

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE SECTION 9-4-11 RELATING TO PROHIBITING CAMPING IN PUBLIC AREAS; REPEALING CITY CODE SECTION 9-4-13 RELATING TO PROHIBITING SOLICITATION; AND AMENDING CITY CODE SECTION 9-4-14 RELATING TO PROHIBITING SITTING OR LYING DOWN ON PUBLIC SIDEWALKS OR SLEEPING OUTDOORS IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA

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

PART 1. Subsection (B) of City Code Section 9-4-11 (*Camping in Public Area Prohibited*) is amended to read:

§ 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 and the person is:

- (1) materially endangering the health or safety of another person or of themselves; or
- (2) intentionally, or knowingly, or recklessly impeding or rendering impassable the use of public property making usage of the public property unreasonably inconvenient or hazardous.

PART 2. Section 9-4-13 (*Solicitation Prohibited*) is repealed and the remaining sections are renumbered accordingly. is amended to read.

§ 9-4-13 AGGRESSIVE CONFRONTATION [SOLICITATION] PROHIBITED

(A) The council finds that:

- (1) Aggressive confrontations in public areas are [solicitation-is] disturbing and disruptive to residents and businesses and contribute[s] to the loss of

40 access to and enjoyment of public places and to a sense of fear, intimidation and
41 disorder.

42 (2) Aggressive confrontation [~~solicitation~~] includes people approaching or
43 following pedestrians, repetitive attempts to approach, confront, and detain
44 another person [~~soliciting~~] despite refusals, the use of abusive or profane language
45 to cause fear and intimidation, unwanted physical contact, or the intentional
46 blocking of pedestrian and vehicular traffic.

47 ~~(3) The presence of individuals who solicit money from persons at or~~
48 ~~near banks, automated teller machines, public transportation facilities, and~~
49 ~~crosswalks is especially troublesome because of the enhanced fear of crime in a~~
50 ~~place that is confined, difficult to avoid, or where a person might find it necessary~~
51 ~~to wait.~~

52 (3 [4]) This section is intended to protect citizens from the fear and intimidation
53 accompanying certain kinds of aggressive confrontations [~~solicitation~~], and not to
54 limit a constitutionally protected activity.

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56 (B) In this section:

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58 (1) AGGRESSIVE MANNER means:

59 (a) intentionally or recklessly making any physical contact with or
60 touching another person in the course of the confrontation
61 [~~solicitation~~] without the person's consent;

62 (b) following the person being confronted [~~solicited~~], if that
63 conduct is[:]

64 [(i)] intended to or likely to cause a reasonable person to
65 fear imminent bodily harm or the commission of a criminal
66 act upon property in the person's possession; [or

67 (ii) intended to or reasonably likely to intimidate the person
68 being solicited into responding affirmatively to the
69 solicitation;]

70 (c) continuing to confront [~~solicit~~] a person within five feet of the
71 person being confronted [~~solicited~~] after the person has demand
72 that the confrontation cease [~~made a negative response~~];

73 (d) intentionally or recklessly blocking the safe or free passage of
74 the person being confronted [~~solicited~~] or requiring the person, or the
75 driver of a vehicle, to take evasive action to avoid physical contact
76 with the person initiating or continuing the confrontation [~~making~~
77 ~~the solicitation~~];

78 (e) using obscene or abusive language or gestures toward the
79 person being confronted [~~solicited~~];

(f) approaching and confronting a [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.

(2[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.

(3[8]) ~~CONFRONT [SOLICIT]~~ means to approach and antagonize, threaten, or provoke another person by words or actions in a manner reasonably calculated to detain, hinder, or delay the person [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 confronts another person in an aggressive manner in a public area [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; or~~

(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 Cafés) or the patio area of a bar or restaurant; or~~

(7) ~~in the downtown business area described in Section 9-4-14 (Sitting or Lying Down on Public Sidewalks in the Downtown Business Area Prohibited) 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 or to proscribe a lawful detention or arrest.

PART 3. The caption and Subsection (E) of City Code Section 9-4-14 (*Sitting or Lying Down on Public Sidewalks or Sleeping Outdoors in the Downtown Austin Community Court Area Prohibited*) are amended to read:

§ 9-4-14 OBSTRUCTION [SITTING OR LYING DOWN ON PUBLIC SIDEWALKS OR SLEEPING OUTDOORS] IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA PROHIBITED

(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; and
- (3) the person is:
 - (i) materially endangering the health or safety of another person or of themselves; or
 - (ii) intentionally, or knowingly, or recklessly impeding or rendering impassable the use of public property making usage of the public property unreasonably inconvenient or hazardous.

PART 4. This ordinance takes effect on _____, 2019.

PASSED AND APPROVED

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_____, 2019 § _____

Steve Adler
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Jannette S. Goodall
City Clerk

DRAFT

Texas Penal Code - PENAL § 42.03. Obstructing Highway or Other Passageway

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1); or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.