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

- (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 30, 2019 memorandum 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*).

9-4-11(1) DEFINITIONS:

- (1) CAMP means the use of a public area for living accommodation purposes including:
 - (a) storing personal belongings;
 - (b) making a camp fire;

40 (c) using a tent or shelter or other structure for a living
41 accommodation;

42 (d) carrying on cooking activities; or

43 (e) digging or earth breaking activities.

44
45 (2) HOMELESS SHELTER means a supervised publicly or
46 privately operated facility that is designed to provide
47 temporary living accommodations for individuals who lack a
48 fixed, regular, and adequate residence while providing them
49 with social service and other assistance to find a home and that
50 is designated by the city as a shelter.

51
52 (3) PARK means a parcel of land dedicated and used as parkland, or
53 city-owned land used for a park or recreational purpose that is
54 under the administrative control of the Parks and Recreation
55 Department.

56
57 (4) PUBLIC AREA means an outdoor area accessible to the public
58 including a street, highway, park, parking lot, alleyway,
59 pedestrian way, and the common areas of a school, hospital,
60 apartment building, office building, transport facility, or
61 business.

62
63 **9-4-11(2) FINDINGS:**

64
65 (A) Council finds that the city has a compelling interest in:

66
67 (1) Protecting the health and safety of all residents and visitors,
68 including people who are experiencing homelessness;

69 (2) Ensuring the free movement of pedestrians and vehicles without
70 undue obstruction or delay, or exposure to dangerous vehicular
71 traffic, that may be caused by people camping in areas where
72 there is high pedestrian or vehicular traffic;

73 (3) Protecting the environment, water quality and public health, and
74 mitigating fire risk in sensitive, flood-prone, or high fire risk
75 areas that may be negatively affected by people camping; and

(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; and

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

(C) Council finds that unwanted camping in the areas identified in Subsection (D) of City Code Section 9-4-11(3) (*Camping in Public Area Prohibited*) may be prohibited by other applicable law or by other applicable property or building use rules. Nonetheless, Council finds that the risks posed by unwanted camping are great enough to ensure that camping is prohibited in those areas.

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;

- 111
- 112 (2) in the bed or on the bank of a creek or river and within 5 feet of
- 113 the top of the bank of a creek or river;
- 114
- 115 (3) on any part of an accessibility ramp for persons with
- 116 disabilities;
- 117
- 118 (4) on land that the city has designated as having a high fire risk;
- 119
- 120 (5) on a sidewalk;
- 121
- 122 (6) on the following high pedestrian and vehicular traffic
- 123 roadways, including any sidewalks as referenced in (5) above
- 124 or right-of-way:
- 125
- 126 a. Guadalupe Street between Martin Luther King Jr. Blvd. and
- 127 26th Street;
- 128 b. 24th Street between N Lamar Blvd and Guadalupe Street
- 129 c. Congress Avenue between Oltorf Street and 11th Street;
- 130 d. 2nd Street between Trinity Street and West Avenue;
- 131 e. 5th Street between IH-35 and Lamar Blvd;
- 132 f. 6th Street between IH-35 and Lamar Blvd;
- 133
- 134 (7) In areas established around shelters as follows:
- 135
- 136 a. Within the area of the Austin Resource Center for Homeless
- 137 (ARCH) bordered by East 4th Street (South), Brushy Street
- 138 (East), East 11th Street (North), and Brazos Street (West),
- 139 excluding any area under IH-35;
- 140
- 141 b. At the time that the South Austin Housing Center homeless
- 142 shelter becomes operational, within the area bordered by the
- 143 western boundary of Manchaca Road, the eastern boundary
- 144 of South 1st Street, the northern boundary of Lightsey Road,
- 145 and the southern boundaries of Redd Street and West St.
- 146 Elmo;
- 147

- 148 (8) on a traffic island, median strip, median island, intersection
149 island or other similar area that separates opposing traffic flows
150 with either a painted area or a raised curb; or
151
- 152 (9) on the sloped area under a highway and at the top of a retaining
153 wall or alongside a highway overpass;
154
- 155 (C) A person commits an offense if the person camps in a manner that:
156
- 157 (1) damages, alters, or modifies public infrastructure, including
158 benches, retaining walls, or planters;
159 (2) obstructs access to or egress from the entrance or exit of any
160 building by camping within six feet of the entrance or exit, as
161 measured from the door jamb; or
162 (3) obstructs normal use of and access to public infrastructure,
163 including benches or parking pay stations.
164
- 165 (D) Except as provided by Subsection (F), a person commits an offense
166 if the person camps in an area that is not designated as a camping
167 area by the city and the person is in an area which is prohibited
168 under other law or rule, including:
- 169 (1) in a park;
- 170 (2) on land designated by the city for conservation, preservation,
171 or water protection including nature preserves, the Balcones
172 Canyonland Preserves, and Austin Water Wildlands;
- 173 (3) on flood buy-out lands that the city has acquired as high flood
174 risk areas;
- 175 (4) in the right-of-way of a railroad or light rail track or crossing;
- 176 (5) in a city library or on the grounds of a city library;
- 177 (6) on private property without the permission of the owner or a
178 person with apparent authority to act for the owner;
- 179 (7) in or on transit stops, shelters, platforms, or stations; or

(8) in a designated and marked special use zone, including construction zones, commercial service zones, passenger loading zones, customer service zones, and valet zones.

(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:

Unless a law enforcement officer determines that there is an imminent health or safety threat, 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:

(A) notified the person that the conduct violates this section;

(B) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and

(C) 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(*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; or

(D) determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or

area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.

PART 3. 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 facility that is designed to provide 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 and that is designated by the city as a shelter.

260 **9-4-14(2) FINDINGS:**

- 261
- 262 (A) The council finds that the city has a compelling interest in:
- 263
- 264 (1) encouraging and preserving a vital, pedestrian-friendly urban
- 265 core;
- 266
- 267 (2) promoting tourism and business in the central business district;
- 268
- 269 (3) preserving the quality of urban life; and
- 270
- 271 (4) encouraging businesses and neighborhoods in the central city
- 272 where walking is a realistic alternative to vehicles that use
- 273 fossil fuels.
- 274
- 275 (B) The council finds that in areas with high pedestrian traffic and a
- 276 high incidence of petty crime related to public disorder, individuals
- 277 obstructing, sitting, or lying in the pedestrian right-of-way:
- 278
- 279 (1) are disruptive to residents, businesses, and customers;
- 280
- 281 (2) discourage, block, or inhibit the free passage of pedestrians;
- 282 and
- 283
- 284 (3) contribute to the loss of access to and enjoyment of public
- 285 places.
- 286
- 287

288 **9-4-14(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:**

- 289
- 290 (A) A person commits an offense if the person is:
- 291
- 292 (1) obstructing the right-of-way between the roadway and the
- 293 abutting property line or structure, or on an object placed in
- 294 that area, and the person is:
- 295
- 296 (i) materially endangering the health or safety of another
- 297 person or of themselves; or
- 298

299 (ii) intentionally, knowingly, or recklessly rendering
300 impassable or impeding the reasonable use of a public area
301 making usage of such area unreasonably inconvenient or
302 hazardous;
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304 (2) obstructing a sidewalk, trail, or shared-use path; or
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306 (3) obstructing access to or egress from the entrance or exit of any
307 building by sitting or lying down within six feet of the entrance
308 or exit, as measured from the door jamb; and
309

310 (4) the person is located in the following area, including the streets
311 and pedestrian rights-of-way that bound the area, but not
312 including the campus of the University of Texas:
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314 (i) beginning at the intersection of 29th Street (West) and
315 Lamar Boulevard (North);

316 (ii) south on Lamar Boulevard (North) to the north shore of
317 Lady Bird Lake;

318 (iii) east along the north shore of Lady Bird Lake to the point
319 directly south of the curve at the intersection of Jesse E.
320 Segovia Street and Robert Martinez, Jr. Street;

321 (iv) north to the curve at the intersection of Jesse E. Segovia
322 Street and Robert Martinez, Jr. Street;

323 (v) west along Jesse E. Segovia Street to the intersection of
324 Chicon Street;

325 (vi) north on Chicon Street to the intersection of Seventh
326 Street (East);

327 (vii) west on Seventh Street (East) to the IH-35 East Frontage
328 Road;

329 (viii) north on the IH-35 East Frontage Road to the
330 intersection of Martin Luther King, Jr. Boulevard;

331 (ix) west on Martin Luther King, Jr. Boulevard to the
332 intersection of Guadalupe Street;

333 (x) north on Guadalupe Street to the intersection of 29th
334 Street (West); and

335 (xi) northwest on 29th Street (West) to the intersection of
336 Lamar Boulevard (North), the place of beginning.
337

(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 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:

- (1) Within the area of the Austin Resource Center for Homeless (ARCH) bordered by East 4th Street (South), Brushy Street (East), East 11th Street (North), and Brazos Street (West), excluding any area under IH-35; or
- (2) At the time that the South Austin Housing Center homeless shelter becomes operational, within 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.

(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:

Unless a law enforcement officer determines that there is an imminent health or safety threat, 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:

- (A) notifies the person that the conduct violates this section;
- (B) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and
- (C) 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 (*Obstruction in the Downtown Austin Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*) to a location at which such obstructing, sitting, or lying is not prohibited and, as reasonably possible, at which case management and housing services can be received; or
- (D) determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.

PART 4. Instruction to City Manager.

- (A) 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

(*Camping in Public Area Prohibited*) and City Code Section 9-4-14 (*Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*) is and is not diverted from criminal sanction through the Enforcement and Engagement process created in City Code Sections 9-4-11 (*Camping in Public Area Prohibited*) and 9-4-14 (*Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*).

(B) At such time that the City designates additional homeless shelters, the City Manager shall propose amendments to establishing boundaries to prohibit camping, sitting or lying within approximately one-quarter mile to one-half mile of the shelter as the City Manager determines is necessary to protect public health and safety.

(C) At such time that the Austin Transportation Department identifies additional high pedestrian and vehicular traffic roadways where camping creates a public safety risk, the City Manager shall propose amendments to Subsection (3)(B)(6) of City Code Section 9-4-11 (*Camping in Public Area Prohibited*) to add these roadways.

PART 5. This ordinance takes effect 15 days after passage of the ordinance.

PASSED AND APPROVED

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§

_____, 2019

Steve Adler
Mayor

APPROVED:

ATTEST:

Anne L. Morgan
City Attorney

Jannette S. Goodall
City Clerk