

21 **WHEREAS**, the Fifth Circuit Court of Appeals has found requiring
22 unaffordable secured bail amounts results in the “absolute deprivation of [indigent
23 arrestees’] most basic liberty interests—freedom from incarceration,” *ODonnell v.*
24 *Harris County*, 892 F.3d 147, 162 (5th Cir. 2018); and

25 **WHEREAS**, pretrial detention separates people from their families,
26 communities, and livelihoods, and research shows that even short stays in jail
27 destabilize families, increase recidivism rates, and lead to an increase in new charges;
28 and

29 **WHEREAS**, pretrial detention often forces people to plead guilty, even if they
30 are innocent, solely so that they can get out of jail earlier rather than languish behind
31 bars, resulting in criminal convictions may follow people for life; and

32 **WHEREAS**, research shows that people detained pretrial are more likely to
33 be convicted, more likely to be sentenced to jail, less likely to be sentenced to
34 probation, and are given longer sentences than similarly situated people released
35 pretrial; and

36 **WHEREAS**, “release on unsecured personal bonds or with no financial
37 conditions is no less effective than release on secured money bail at achieving the
38 goals of appearance at trial or avoidance of new criminal activity during pretrial
39 release,” *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1103 (S.D. Tex. 2017);
40 and

41 **WHEREAS**, most people detained in the Travis County Jail pretrial cannot
42 afford the cost of their release by paying the full cash bail amount or even a
43 bondsman’s fee; and

44 **WHEREAS**, the Travis County jail population is approximately one-fourth
45 Black or African American—more than three times their representation in the Travis
46 County population; and

47 **WHEREAS**, pursuant to rulings finding that Harris County violated both the
48 Due Process and Equal Protection clauses of the U.S. Constitution by using secured
49 money bail as a *de facto* pretrial detention order against indigent people charged with
50 misdemeanors, the Harris County Criminal Court at Law Judges enacted Rule 9 in
51 January, 2019, requiring the efficient release of the vast majority of people arrested
52 for misdemeanors and robust procedural and substantive protections at bail hearings;
53 and

54 **WHEREAS**, under Rule 9, the Harris County Criminal Court at Law Judges
55 release most people charged with misdemeanor offenses without any payment and
56 avoid inequitable, unnecessary, and time-consuming processes prior to release,
57 including: lengthy pretrial services interviews, risk assessments, and magistration;
58 personal bond fees and fees associated with nonfinancial conditions of release for
59 indigent arrestees; and the use of monetary bail for most misdemeanor arrestees and,
60 in cases where it can be considered, requires a judicial officer to make an

61 individualized determination of ability to pay at a hearing with counsel, consider
62 alternatives for those who cannot pay, and if unaffordable money bail is required,
63 make a finding that detention is necessary to meet a compelling interest;; and

64 **WHEREAS**, to comply with the Due Process Clause and Equal Protection
65 Clause of the U.S. Constitution, precedent dictates that magistrate judges, including
66 Austin Municipal Court judges acting as magistrates, may not require unaffordable
67 monetary bail as a condition of release unless they first inquire into the person's
68 present ability to make a payment and make findings on the record concerning ability
69 to pay, provide a meaningful opportunity at a hearing with counsel to make
70 arguments in support of release and for alternative conditions of release, impose only
71 the least restrictive conditions of release necessary to reasonably prevent flight from
72 the jurisdiction or reasonably assure public safety, and if unaffordable money bail is
73 imposed, make a finding on the record that totally incapacitating the person is
74 necessary to meet a compelling government interest, and that counsel must be
75 provided for indigent defendants at bail hearings; and

76 **WHEREAS**, any bail reform policy should have as its explicit goals (1) a
77 decrease in the number of people detained prior to trial; (2) a decrease in racial
78 disparities in the jail population; and (3) a reduction in the amount of time people
79 spend in jail prior to their release pretrial; and

80 **WHEREAS**, any bail reform policy should ensure efficient pretrial release

81 prior to magistration without a lengthy pretrial services interview or magistration for
82 most people charged with misdemeanors, state-jail felonies, and all other felony
83 offenses that do not involve the use or threatened use of physical harm to another
84 person; and

85 **WHEREAS**, the City Council passed Resolution No. 20160811-037,
86 affirming that it is the policy of Council that the City make every effort to avoid
87 committing to jail persons who cannot afford to pay fines, and outlining several
88 strategies and values of the City of Austin in an effort to develop a more equitable
89 court system that does not treat people disparately depending on their income; and

90 **WHEREAS**, the Council passed Ordinance No. 20171012-014 to establish the
91 Judicial Committee and its charges to appoint Municipal Court Judges and evaluate
92 their performance; and

93 **WHEREAS**, in 2018, the Council adopted Strategic Direction 2023, which
94 includes “Fair Administration of Justice” as one of Council’s Top Ten indicators of
95 success toward the strategic outcomes in the plan, as well as a number of other
96 indicators of equity in interactions with government and strategies to improve equity;
97 and

98 **WHEREAS**, on February 6, 2020, the Travis County Courts at Law Judges
99 issued Standing Order for Personal Bonds on Misdemeanor Cases in Travis County
100 (C-1-CR-11-100054) that outlined a procedure for releasing all persons arrested for

101 misdemeanor crimes on personal bonds except in certain circumstances; and

102 **WHEREAS**, the Interlocal Agreement provides that the City and Travis
103 County will convene a working group in 2020 to review the terms of that agreement
104 and propose changes and/or amendments to it; **NOW, THEREFORE, BE IT**
105 **RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

106 The Council supports the standing order issued by Travis County Courts at
107 Law Judges on February 6, 2020, as it represents movement toward a more efficient
108 process for pretrial release. The Council encourages further reforms by Travis
109 County and the State of Texas to improve equity and end wealth-based detention.

110 **BE IT FURTHER RESOLVED:**

111 The Council reaffirms its commitment to eliminating wealth-based detention
112 and its commitment that persons must never remain in jail solely because they cannot
113 afford to pay fines or the cost of pretrial bail..

114 **BE IT FURTHER RESOLVED:**

115 The Council affirms the policy of the City that magistration hearings
116 conducted by judges of the City of Austin Municipal Court at the Central Booking
117 Facility should afford arrested persons all rights guaranteed under the U.S.
118 Constitution and Texas state law, including:

- 119 • Interpretation services offered and provided if there is any indication that the
120 person does not speak English fluently or is hearing-impaired;

- 121 • Information about the right to retain legal counsel and have counsel present
122 during any interviews with peace officers or attorneys representing the state,
123 and the right to appointment of legal counsel if the person cannot afford
124 counsel, including procedures for requesting appointment of counsel;
- 125 • Notification of the right to terminate any such interviews at any time;
- 126 • Notification of the right to remain silent, and notice that any statement made
127 by the person may be used against him or her;
- 128 • Notice of the specific criminal charges against the person; and
- 129 • Any other information the magistrate deems to be required by law or
130 appropriate to the case.

131 **BE IT FURTHER RESOLVED:**

132 The City Manager is directed to engage with Travis County through the
133 working group process described in the Interlocal Agreement with the goal of
134 amending the Interlocal Agreement to create a magistration process that efficiently
135 releases arrested persons on personal bond whenever possible; to impose the least-
136 restrictive pretrial conditions necessary to reasonably assure public safety and
137 prevent flight from prosecution when release on personal bond is not appropriate;
138 and to include the following standards and improvements to guarantee the rights
139 afforded by the U.S. Constitution;

- 140 • Sufficient space or accommodation to allow for public access to the courtroom

141 where magistration occurs, and public observation of magistration
142 proceedings;

- 143 • Representation by counsel at magistration hearings;
- 144 • Adequate notice of the rights at stake in the hearing provided to the person
145 arrested, incorporating standard plain-language explanations understandable to
146 non-lawyers to be used in all cases to help people understand the rights at stake;
147 and
- 148 • Assurance that no one may be detained following a bail hearing, except to the
149 extent consistent with state and federal law;
- 150 • Assurance that misdemeanor arrestees who are not promptly released may be
151 detained for up to 24 hours for a constitutionally adequate bail hearing with
152 counsel before a judicial officer, who may impose financial and nonfinancial
153 conditions of release;
- 154 • Provision of individualized bail hearings before imposing financial or non-
155 financial conditions of release with the following procedural protections:
 - 156 ○ Providing the person arrested the following procedural protections with
157 access to all information gathered by Travis County Pre-Trial Services,
158 including any risk assessment score, the data that was used to determine
159 the risk assessment score, and NCIC/TCIC criminal history;
 - 160 ○ The opportunity for the person arrested to be heard concerning any

161 factors relevant to release, detention, and the availability of alternative
162 conditions;

- 163 ○ The opportunity for the person arrested to present evidence at the
164 hearing and make arguments concerning those issues, and to contest
165 any evidence or argument offered by the State concerning those issues;
- 166 ○ Notice of the magistrate's reasons on the record for any financial or non-
167 financial conditions of release, including findings that the required
168 conditions are the least restrictive conditions of release necessary to
169 reasonably protect the safety of other persons and/or reasonably prevent
170 the person arrested from fleeing the jurisdiction;

- 171 ● Application of the following definition of "indigent" to determine whether a
172 person arrested has the present ability to pay any amount of secured bail or to
173 pay a fee or cost associated with a personal bond or a non-financial condition
174 of release, including but not limited to, a personal bond fee, a supervision fee,
175 a fee for electronic monitoring, or a fee for an interlock device. A person may
176 be presumed to be indigent if the person meets any of the following conditions:

- 177 ○ Is eligible for appointed counsel;
- 178 ○ Has income at or below 200% of the federal poverty guidelines;
- 179 ○ Is a full-time student;
- 180 ○ Is incarcerated, or residing in a mental health or other treatment

181 program;

182 ○ Is receiving means-tested public assistance; or

183 ○ Is otherwise unable to pay the fee or cost without substantial hardship.

- 184 ● If detention results from unaffordable bail, make findings on the record by
185 clear and convincing evidence that no less restrictive conditions of release are
186 sufficient to protect the safety of other persons or prevent flight from the
187 jurisdiction such that detention is necessary to meet a compelling government
188 interest; make a finding that a person arrested lacks the present ability to pay
189 any amount of secured bail, or any fee or cost associated with a personal bond
190 or non-financial condition, if the person is indigent or otherwise lacks the
191 ability to pay given the person's current circumstances;

- 192 ● A method for providing the City with data on arrested persons who remain
193 detained in jail after magistration at the Central Booking Facility, including at
194 a minimum for each person who remains detained:

195 ○ The charge against the person;

196 ○ The bond amount set by the magistrate;

197 ○ Whether the person was determined by the magistrate to be indigent; and

198 ○ The reason(s) the person was detained following magistration.

199 **BE IT FURTHER RESOLVED:**

200 The City Manager is directed to provide a report to the Council Judicial

201 Committee in at its May 2020 meeting, or the soonest meeting thereafter, outlining
202 the steps that have been taken to implement this resolution, with additional updates
203 on implementation to the Judicial Committee every subsequent six months. These
204 updates should include analysis of the data collected about arrested persons who
205 remained detained in in jail after magistration at the Central Booking Facility, as
206 described in this Resolution, once such data becomes available. The City Manager is
207 further directed to make such data reports available on the City’s public website.

208 **BE IT FURTHER RESOLVED:**

209 When evaluating candidates for appointment as judges to the City of Austin
210 Municipal Court, the Judicial Committee may consider information concerning
211 arrested persons who remained detained after magistration, as described in this
212 resolution.

213 **BE IT FURTHER RESOLVED:**

214 The City Manager is directed to work with the Innovation Office and the Equity
215 Office to produce a report on the financial impact that the Travis County pretrial justice
216 system has on Austin residents, and in particular lower-income residents and residents
217 of color, who are disproportionately arrested. The report shall include analysis of:

- 218 • the amount of money Austin residents have paid and continue to pay to for-profit
219 bail bond companies;
- 220 • the amount of money Austin residents otherwise pay in secured bail;

- 221 • the amount of money paid in personal bond fees as well as fees associated with
222 non-financial conditions of release such as GPS and electronic monitoring,
223 ignition interlock devices, SCRAM devices (ankle alcohol monitoring devices),
224 and drug tests;
- 225 • other financial consequences associated with pretrial detention such as lost wages
226 and employment; and
- 227 • any other relevant financial or equity impacts, including but not limited to effects
228 on health, medical care, care for dependent children and family members, ability
229 to pay rent and other bills, and ability to make payments toward debts such as car
230 liens and student loan debt.

231 The City Manager shall present this report to the Judicial Committee no later than
232 six months from the effective date of this resolution.

233 **ADOPTED:** _____, 2020 **ATTEST:** _____
234 Jannette S. Goodall
235 City Clerk