ORDINANCE NO. 20210209-003

AN ORDINANCE ORDERING A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF AUSTIN ON MAY 1, 2021, TO SUBMIT TO THE VOTERS A PROPOSED CITIZEN-INITIATED ORDINANCE REGARDING A CRIMINAL OFFENSE AND A PENALTY FOR CAMPING IN PUBLIC AREAS WITHOUT A PERMIT, CERTAIN TYPES OF SOLICITATION, AND SITTING, LYING, OR SLEEPING OUTDOORS IN CERTAIN PUBLIC AREAS; PROVIDING FOR THE CONDUCT OF THE SPECIAL ELECTION; AUTHORIZING THE CITY CLERK TO ENTER INTO JOINT ELECTION AGREEMENTS WITH OTHER LOCAL POLITICAL SUBDIVISIONS AS MAY BE NECESSARY FOR THE ORDERLY CONDUCT OF THE ELECTION; AND DECLARING AN EMERGENCY.

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

PART 1. A special municipal election shall be held in the City on May 1, 2021, to submit to the voters of the city a proposed citizen-initiated ordinance regarding a criminal offense and a penalty for camping in public areas without a permit, certain types of solicitation, and sitting, lying, or sleeping outdoors in certain public areas. The ballot shall be prepared to permit voting "Yes" or "No" on the Proposition:

Proposition B: Shall an ordinance be adopted that would create a criminal offense and a penalty for anyone sitting or lying down on a public sidewalk or sleeping outdoors in and near the Downtown area and the area around the University of Texas campus; create a criminal offense and penalty for solicitation, defined as requesting money or another thing of value, at specific hours and locations or for solicitation in a public area that is deemed aggressive in manner; create a criminal offense and penalty for anyone camping in any public area not designated by the Parks and Recreation Department?

PART 2. If the proposition provided in Part 1 is approved by a majority of voters voting at the election, the City Code is amended as indicated below, with the Purpose appearing before Section 9-4-11 of the City Code, and the Effectiveness and Severability appearing after Section 9-4-14 of the City Code:

Part 1. Purpose

On June 20, 2019, the Austin City Council amended provisions of the Austin City Code relating to camping and solicitation in public areas of Austin and to sitting

or lying down on public sidewalks or sleeping outdoors in certain downtown areas of the city. These provisions had long been effective in maintaining safety and order throughout the city. Since and as a result of the adoption of the amended provisions, and the adoption of further amendments by the City Council, Austin has been plagued by threats to public health and safety, as camping and sleeping outdoors, sitting or lying down on public sidewalks, and solicitation during the evening and nighttime hours have expanded dramatically, notwithstanding the fact that Austin has shelters and other facilities that do not reach maximum capacity and that are available to individuals as an alternative to such actions. The purpose of this ordinance is to restore generally the provisions of the Austin City Code that were in effect on June 19, 2019 prior to the City Council's action, expand the area in which solicitation is prohibited during the evening and nighttime hours, and modify the boundaries of the geographic area to which the ordinance applies to encompass the area that contains the campus of The University of Texas at Austin and areas where many students at the university and through which they must move to travel to and from the campus. This will return to the effective system of management and control of the city which these provisions promoted and secured.

Part 2. Subsection (B) of Section 9-4-11 of the Austin City Code is hereby repealed and replaced with the following:

§ 9-4-11 CAMPING IN PUBLIC AREA PROHIBITED

(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.

Part 3. Section 9-4-13 of the Austin City Code is hereby repealed and replaced with the following:

§ 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;

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;

(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 café 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.

Part 4. Section 9-4-14 of the Austin City Code is hereby repealed and replaced with the following:

§ 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.

(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 Keaton Street (East) to the intersection of Red River Street;

(14) north on Red River Street to the intersection of 38th 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.

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.

PART 3. The election shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. The location of the main early voting polling place, the dates and hours for early voting, and the early voting clerk's official mailing address are provided in Exhibit A, attached and incorporated as a part of this ordinance.

PART 4. A direct electronic recording voting system, as the term is defined in Title 8 of the Texas Election Code, shall be used for early voting and for voting conducted on election day. The central counting station is established at the Travis County Elections Division, 5501 Airport Boulevard, Austin, Texas.

PART 5. Notice of this election shall be posted and published in accordance with state law. The notice shall be posted, in both English and Spanish, in the office of the City Clerk and at the City Hall notice kiosk not later than the 21st day before election day. Notice of this election shall be published one time, in English and Spanish, not earlier than the 30th day before the date of the election or later than the 10th day before the date of the election, in a newspaper of general circulation in the City of Austin.

PART 6. In accordance with Chapter 271 of the Texas Election Code, the May 1, 2021 special municipal election may be held jointly with the various political

subdivisions that share territory with the City of Austin and that are holding elections on that day. The City Clerk may enter and sign joint election agreements with other political subdivisions for this purpose, and their terms as stated in the agreements are hereby adopted.

PART 7. The Council finds that the need to immediately begin required preparations for this election constitutes 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.

PASSED AND APPROVED

February 9, 2021 § §

Steve Adler
Mayor

APPROVED: Anne L. Morgan by NJ
Anne L. Morgan
City Attorney

ATTEST: Jannette S. Goodall
Jannette S. Goodall
City Clerk

EXHIBIT A

Main Early Voting Locations

EXHIBIT A

Main Early Voting Locations, Early Voting Dates, and Early Voting Clerk Mailing Address
May 1, 2021

Main Early Voting Locations:

Travis County: City of Austin Planning and Development Center, 6310 Wilhelmina Dr., Austin TX

Hays County: Government Center Conference Room, 712 S. Stagecoach Trail, San Marcos, TX

Williamson County: Williamson County Inner Loop Annex, 301 SE Inner Loop, Suite 104, Georgetown, TX

Early Voting Dates:
Monday, April 19, 2021 – Tuesday, April 27, 2021; times vary

Designated 12-Hour Days of Early Voting:
Travis County – every Early Voting Day except Sunday, April 25, 2021
Hays County – Monday, April 19, 2021 and Monday, April 26, 2021
Williamson County – Monday, April 26, 2021 and Tuesday, April 27, 2021

Early Voting Clerk Mailing Addresses:

Ballots by Mail – Travis County
By Mail voters: P.O. 149325, Austin, Texas 78714-9325
By Contract Carriers/ Fedex: 5501 Airport Blvd., Austin, Texas 78751

Ballots by Mail - Hays County
By Mail Voters: P.O. Box 907, San Marcos, TX 78666

Ballots by Mail – Williamson County
By Mail voters: P.O Box 209, Georgetown, TX 78627

ADJUNTO A

Sitios Principales de la Votación Adelantada, Fechas de la Votación Adelantada, y Dirección Postal de la Secretaria de la Votación Adelantada
1 de Mayo, 2021

Sitios Principales de la Votacion Adelantada:

Condado de Travis: City of Austin Planning and Development Center, 6310 Wilhelmina Dr., Austin, TX

Condado de Hays: Government Center Conference Room, 712 S. Stagecoach Trail, San Marcos, TX

Condado de Williamson: Williamson County Inner Loop Annex, 301 SE Inner Loop, Suite 104, Georgetown, TX

Fechas de la votación Adelantada:
Martes, 19 de abril, 2021 – Viernes, 27 de abril, 2021; las horas varían

Días designados de 12 horas de votación anticipada:

Condado de Travis: todos los días de votación anticipada excepto el domingo 25 de abril de 2021

Condado de Hays: Lunes 19 de abril de 2021 y lunes 26 de abril de 2021

Condado de Williamson: Lunes 26 de abril de 2021 y martes 27 de abril de 2021

Direcciones Postales de la Secretaria de la Votación Adelantada

Para Boletas por Correo-Condado de Travis
Enviadas por correo por los votantes: P.O. 149325, Austin, Texas 78714-9325
Enviadas usando transportista contratado/ Fedex: 5501 Airport Blvd., Austin, Texas 78751

Para Boletas por Correo – Condado de Hays
Enviadas por correo por los votantes: P.O. Box 907, San Marcos, TX 78666

Para Boletas por Correo – Condado de Williamson
Enviadas por correo por los votantes: P.O Box 209, Georgetown, TX 78627