

ORDINANCE NO. 090825

AN ORDINANCE OF THE CITY OF EDGEWOOD, VAN ZANDT COUNTY, TEXAS, AMENDING CHAPTER 18, OFFENSES AND MISCELLANEOUS PROVISIONS BY ADDING ARTICLE VI. SECTION 18-100, PROHIBITION ON THE UNAUTHORIZED PLACEMENT, ERECTION, OR MAINTENANCE OF TEMPORARY SHELTERS ON DESIGNATED PUBLIC PROPERTY; AND BY ADDING SECTION 18-200, SLEEPING IN A PUBLIC PLACE; PROVIDING A PENALTY, PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants and;

WHEREAS, the City Council of the City serves as the elected governing body directly responsible for the promotion and protection of the public health and safety of its citizens and inhabitants;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, TEXAS:

Chapter 18 – Offenses and Miscellaneous Provisions, is hereby amended by the addition of Article VI Subsection 18-100 - Prohibition on the unauthorized placement, erection, or maintenance of temporary shelters on designated public property and Section 18-200 - Sleeping in a public place, as follows:

Sec. 18-100. Prohibition on the unauthorized placement, erection or maintenance of temporary shelters on designated public property.

(a) In this section:

1. Designated Public Property shall mean any of the following:

- (A) Any parks, grounds, buildings, facilities, or rights-of-way under the jurisdiction, management or control of the City including, but not limited to, flood and drainage easements of the City;
- (B) Any properties, grounds, buildings, facilities and/or rights-of-way owned, leased or controlled by the City including, but not limited to:
 - (i) Edgewood City Lake;
 - (ii) Edgewood City Park;

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(iii) Edgewood City Hall;

(iv) Water and Waste Water Treatment facilities;

(v) Water storage facilities;

(vi) All Public Safety Buildings including, but not limited to, all Police, Fire, EMS and such other public safety facilities which may be added.

(C) Any vacant and unimproved lots owned, leased, or controlled by the city.

2. Temporary Shelter means any tent or other type of portable or impermanent structures whether manufactured or makeshift, in or under which a person can be sheltered or partially sheltered from the elements.

(b) A person commits an offense if the person places, erects, or maintains a temporary shelter in or upon any designated public property.

(c) It is a defense to prosecution under section (b) of this section if the placement, erection, or maintenance of the temporary shelter by the person on the designated public property was expressly authorized by:

(1) an ordinance or resolution of the City Council;

(2) a special event permit issued or granted by the City;

(3) a contract with the City; or

(4) If the designated public property is under the jurisdiction, management, or control of the City's Park Board, a permit or other written authorization is granted by the director of the park and recreation department.

(d) A person who violates a provision of this section is guilty of a separate offense for each day during which the violation is committed and upon conviction, is punishable by a fine not to exceed Two Hundred Dollars (\$200.00).

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- (e) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's reason for placing, erecting, or maintaining a temporary shelter on the designated public property. The police officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present. Before issuing a citation or making an arrest, the police officer shall give the person an oral or written warning that:
- (1) Informs the person of community resources which may be desirable for the person to reach out to; and
 - (2) Requests the person to cease the placement, erection, or maintenance of the temporary shelter and to completely remove the temporary shelter and all personal belongings from the designated public property within no less than one hour after the issuance of the warning; and
 - (3) States that failure to comply with the warning may result in the citation or arrest of the person and the removal by the City of the temporary shelter and any personal belongings remaining on the designated public property.
- (f) If a person's temporary shelter and personal belongings are not removed from the designated public property in compliance with a warning issued by a police officer under Subsection (e), the City may remove those items from the designated public property and store them at a secure location (if the items are determined by the City to have a market value) or dispose of them as solid waste (if the City items are determined by the City to be perishable, to have no market value, or to pose a threat to the public health, safety or welfare). If stored property is not claimed within sixty (60) days after removal, it will be deemed unclaimed or abandoned, and the

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City may sell, recycle, convert or dispose of the property in accordance with City ordinances and policies and any applicable state or federal law.

Sec. 8-200. Sleeping in a public place

(a) Definitions:

"Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, shops, parks, parking lots, parking spaces and includes a privately owned vehicle located in or upon said place whether legally parked or not.

(b) A person commits an offense if he/she:

(1) Sleeps or dozes in a street, alley, park, drainage easement or other public place; or

(2) Sleeps or dozes in a vacant lot or around a vacant building adjoining a public sidewalk, street or highway.

(c) It is a defense to prosecution under Subparagraph (2) of this section if the person is engaged in an act that is temporarily incidental to recreational activity at a designated public park.

(d) Violations: penalty. A person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not less than \$50.00 nor more than the maximum allowed by law for each offense.

(e) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's reason for sleeping in public. The police officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstance, that no defense in Subsection (b) above is present. Before issuing a citation or making an arrest, the police officer shall give the person an oral or written warning that:

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(1) Informs the person of community resources which may be desirable for the person to reach out to; and

(2) Request that the person cease and desist from sleeping in public and remove any and all personal belongings from the vacant lot or public property within no less than one hour after the issuance of a warning; and

(3) State that failure to comply with the warning may result in the issuance of a citation or an arrest of the person and the removal by the city of any personal belongings remaining.

(f) If a person's personal belongings are not removed from the designated public property in compliance with a warning issued by a police officer under subparagraph (3) above, the City may remove these items from the designated public property and store them at a secure location (if the items are determined by the City to have a market value) or dispose of them as solid waste (if the City determines that the items are perishable and/or have no market value, or pose a threat to the public health, safety or welfare). If stored property is not claimed within sixty (60) days after removal, it will be deemed unclaimed or abandoned, and the City may sell, recycle, convert or dispose of the property in accordance with City ordinances and policies and any applicable state or federal law.

Repealing Clause.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Severability Clause.

Should any section, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect. The City of Edgewood hereby declares that it would have passed this ordinance, and each

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section, subsection, clause or phrase thereof irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

FURTHER, THIS ORDINANCE SHALL BECOME EFFECTIVE UPON PASSAGE AND PUBLICATION.



Steve Steadham, Mayor
City of Edgewood



Kathleen Jordan, City Secretary