

ORDINANCE NO.

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

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, a new subsection (C) is added, and the remaining subsections are numbered accordingly, as follows:

§ 9-4-11 CAMPING IN PUBLIC AREA PROHIBITED

(B) Except as provided in Subsection (E[~~D~~]), a person commits an offense if, after having been notified by a law enforcement officer that the conduct violates this section, the person camps in a public area that is not designated as a camping area by the City of Austin [Parks and Recreation Department] 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.

(C) A peace officer must provide written notice before taking enforcement action when a person's health or safety is not imminently endangered.

PART 2. The Caption and City Code Section 9-4-13 (*Solicitation Prohibited*) are 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 access to and enjoyment of public places and to a sense of fear, intimidation and disorder.

(2) Aggressive confrontation [~~solicitation~~] includes people approaching or following pedestrians, repetitive attempts to confront another person [~~soliciting~~] despite refusals, the use of abusive or profane language with the intent 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 aggressive confrontations [~~solicitation~~], and not to limit a constitutionally protected activity.

(B) In this section:

(1) AGGRESSIVE MANNER means intending [~~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 by:

(a) [~~intentionally or recklessly~~] making any physical contact with or touching another person in the course of the confrontation [~~solicitation~~] without the other person's consent when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative;

(b) following the person being confronted [~~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 confronted [~~solicited~~] into engaging in

acts or behaviors the person would not otherwise do or perform ~~[responding affirmatively to the solicitation];~~

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

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

(e) using obscene or abusive language or gestures toward the person being confronted ~~[solicited]~~ in a manner that tends to incite an immediate breach of the peace.~~;~~

(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.]~~

(2) CONFRONT means to approach and threaten or intimidate another person by words or actions in a manner reasonably calculated to detain, hinder, or delay the person.

(3[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 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.

(E) This section does not apply to a person who participates in or views a parade, festival, performance, rally, demonstration, or similar event.

(F) This section does not apply to a peace officer or other person making a lawful detention or arrest.

PART 3. The Caption and 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

(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) 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 in protecting its citizens from intimidating behavior~~]; and

178 (4) encouraging businesses and neighborhoods in the central city where
179 walking is a realistic alternative to vehicles that use fossil fuels.

180 (C) The council finds that in areas with high pedestrian traffic and a high
181 incidence of petty crime related to public disorder, individuals obstructing
182 [~~sitting or lying in~~] the pedestrian right-of-way:

183 (1) [~~contribute to a sense of fear, intimidation, and disorder;~~

184
185 (2)——]are disruptive to residents, businesses, and customers;

186
187 (2[3]) discourage, block, or inhibit the free passage of pedestrians; and

188
189 (3[4]) contribute to the loss of access to and enjoyment of public places.

190 (D) This section applies in the following area, including the streets and
191 pedestrian rights-of- way that bound the area, but does not apply on the
192 campus of the University of Texas:

193 (1) beginning at the intersection of 29th Street (West) and Lamar
194 Boulevard (North);

195 (2) south on Lamar Boulevard (North) to the north shore of Lady Bird
196 Lake;

197 (3) east along the north shore of Lady Bird Lake to the point directly
198 south of the curve at the intersection of Jesse E. Segovia Street and
199 Robert Martinez, Jr. Street;

200 (4) north to the curve at the intersection of Jesse E. Segovia Street and
201 Robert Martinez, Jr. Street;

202 (5) west along Jesse E. Segovia Street to the intersection of Chicon
203 Street;

204 (6) north on Chicon Street to the intersection of Seventh Street (East);

205 (7) west on Seventh Street (East) to the IH-35 East Frontage Road;

206 (8) north on the IH-35 East Frontage Road to the intersection of Martin
207 Luther King, Jr. Boulevard;

208 (9) west on Martin Luther King, Jr. Boulevard to the intersection of
209 Guadalupe Street;

210 (10) north on Guadalupe Street to the intersection of 29th Street (West);
211 and

(11) northwest on 29th 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 is obstructing ~~[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

(2~~[3]~~) 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.

(F) A peace officer must provide written notice before taking enforcement action when a person's health or safety is not imminently endangered.

(G~~[F]~~) This section does not apply to a person who:

(1) is obstructing the right-of-way ~~[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 (*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.

(H[G]) It is an affirmative defense to prosecution if a person is obstructing the right-of-way ~~[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 proved, for an offense under this section.]~~

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

PASSED AND APPROVED

_____, 2019 §
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Steve Adler
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Jannette S. Goodall
City Clerk