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WHEREAS, the Fifth Circuit Court of Appeals has found requiring

unaffordable secured bail amounts results in the “absolute deprivation of [indigent arrestees’] most basic liberty interests—freedom from incarceration,” *ODonnell v. Harris County*, 892 F.3d 147, 162 (5th Cir. 2018); and

WHEREAS, pretrial detention separates people from their families, communities, and livelihoods, and even short stays in jail destabilize families, increase recidivism rates, and thus may not improve public safety; and

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

WHEREAS, people detained pretrial are more likely to be convicted, more likely to be sentenced to jail, less likely to be sentenced to probation, and are given longer sentences than similarly situated people released pretrial, Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. Law, Econ., and Org. 511 (2018); Paul Heaton, et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017); and

WHEREAS, “release on unsecured personal bonds or with no financial conditions is no less effective than release on secured money bail at achieving the goals of appearance at trial or avoidance of new criminal activity during pretrial release,” *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1103 (S.D. Tex. 2017); 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 The misdemeanor judges in Harris County also eliminated personal bond fees and
59 fees associated with nonfinancial conditions of release for indigent arrestees. The
60 Rule further prohibits the use of monetary bail for most misdemeanor arrestees and,

61 in cases where it can be considered, requires a judicial officer to make an
62 individualized determination of ability to pay at a hearing with counsel, consider
63 alternatives for those who cannot pay, and make a finding that detention is necessary
64 to meet a compelling interest; and

65 **WHEREAS**, to comply with the Due Process Clause and Equal Protection
66 Clause of the U.S. Constitution, magistrate judges, which includes Austin Municipal
67 Court judges acting as magistrates, may not require unaffordable monetary bail as a
68 condition of release unless they first inquire into the person's present ability to make
69 a payment and make findings on the record concerning ability to pay, provide a
70 meaningful opportunity at a hearing with counsel to make arguments in support of
71 release and for alternative conditions of release, impose only the least restrictive
72 conditions of release necessary to reasonably assure court appearance or public
73 safety, and make a finding on the record that totally incapacitating the person is
74 necessary to meet a compelling government interest (see *Pugh v. Rainwater*, 572 F.2d
75 1053, 1057 (5th Cir. 1978); *Griffin v. Illinois*, 351 U.S. 12, 18 (1956); *United States*
76 *v. Salerno*, 481 U.S. 739, 750 (1987); *Booth v. Galveston County*, 352 F. Supp. 3d
77 718 (S.D. Tex. 2019); *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018);
78 *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191 (2008)); and

79 **WHEREAS**, to comply with the U.S. Constitution, Travis County must
80 provide counsel to indigent defendants at bail hearings, as decided in *Booth v.*

81 *Galveston County*, No. 3:18-CV-00104, 2019 WL 3714455, at *29 (S.D. Tex. Aug.
82 7, 2019), report and recommendation adopted as modified, No. 3:18-CV-00104,
83 2019 WL 4305457 (S.D. Tex. Sept. 11, 2019) (“[A] hearing at which bail is set is a
84 ‘critical stage,’ requiring the appointment of counsel for indigent defendants.”); and

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

89 **WHEREAS**, any bail reform policy should ensure efficient pretrial release
90 prior to magistration without a lengthy pretrial services interview or magistration for
91 most people charged with misdemeanors, state-jail felonies, and all other felony
92 offenses that do not involve the use or threatened use of physical harm to another
93 person;

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

99 **WHEREAS**, the Council passed Ordinance No. 20171012-014 to establish the
100 Judicial Committee and its charges to appoint Municipal Court Judges and evaluate

101 their performance; and

102 **WHEREAS**, in 2018, the Council adopted Strategic Direction 2023, which
103 includes “Fair Administration of Justice” as one of Council’s Top Ten indicators of
104 success toward the strategic outcomes in the plan, as well a multiple other indicators
105 of equity in interactions with government and strategies to improve equity; and

106 **WHEREAS**, Section 1.05 of the Interlocal Agreement between the City and
107 Travis County for booking and related services calls for a three year review of the
108 agreement and a work group to convene starting in February 2020, to propose
109 changes and/or amendments; and

110 **WHEREAS**, on February 6, 2020, the Travis County Courts at Law Judges
111 issued Standing Order for Personal Bonds on Misdemeanor Cases in Travis County
112 (C-1-CR-11-100054) that outlined a procedure for releasing all persons arrested for
113 misdemeanor crimes on personal bonds except in certain circumstances; **NOW**,

114 **THEREFORE**,

115 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

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

121 **BE IT FURTHER RESOLVED:**

122 The City Council reaffirms its commitment to eliminating wealth-based
123 detention, including its commitment to never jail persons solely because they cannot
124 afford to pay fines. Additionally, the Council asserts that a fair and equitable policy
125 for Municipal Court Judges' assessment of bond amounts for people charged with
126 criminal offenses should:

- 127 • Permit public access to the courtroom where magistration occurs;
- 128 • Provide for representation by counsel at bail hearings;
- 129 • Before imposing financial or non-financial conditions of release, provide the
130 following procedural protections at an individualized bail hearing:
 - 131 ○ An interpreter must be offered to everyone and must be provided if there
132 is any indication that the person does not speak English fluently or is
133 hearing-impaired, including if the person requests one;
 - 134 ○ Adequate notice of the rights at stake in the hearing must be provided to
135 the person arrested, and the judges should develop standard language,
136 understandable to non-lawyers, that will be used in all cases to help
137 people understand the rights at stake;
 - 138 ○ The person arrested must have access to all of the evidence and
139 information considered at the bail hearing, including any risk
140 assessment score, the data that was used to determine the risk

assessment score, and NCIC/TCIC criminal history;

- The person arrested must be given an opportunity to be heard concerning any factors relevant to release, detention, and the availability of alternative conditions;
- The person arrested must have an opportunity at the hearing to present evidence and make argument concerning those issues, and to contest any evidence or argument offered by the State concerning those issues; and
- The magistrate must provide reasons on the record for any financial or non-financial conditions of release, including findings that the required conditions are the least restrictive conditions of release necessary to reasonably protect the safety of other persons and/or reasonably prevent the person arrested from fleeing the jurisdiction;

- Impose the least-restrictive pretrial conditions necessary to reasonably assure public safety and protect against flight from prosecution;
- If detention results from unaffordable bail, make findings on the record by clear and convincing evidence that no less restrictive conditions of release are sufficient to protect the safety of other persons or prevent flight from the jurisdiction such that detention is necessary to meet a compelling government interest; Make a finding that a person arrested lacks the present ability to pay any amount of secured bail, or any fee or cost associated with a personal bond

161 or non-financial condition, if the person is indigent or otherwise lacks the
162 ability to pay given the person's current circumstances; and

- 163 • Apply the following definition of "indigent" to determine whether a person
164 arrested has the present ability to pay any amount of secured bail or to pay a
165 fee or cost associated with a personal bond or a non-financial condition of
166 release, including but not limited to, a personal bond fee, a supervision fee, a
167 fee for electronic monitoring, or a fee for an interlock device. A person may
168 be presumed to be indigent if the person meets any of the following
169 conditions:

- 170 ○ Is eligible for appointed counsel;
- 171 ○ Has income at or below 200% of the federal poverty guidelines;
- 172 ○ Is a full-time student;
- 173 ○ Is incarcerated, or residing in a mental health or other treatment
174 program;
- 175 ○ Is receiving means-tested public assistance; or
- 176 ○ Is otherwise unable to pay the fee or cost without substantial hardship.

177 **BE IT FURTHER RESOLVED:**

178 The City Manager is directed to convene the working group under Section 1.05
179 of the interlocal agreement with Travis County for Booking and Related Services to
180 initiate the Three Year Review and incorporate policies and definitions for the

administration and performance of magistration services provided by Austin Municipal Court judges for Travis County, as set forth in this resolution, that comply with the U.S. Constitution and are written to facilitate the end of wealth-based detention. This language should be designed to guide efficient release on personal bond for most people charged with misdemeanors without forcing them through unnecessary, costly, and dehumanizing pretrial services and magistration processes, provided that:

- The few misdemeanor arrestees who are not promptly released may be detained for up to 24 hours for a constitutionally adequate bail hearing with counsel before a judicial officer, who may impose financial and non-financial conditions of release;
- No one may be detained following the hearing, except to the extent consistent with state and federal law; and
- Data collected and maintained regarding people who remain detained in jail after magistration will be reported to the Judicial Committee of City Council and available to the public via the City's online data portal, including at a minimum for each person who remains detained: the charge against them, the bond amount set by the magistrate, whether they were determined by the magistrate to be indigent, and the reason the magistrate determined unaffordable financial conditions for release to be the least restrictive

201 necessary to protect public safety or ensure flight from the jurisdiction.

202 The work group will also consider language clarifying that the magistration
203 services provided by the City of Austin Municipal Court Judges adhere to the City
204 of Austin's values and policies set forth in this resolution, and shall apply in all cases
205 for which the City provides magistration.

206 **BE IT FURTHER RESOLVED:**

207 The City Manager is directed to determine whether City resources can be made
208 available to assist in the data collection and reporting process. Any resources needed
209 to comply with these reporting requirements must be detailed in future interlocal
210 agreements or extensions of the existing interlocal agreement for booking and related
211 services.

212 Additionally the interlocal agreement should include expectations for facilities
213 and resources supplied by Travis County that better facilitate the fair administration
214 of justice, including but not limited to improvements to the magistration space at the
215 Central Booking facility to allow for public attendance or observation of proceedings,
216 as required by the Fifth and Sixth Amendments to the U.S. Constitution.

217 **BE IT FURTHER RESOLVED:**

218 The City Manager is directed to provide a report to the Council Judicial
219 Committee in at its May, 2020, meeting outlining the steps that have been taken to
220 implement this resolution, with additional updates on implementation to the Judicial

Committee every six months thereafter. These updates should include analysis of the data collected about people who remained in jail after magistration, when available.

BE IT FURTHER RESOLVED:

When evaluating the performance of Municipal Court Judges for appointment or reappointment, the Judicial Committee may assess and consider data regarding the number of people who remained detained after magistration, and data about the conditions under which they remained detained.

BE IT FURTHER RESOLVED:

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

- the amount of money Austin residents have paid and continue to pay to for-profit bail bond companies;
- the amount of money Austin residents otherwise pay in secured bail;
- the amount of money paid in personal bond fees as well as fees associated with non-financial conditions of release such as GPS and electronic monitoring, ignition interlock devices, SCRAM devices (ankle alcohol monitoring devices), and drug tests;
- other financial consequences associated with pretrial detention such as

lost wages and employment; and

- any other relevant financial or equity impacts, including but not limited to effects on health, medical care, care for dependent children and family members, ability to pay rent and other bills, and ability to make payments toward debts such as car liens and student loan debt.

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

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