-way line of Sabine Street;~~
 - ~~(b) — South along the west right-of-way line of Sabine Street to a point in the north right-of-way line of Second Street (East);~~
 - ~~(c) — West along the north right-of-way line of Second Street (East) to a point in the east right-of-way line of Red River Street;~~
 - ~~(d) — South along the east right-of-way line of Red River Street to a point in the south right-of-way line of First Street (East);~~
 - ~~(e) — West along the south right-of-way line of First Street (East) to a point in the west right-of-way line of Trinity Street; and~~
 - ~~(f) — North along the west right-of-way line of Trinity Street to the point of beginning.]~~

(B) This section does not apply to:

- (1) the sale or display of a newspaper, pamphlet, or periodical on a sidewalk if the newspaper, pamphlet, or periodicals and any display or dispenser is within an area extending not more than three feet from the curblane or the lot line; or
- (2) [a food vendor legally operating as authorized under the Code.] the distribution of leaflets, literature, or other information in a manner that does not block the safe or free passage of another person.
- (3) solicitation as defined by Subsection (B)(8) of City Code Section 9-4-13 (Exception to Prohibition Against Obstruction for Sale, Rental, or Lease of Merchandise or Services) in a manner that does not violate Subsection

(C) of City Code Section 9-4-13 (*Exception to Prohibition Against Obstruction for Sale, Rental, or Lease of Merchandise or Services*)

PART 4. City Code Section 14-9-12 (*Obstruction for Sale of Merchandise*) is amended to add a prohibition against renting or leasing merchandise or services in the City right-of-way to read as follows:

§ 14-9-12 - OBSTRUCTION FOR SALE, RENTAL, OR LEASE OF MERCHANDISE OR SERVICES PROHIBITED.

- (A) This section does not apply to a person licensed under Section 14-9-21 (*Street Vendor License Authorized*), or to a use authorized by Section 14-9-13 (*Exceptions to Prohibition Against Obstruction for Sale, Rental, or Lease of Merchandise or Services*).
- (B) On a street, highway, bridge, alley, sidewalk, or right-of-way, a person may not:
 - (1) place, park, or maintain, or cause to be placed, parked, or maintained a structure or display used to sell, offer for sale, lease, rental, barter, trade, store, or take an order for the sale, lease, rental, or exchange of merchandise, or dockless transportation goods, or services; or
 - (2) sell, offer for sale, rent, lease, exchange, or take orders for the sale or exchange of merchandise, or dockless transportation goods or services.
- (C) A person may not park a motor vehicle on a street to use as a structure or display to sell merchandise to a pedestrian or occupant of another vehicle.

PART 5. City Code Section 14-9-13 (*Exceptions to Prohibition Against Obstruction for Sale of Merchandise*) is amended to read as follows:

§ 14-9-13 - EXCEPTIONS TO PROHIBITION AGAINST OBSTRUCTION FOR SALE, RENTAL, OR LEASE OF MERCHANDISE OR SERVICES.

Section 14-9-12 (*Obstruction for Sale, Rental, or Lease of Merchandise or Services Prohibited*) does not apply to:

- (1) a display for a newspaper, pamphlet, or periodical, on a sidewalk if the display is not more than three feet from the curbline or lot line, in compliance with Article 4 (*Restrictions on Newsracks and Direct Sales in a Public Rights-of-Way*);
- (2) a public market established under Chapter 14-2 (*Public Markets*);
- (3) the delivery of previously ordered or purchased merchandise;

- (4) the use of a street, alley, or sidewalk in connection with residence-to-residence or business-to-business sales or solicitations;
- (5) fresh cut flower sales, offers for sale, exchanges, or purchase orders;
- (6) a sidewalk cafe permitted or licensed under Chapter 14-4 (*Sidewalk Cafés*);
- (7) a sidewalk sign that complies with Section 25-10-153 (*Sidewalk Signs*) or a retail item for display or sale, provided that:
 - (i) the sign or retail item is within the frontage of the business displaying the sign or retail item; and
 - (ii) an unobstructed pedestrian pathway exists sufficient to meet applicable requirements of the Americans with Disabilities Act (ADA); ~~and~~
- (8) a street vendor operating a non-stationary vending cart from which only prepackaged food or drinks are sold to the general public, provided the street vendor is a person affiliated with or operating as an agent of a non-profit corporation that assists the chronically homeless~~[-]; and~~
- (9) a children's neighborhood beverage stand as defined by City Code Section 10-3-1 (*Definitions*).

PART 6. City Code Section 14-9-14 (*Impoundment of Property Found in Violation*) is amended to authorize civilian city employees to impound and dispose of merchandise or goods in the City right-of-way, and to read as follows:

§ 14-9-14 - IMPOUNDMENT OF PROPERTY FOUND IN VIOLATION.

- (A) A peace officer or a civilian employee designated by the director may impound a structure, ~~[or] display, merchandise or goods [used for the sale of merchandise]~~ placed, parked, or maintained on a street, highway, bridge, alley, sidewalk, or other public right-of-way in violation of this article.
- (B) Property impounded under this section may be removed immediately and redeemed or disposed of in accordance with Chapter 9-1 (*Abandoned Property and Vehicles*).

PART 7. Article 3 (*Street Vendor License*) City Code Section 14-9-21 (*Street Vendor License Authorized*) Subsection (B) is amended to read as follows:

§ 14-9-21 - STREET VENDOR LICENSE AUTHORIZED.

- (B) The city manager may not issue a [~~permit~~] license under this section unless the traffic engineer has reviewed the request for a license and determines that the proposed location:
- (1) have been approved by the Texas Department of Transportation Engineer, if the location involves a right-of-way covered by a state-city maintenance agreement;
 - (2) has been the site of fewer than 14 motor vehicle accidents during the 12-month period immediately preceding the date of the application;
 - (3) has a turnout, curbside parking, or other parking space available that may be used to transact a sale;
 - (4) is not expected to cause excessive vehicle delays, vehicle surges, or lane changes;
 - (5) has customary street traffic volumes that do not significantly impede the flow of vehicular traffic;
 - (6) complies with the provisions of the Section 552.007 (*Solicitation by Pedestrians*) of the Texas Transportation Code and Section 42.03 (*Obstructing Highway or Other Passageway*) of the Texas Penal Code;
 - (7) is not expected to cause or significantly contribute to sidewalk congestion or make access to abutting private property unreasonably inconvenient or hazardous; or
 - (8) is not expected to impede the flow of pedestrian traffic to make the use of a sidewalk unreasonably inconvenient or hazardous.

PART 8. City Code Section 14-9-22 (*Conditions of License*) is amended to read as follows:

§ 14-9-22 - CONDITIONS OF LICENSE.

[~~(A)~~] A person who applies for a license under this article must:

- [~~(1)~~] (A) agree to comply with the terms of the license agreement;
- [~~(2)~~] (B) pay the annual ground rent fee prescribed by ordinance, based on the traffic engineer's determination of the vendor's square-foot encroachment on the right-of-way; and
- [~~(3)~~] (C) carry and display a right of-way license verification card.

PART 9. Article 3 (*Street Vendor License*) of City Code Chapter 14-9 (*Traffic or Sidewalk Obstructions*) is amended to add a new Section 14-9-23 (*City-Wide Services License Authorized*) to create a new license, to read as follows:

§ 14-9-23 – CITY-WIDE DOCKLESS TRANSPORTATION LICENSE AUTHORIZED.

- (A) The director may issue a city-wide dockless transportation license to a person for use of the public right-of-way to sell, offer for sale, rent, lease, exchange, or take orders for dockless-transportation-related merchandise, goods, or services.
- (B) The director shall review the request for a license and determine that the following criteria have been met in addition to other criteria as established by rule:
 - (1) unit placement plan City Code Section 14-9-24 (*City Wide Placement Plan*) submitted;
 - (2) unit placement plan complies with the provisions of the Section 552.007 (*Solicitation by Pedestrians*) of the Texas Transportation Code and Section 42.03 (*Obstructing Highway or Other Passageway*) of the Texas Penal Code;
 - (3) activity is not expected to cause or significantly contribute to sidewalk congestion or to make access to abutting private property hazardous; and
 - (4) activity is not expected to impede the flow of pedestrian traffic or to make the use of a sidewalk unreasonably inconvenient or hazardous;
 - (5) licensee provides anonymized data reporting as required to ensure best management of public right of way and improve associated infrastructure, safety, and associated planning;
 - (6) vendor meets determined minimum liability insurance, both per occurrence and in the aggregate, as well as providing a performance bond per unit (to serve as security deposit); and
 - (7) units physically display contact information of vendors to provide people ability to call with complaints;
- (C) The director may modify a license or reduce the number of authorized units placed in the right of way, based on the total number of units concentrated within a specific area.

- (D) Each license shall be valid for no more than six months from date of issuance.
- (E) The director shall ensure that license applications are approved only for operators in compliance with City laws and in good financial standing with the City once an operator files a permit application and pays the permit fee. Companies can restore good standing if they take the following actions:
- (1) remove dockless devices from the public right-of-way;
 - (2) cease operations until they secure a license;
 - (3) reimburse the City for any and all costs associated with the company's lack of compliance; and
 - (4) other requirements as determined by the director.

PART 10. Article 3 (*Street Vendor License*) of City Code Chapter 14-9 (*Traffic or Sidewalk Obstructions*) is amended to add a new Section 14-9-24 (*City-Wide Unit Placement Plan*) to create a placement plan requirement, to read as follows:

§ 14-9-24 – CITY-WIDE DOCKLESS TRANSPORTATION UNIT PLACEMENT PLAN

- (A) An applicant for a city-wide dockless transportation license shall provide the director a plan that shows the number of units to be deployed in specific areas of the City.
- (B) The director may reduce the number of authorized units placed in the right of way, based on the number of units concentrated within a specific area.

PART 11. Article 3 (*Street Vendor License*) of City Code Chapter 14-9 (*Traffic or Sidewalk Obstructions*) is amended to add a new Section 14-9-25 (*License Amendment, Suspension, or Revocation*) to authorize license amendments, suspensions, or revocations, to read as follows:

§ 14-9-25 - LICENSE AMENDMENT, SUSPENSION, OR REVOCATION

- (A) The director may suspend, amend, or revoke a license for a violation of federal, state, or local law, or if the license holder does not meet the requirements under this division.
- (B) In addition to the grounds described in Subsection (A) above, the director may also suspend or revoke a license if the:

- (1) License holder fails to maintain correct and current information with the City regarding the information or operations in the right-of-way required by the license;
- (2) License holder provides false or misleading information to the director or any officer, employee, or contractor of the City;
- (3) License holder files bankruptcy, is insolvent, or fails to meet financial obligations on a timely basis, or is unable to obtain or maintain the financial resources needed to properly maintain facilities or provide adequate service;
- (4) License holder fails to provide the director regular reports;
- (5) License holder engages in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination;
- (6) License holder shows a pattern of not responding to inquiries by the director or customer complaints in a timely fashion;
- (7) A federal, state, or local registration, certification, or license of license holder is suspended; or
- (8) License holder, a person controlling the license, or principal employed by the license holder, is convicted of a felony or any crime involving theft, fraud, or deceit related to the license holder's service.

PART 12. Current City Code Section 14-9-23 (*Offenses and Penalty*) is renumbered and amended to read as follows:

§ 14-9-2[3]6 - OFFENSE AND PENALTY.

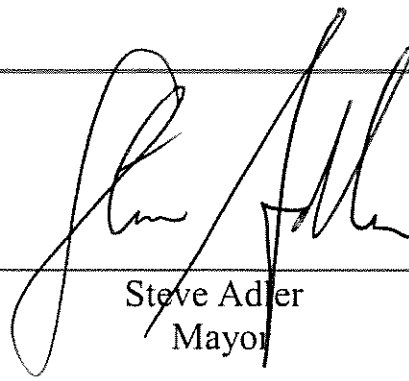
- (A) A person commits an offense if the person operates without a permit or license as required by this Chapter.
- ~~[(A)]~~ (B) A person commits an offense if the person fails to display the person's right-of-way license verification card to a peace officer or authorized City employee during the time the person is operating at the permitted location.
- (C) An offense under this article is a Class C misdemeanor punishable as prescribed by Section 1-1-99 (*Offenses; General Penalties*).

PART 13. The City Council finds that the impacts of obstructions to vehicle and pedestrian traffic constitute an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

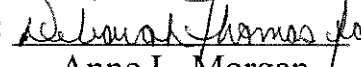
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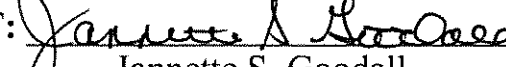
_____, April 26, 2018

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Steve Adler
Mayor

APPROVED: 
Anne L. Morgan
City Attorney

ATTEST: 
Jannette S. Goodall
City Clerk