

# Late Backup

## ORDINANCE NO.

### AN ORDINANCE REPEALING AND REPLACING CITY CODE SECTION 9-4-11 RELATING TO CAMPING IN PUBLIC AREA PROHIBITED, AND CITY CODE SECTION 9-4-14 RELATING TO OBSTRUCTION IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA PROHIBITED; AND CREATING OFFENSES.

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

#### **PART 1. FINDINGS:**

- (A) Council finds that this ordinance is needed to clarify and further define the prohibitions on camping, obstruction, and sitting and lying in public and other specified areas.
- (B) Council finds that the prohibitions and law enforcement procedures enacted by this ordinance do not make it a crime to be a person experiencing homelessness in the City, but prohibit specific risky and potentially injurious behaviors in specific areas.
- (C) Council finds that the City Manager's August 2019 memorandum dated challenges the Council to provide additional clarity with regards to the June 20, 2019 changes Council made to City Code Sections 9-4-11 (*Camping in Public Area Prohibited*) and 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*).

**PART 2.** City Code Section 9-4-11 (*Camping in Public Area Prohibited*) is repealed and replaced to read as follows:

#### **§ 9-4-11 CAMPING IN PUBLIC AREA PROHIBITED**

##### **9-4-11(1) DEFINITIONS:**

In this section:

- (A) CAMP means the use of a public area for living accommodation purposes including:
  - (1) storing personal belongings;
  - (2) making a camp fire;
  - (3) using a tent or shelter or other structure for a living accommodation;

- (4) carrying on cooking activities; or
  - (5) digging or earth breaking activities.
- (B) HOMELESS SHELTER means a supervised publicly or privately operated shelter or other facility that is designed to provide, and is providing, temporary living accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social service and other assistance to find a home; that is open and operational; and that is designated by the city as a shelter.
- (C) PARK means a parcel of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose that is under the administrative control of the Parks and Recreation Department.
- (D) 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.

#### **9-4-11(2) FINDINGS:**

- (A) Council finds that the city has a compelling interest in:
  - (1) Protecting the health and safety of all residents and visitors, including people who are experiencing homelessness;
  - (2) Ensuring the free movement of pedestrians and vehicles without undue obstruction or delay, or exposure to dangerous vehicular traffic, that may be caused by people camping in areas where there is high pedestrian or vehicular traffic;
  - (3) Protecting the environment, water quality and public health, and mitigating fire risk in sensitive, flood-prone, or high fire risk areas that may be negatively affected by people camping;
  - (4) Ensuring that parks and other public spaces are, to the greatest extent possible, protected and available for equal access and use by all.
- (B) Council finds that camping in public areas can, in the areas and circumstances identified in this section:
  - (1) threaten public health and safety, including the health and safety of those camping;
  - (2) create substantial risks to the environment; or

- (3) block or obstruct the safe access of pedestrians and vehicles to buildings and public infrastructure.

#### **9-4-11(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE**

- (A) Except as provided in Subsection (F), a person commits an offense if the person camps in a public area that is not designated as a camping area by the city and the person is:
  - (1) materially endangering the health or safety of another person or of themselves; or
  - (2) intentionally, knowingly, or recklessly rendering impassable, or impeding, the reasonable use of a public area making usage of such area unreasonably inconvenient or hazardous.
- (B) Except as provided by Subsection (F), a person commits an offense if the person camps in an area that is not designated as a camping area by the city and the person is:
  - (1) on or inside a culvert or storm drain;
  - (2) in a park;
  - (3) in a city library or on the grounds of a city library;
  - (4) in the right-of-way of a railroad or light rail track or crossing;
  - (5) in or on transit stops, shelters, platforms, or stations;
  - (6) on private property without the permission of the owner or apparent authority to act for the owner;
  - (7) on any part of an accessibility ramp for persons with disabilities, or is camping on a ramp in any manner that would restrict the movement of persons with disabilities;
  - (8) on land designated by the city for conservation, preservation, or water protection including nature preserves, the Balcones Canyonland Preserves, and Austin Water Wildlands;
  - (9) in a flood buy out area where camping has been prohibited by the City;
  - (10) inside of a creek or river or on its banks; or
  - (11) in a designated and marked special use zone, including construction zones, commercial service zones, passenger loading zones, customer service zones, and valet zones.
- (C) A person commits an offense if the person camps in a manner that:

- (1) knowingly damages, alters, or modifies public infrastructure, including benches, retaining walls, or planters;
  - (2) places furniture that obstructs pedestrian access to public areas, including benches and parking pay stations;
  - (3) starts or tends to a fire in an area that the city has designated as a high fire risk area;
  - (4) obstructs access to or egress from the entrance or exit of any building by camping within six feet of the entrance or exit, as measured from the door jamb;
  - (5) obstructs a sidewalk or other right-of-way by failing to leave a four foot clearance zone; or
  - (6) obstructs normal use of and access to public infrastructure, including benches or parking pay stations.
- (D) A person commits an offense if the person camps in an area that is not designated as a camping area by the City, if the area is marked with city no-camping signage, and the person is:
- (1) Within approximately one-quarter mile, with boundaries set by the City Manager, of a homeless shelter located outside of the area in 9-4-14(3)(A);
  - (2) Within approximately three blocks, with boundaries set by the City Manager, of a homeless shelter located inside the area in 9-4-14(3)(A);
  - (3) Within the area bordered by East 4th Street (South), Brushy Street (East), East 11th Street (North), and Brazos Street (West), excluding any area under IH-35;
  - (4) on a traffic island, median strip, median island, intersection island or other similar area that separates opposing traffic flows with either a painted area or a raised curb;
  - (5) in a floodplain that poses the greatest risk to people that are camping there as determined by the City Manager;
  - (6) on the sloped area under a highway and at the top of a retaining wall or alongside a highway overpass that is determined by the City to be particularly dangerous for camping.
- (E) A person is camping if the person engages in any of the activities listed in Subsection (A)(1) of City Code Section 9-4-11(1) (*Camping in Public Area Prohibited*) 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 camping or cooking in a park that complies with park regulations.

- (G) 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.

#### **9-4-11(4) ENFORCEMENT AND ENGAGEMENT PROCESS**

- (A) A law enforcement officer may only issue a citation for a violation of this section if, prior to issuing the citation, the law enforcement officer:
- (1) notified the person that the conduct violates this section,
  - (2) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and
  - (3) contacts, whenever reasonable, a member of a Homeless Outreach Street Team (HOST), case worker, community health paramedic, or other city designee who shall have the opportunity to offer to transport a person who continues to camp in violation of City Code Section 9-4-11(3) (*Camping in Public Area Prohibited*) to a location at which camping, is not prohibited and, as reasonably possible, at which case management and housing services can be received.

#### **9-4-11(5) SIGNAGE**

If the City is required to post a city no-camping sign to establish an offense to camp in an area, the sign must:

- (1) state that no camping is permitted in the area; and
- (2) be posted in a manner that is reasonably likely to come to the attention of a person entering the area.

#### **PART 3. Installation of signage and reporting requirement.**

- (A) In areas where city no-camping signage is required to make camping an offense, the City will not erect such signage until the following events have occurred:
- (1) The City has completed a comprehensive assessment of individuals camping in the prohibited area, and adjacent areas;
  - (2) The City has the resources to offer and has offered appropriate services and permanent housing to the individuals who are alleged to be in violation of the camping prohibition;
  - (3) The City Manager has posted on the City website a report documenting that the City has given individuals an adequate opportunity to participate in such housing and services, that the housing and services being offered to individuals

- are appropriate based on the assessments completed (including permanent housing opportunities), that individuals have been adequately educated about City rules related to camping the area, and that individuals have been granted sufficient time to participate in housing and service programs.
- (4) The City may post city no-camping signage in an area prior to completing the process in Subsections (A)(1)-(A)(3) if the City Manager determines that camping in the area poses an imminent or serious public health and safety threat, including, but not limited to, fire safety.
- (B) The City Manager shall provide to Council a quarterly report for the first year after passage of this ordinance detailing how often an accused offender under City Code Section 9-4-11(3) (*Camping in Public Area Prohibited*) is and is not so diverted from criminal sanction.

**PART 4.** The caption and City Code Section 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*) are repealed and replaced to read as follows:

**§ 9-4-14 OBSTRUCTION IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA AND SITTING OR LYING IN OTHER SPECIFIED AREAS PROHIBITED**

**9-4-14(1) DEFINITIONS:**

In this section:

- (A) **DISABILITY** means having a physical or mental impairment which substantially limits one or 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) **HOMELESS SHELTER** means a supervised publicly or privately operated shelter or other facility that is designed to provide, and is providing, temporary living

accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social service and other assistance to find a home; that is open and operational; and that is designated by the city as a shelter.

#### **9-4-14(2) FINDINGS:**

- (A) The council finds that the city has a compelling interest in:
  - (1) encouraging and preserving a vital, pedestrian-friendly urban core;
  - (2) promoting tourism and business in the central business district;
  - (3) preserving the quality of urban life; and
  - (4) encouraging businesses and neighborhoods in the central city where walking is a realistic alternative to vehicles that use fossil fuels.
- (B) The council finds that in areas with high pedestrian traffic and a high incidence of petty crime related to public disorder, individuals obstructing, sitting, or lying the pedestrian right-of-way:
  - (1) are disruptive to residents, businesses, and customers;
  - (2) discourage, block, or inhibit the free passage of pedestrians; and
  - (3) contribute to the loss of access to and enjoyment of public places.

#### **9-4-14(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:**

- (A) A person commits an offense if the person is:
  - (1) obstructing the right-of-way between the roadway and the abutting property line or structure, or on an object placed in that area, and the person is:
    - (i) materially endangering the health or safety of another person or of themselves; or
    - (ii) intentionally, knowingly, or recklessly rendering impassable or impeding the reasonable use of a public area making usage of such area unreasonably inconvenient or hazardous; or
  - (2) obstructing a sidewalk, trail, or shared-use path such that the person fails to leave four feet of clearance for a pedestrian; or

- (3) obstructing access to or egress from the entrance or exit of any building by sitting or lying down within six feet of the entrance or exit, as measured from the door jamb; and
  - (4) the person is located in the following area, including the streets and pedestrian rights-of-way that bound the area, but not including the campus of the University of Texas:
    - (i) beginning at the intersection of 29th Street (West) and Lamar Boulevard (North);
    - (ii) south on Lamar Boulevard (North) to the north shore of Lady Bird Lake;
    - (iii) 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;
    - (iv) north to the curve at the intersection of Jesse E. Segovia Street and Robert Martinez, Jr. Street;
    - (v) west along Jesse E. Segovia Street to the intersection of Chicon Street;
    - (vi) north on Chicon Street to the intersection of Seventh Street (East);
    - (vii) west on Seventh Street (East) to the IH-35 East Frontage Road;
    - (viii) north on the IH-35 East Frontage Road to the intersection of Martin Luther King, Jr. Boulevard;
    - (ix) west on Martin Luther King, Jr. Boulevard to the intersection of Guadalupe Street;
    - (x) north on Guadalupe Street to the intersection of 29th Street (West); and
    - (xi) northwest on 29th Street (West) to the intersection of Lamar Boulevard (North), the place of beginning.
- (B) A person commits an offense if the person sits or lies down in the following areas:
- (1) in the right-of-way of a railroad or light rail track or crossing;
  - (2) in a designated and marked special use zone, including, construction zones, commercial service zones, passenger loading zones, customer service zones, and valet zones;
  - (3) on any part of an accessibility ramp, located in a public place, for persons with disabilities, or on a ramp in any manner that would restrict the movement of persons with disabilities in a public place.
- (C) A person commits an offense if the person sits or lies down in the following areas if those areas are marked with city no-sitting or lying signage:

- (1) Within approximately one-quarter mile, with boundaries set by the City Manager, of a homeless shelter located outside of the area identified in 9-4-14(3)(A);
  - (2) Within three blocks, with boundaries set by the City Manager, of a homeless shelter located in the area identified in 9-4-14(3)(A).
- (D) This section does not apply to a person who:
- (1) is obstructing the right-of-way, or sitting or lying, because of a medical emergency;
  - (2) operates or patronizes a commercial establishment that conducts business on the sidewalk under Title 14 (*Streets and Use of 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.
- (E) It is an affirmative defense to prosecution if a person is obstructing the right-of-way, or sitting or lying, as the result of a physical manifestation of a disability, even if the manifestation of the disability is not visually observable.

#### **9-4-14(4) ENFORCEMENT AND ENGAGEMENT PROCESS**

- (A) A law enforcement officer may only issue a citation for a violation of this section if, prior to issuing the citation, the law enforcement officer:
- (1) notified the person that the conduct violates this section,
  - (2) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply, and
  - (3) contacts, whenever reasonable, a member of a Homeless Outreach Street Team (HOST), case worker, community health paramedic, or other city designee who shall have the opportunity to offer to transport a person who continues to obstruct, sit, or lie in violation of City Code Section 9-4-14(3) to a location at which such obstructing, sitting, or lying not prohibited and, as reasonably possible, at which case management and housing services can be received.

## **9-4-14(5) SIGNAGE**

If the City is required to post a city no-sitting or lying sign to establish an offense to sit or lie down in an area, the sign must:

- (1) state that no sitting or lying is permitted in the area; and
- (2) be posted in a manner that is reasonably likely to come to the attention of a person entering the area.

### **PART 5. Installation of signage and reporting requirement.**

- (A) In areas where city no-sitting or lying signage is required to create an offense in City Code Section 9-4-14(3) (*Obstruction in the Downtown Austin Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*), the City will not erect signage until the following events have occurred:
- (1) The City has completed a comprehensive assessment of individuals camping in the prohibited area, and adjacent areas;
  - (2) The City has the resources to offer services and permanent housing to the individuals who are alleged to be in violation of the camping prohibition;
  - (3) The City Manager has posted on the City website a report documenting that the City has given individuals an adequate opportunity to participate in such housing and services, that the housing and services being offered to individuals are appropriate based on the assessments completed (including permanent housing opportunities, that individuals have been adequately educated about City rules related to camping the area, and that individuals have been granted sufficient time to participate in housing and service programs).
  - (4) The City may post city no-camping signage in an area prior to completing the process in Subsections (A)(1)-(A)(3) if the City Manager determines that camping in the area poses an imminent or serious public health and safety threat, including, but not limited to, fire safety.
  - [~~(5) Unless needed pursuant to (A)(4), the city will only post city no camping signs in the area bordered by the western boundary of Manchaca Road, the eastern boundary of South 1st Street, the northern boundary of Lightsey Road, and the southern boundaries of Redd Street and West St. Elmo when the homeless shelter in that area becomes operational.]~~
- (B) The City Manager shall provide to Council a quarterly report for the first year after passage of this ordinance detailing how often an accused offender under City Code Section 9-4-14(3) (*Obstruction in the Downtown Austin Community Court Area and*

*Sitting or Lying in Other Specified Areas Prohibited) is and is not so diverted from criminal sanction.*

**PART 6.** When the City Manager has determined that the housing wait list for people experiencing homelessness is 60 days or fewer, then the Manager shall bring back for Council consideration additional prohibitions or restrictions on camping, sitting, and lying that Council may consider and that may:

- a. Increase the distance from shelters where these activities are prohibited;
  - b. Prohibit these activities on high pedestrian trafficked streets;
  - c. Prohibit these activities along creeks and rivers or in floodways;
  - d. Prohibit these activities on more sidewalks.

**PART 7.** Parts 1-5 of this ordinance take effect from 10 days of passage of the ordinance. Part 6 shall return to Council upon the date determined by the City Manager when the housing wait list is 60 days or fewer. To ensure the success of this approach, the City Manager shall implement an Encampment Response strategy that delivers services and housing opportunities, and the Manager shall report as quickly as possible to the Council about any funding needs and next steps.

## **PASSED AND APPROVED**

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Steve Adler  
Mayor

## **APPROVED:**

Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_

Jannette S. Goodall  
City Clerk