

**City of Houston, Texas, Ordinance No. 2017-261**

**AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO ENCAMPMENTS IN PUBLIC PLACES; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFOR; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, the City of Houston ("City") is a home-rule municipality pursuant to Section 5, Article XI of the Texas Constitution; and

**WHEREAS**, Section 282.001 of the Texas Local Government Code provides that a home-rule municipality has exclusive control over its public property; and

**WHEREAS**, a core function of local government is to help ensure its public property is used in a manner that is consistent with the property's purpose and minimizes hazards to public health and safety; and

**WHEREAS**, Section 311.001 of the Texas Transportation Code provides that a home-rule municipality has exclusive control "over and under the public highways, streets, and alleys of the municipality" and may "control, regulate, or remove an encroachment or obstruction on a public street or alley of the municipality;" and

**WHEREAS**, the City has long partnered with other governmental entities and nonprofit organizations to provide housing and social services to homeless persons, which efforts have reduced Houston's homeless population; and

**WHEREAS**, notwithstanding the efforts of the City and its partners, from time to time certain homeless persons erect tents or other temporary structures in the City's public places for use as living quarters, which structures are inconsistent with the property's purpose; and

**WHEREAS**, on occasion such structures have been used to shield criminal acts from public view, threatening the safety of the general public and, especially, of persons in or near the structures; and

**WHEREAS**, on occasion homeless persons have used heating or cooking devices in public places, which devices present a fire hazard threatening the safety of the general public and, especially, of persons near the devices; and

**WHEREAS**, some homeless persons have maintained in public places substantial amounts of personal property that the City, at significant public expense, must move to another location to clean the public place and reduce health hazards for the general public and, especially, for persons using the places; and

**WHEREAS**, the City's Homeless Outreach Team, a program of the Mental Health Division of the Houston Police Department, is staffed with police officers and mental health professionals well-trained to address the challenges faced by Houston's homeless population; and

**WHEREAS**, to assist homeless persons, the Homeless Outreach Team regularly collaborates with the Harris Center for Mental Health and IDD, SEARCH Homeless Services, Lord of the Streets, Star of Hope, and other qualified nonprofit organizations; and

**WHEREAS**, the City continues to dedicate resources to help provide housing options for homeless persons, including access to shelters, short- and medium-term rental subsidies, and programs to facilitate private employment; and

**WHEREAS**, the City is obligated to preserve, protect, and maintain public property for its intended purposes and to help ensure its public places are not used in a manner creating health or safety hazards for persons using the property or for the general public;  
**NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Chapter 21 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article III that reads as follows:

**"ARTICLE III. ENCAMPMENTS**

**Sec. 21-61. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

*Encampment* means any one or more of the following:

- (a) The unauthorized use of fabric, metal, cardboard, or other materials as a tent or other temporary structure for living accommodation purposes or human habitation; or
- (b) The unauthorized use of a *heating device*; or
- (c) The unauthorized accumulation of personal property (other than *durable medical equipment*) that would not fit in a container three feet high, three feet wide, and three feet deep.

*Designated outreach organization* means a nonprofit organization jointly designated by the Houston Police Department's Homeless Outreach Team and the city's Director of Emergency Medical Services to assist the city's Police Department in the manner prescribed in section 21-63 of this Code.

*Durable medical equipment* means equipment customarily used for medical purposes, able to withstand repeated use, and generally not useful to a person in the absence of illness or injury. Non-exclusive examples of such equipment include wheelchairs, canes, crutches, and portable oxygen tanks.

*Heating device* means a camp stove, grill, heater, or other container or device capable of generating or containing an open flame.

*Police officer* means an officer of the city's Police Department.

*Public place* means an outdoor area owned, managed, or controlled by the city to which the public has access, including public rights-of-way, parks, streets, sidewalks, hike and bike trails, transit facilities, underpasses, and parking lots.

**Sec. 21-62. Encampment in a public place prohibited; penalty.**

(a) Encampment in a public place in the city is unlawful.

(b) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-6 of this Code.

**Sec. 21-63. Procedure for enforcement.**

(a) A police officer may issue a citation for a violation of this article if prior to issuing the citation:

- (1) The officer has tendered a written warning to the person stating that a failure to comply with the city's prohibition against encampment may result in the issuance of a criminal citation to the person or in the person's arrest; and
- (2) The officer has provided a reasonable time for the person to comply with the prohibition, but the person has not complied.

(b) The written warning required by subsection (a)(1) of this section may be accompanied by written information regarding the availability of medical treatment (including mental health treatment) or social services (including temporary shelter or drug or alcohol rehabilitation).

(c) A police officer may arrest a person for a violation of this article if prior to the arrest:

- (1) The officer has tendered the written warning required by subsection (a) of this section and has provided a reasonable time for the person to comply with the prohibition, but the person has not complied;
- (2) The officer has attempted to ascertain whether the person is in need of emergency medical treatment (including emergency mental health treatment) or social services (including temporary shelter or drug or alcohol rehabilitation), and, if the officer has concluded the person may be in need of emergency medical treatment or social services, has made reasonable efforts to obtain assistance from the Houston Police Department's Homeless Outreach Team and/or a designated outreach organization to informally evaluate the person's condition and needs; and
- (3) At least one of the following circumstances exists:
  - a. The officer has concluded the person may be in need of medical treatment or social services, but, notwithstanding the officer's reasonable efforts, the officer has not been able to obtain the assistance contemplated by subsection (c)(2) of this section;
  - b. Personnel from the Houston Police Department's Homeless Outreach Team and/or a designated outreach organization have informally evaluated the person's condition and needs and concluded the person has no immediate need for emergency medical treatment or social services; or
  - c. Personnel from the Houston Police Department's Homeless Outreach Team and/or a designated outreach organization have informally evaluated the person's needs, concluded the person has an immediate need for emergency medical treatment or social services, and directed the person to an appropriate provider, but the person has not accepted the direction.

**Sec. 21-64. Cumulative effect; conflict with other ordinances.**

This article is cumulative of other applicable laws and ordinances. If this article conflicts with another provision of this Code, the more restrictive provision shall govern, except that Chapter 32 of this Code ('Parks and

Recreation') shall govern over this article without regard to the restrictive nature of the respective provisions."

**Section 3.** That, at least five business days before the day on which this Ordinance is effective, the Captain of the Mental Health Division of the Houston Police Department and the City's Director of Emergency Medical Services jointly shall issue a list of designated outreach organizations to provide the assistance described in Section 2 of this Ordinance.

**Section 4.** That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances to make such nonsubstantive changes to the Code as necessary to conform to the provisions adopted in this Ordinance and to make such nonsubstantive changes to the provisions adopted in this Ordinance to conform to the conventions of the published Code.

**Section 5.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor;

therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the thirtieth day next following the date of its passage and approval by the Mayor.

**PASSED AND APPROVED this 12<sup>th</sup> day of April, 2017.**

*Sylvester Turner*

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Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
TPA 04/07/2017 First Assistant City Attorney  
Requested by the Honorable Sylvester Turner, Mayor  
L.D. File No. 0421700026001