

RESOLUTION NO. 20200409-30

1
2 **WHEREAS**, under interlocal agreement with Travis County and the City of
3 Austin for Booking and Related Services (the “Interlocal Agreement”), the City of
4 Austin Municipal Court judges conduct magistration hearings in accord with the
5 requirements of Texas state law at the Central Booking Facility located at the Travis
6 County Criminal Justice Center, for persons arrested and charged with Class A and
7 B misdemeanor offenses and felony offenses; and

8 **WHEREAS**, anyone who cannot afford the secured bail amount and who is
9 not released on unsecured bond (i.e., “personal bond” or “PR bond”) will remain
10 detained in the Travis County Jail; and

11 **WHEREAS**, according to the Who is in Jail and Why Committee Report
12 presented to stakeholders in February of 2020, of the 30,832 bookings in the Travis
13 County Jail with local criminal charges in 2018, “67% (20,678) had new charges
14 only. This means that they were booked into jail for a Travis County charge, and had
15 no external hold or Travis County exclusion (e.g., bond forfeiture, motion to revoke
16 probation, application to revoke probation) that could impact their ability to be
17 released on PR bond”; and

18 **WHEREAS**, at any given moment, there are people held in the Travis County
19 Jail are presumptively innocent and have not been convicted of the crime for which
20 they are being detained; and

21 **WHEREAS**, the U.S. Supreme Court has ruled that “[i]n our society, liberty
22 is the norm, and detention prior to trial or without trial is the carefully limited
23 exception,” *United States v. Salerno*, 481 U.S. 739, (1987); and

24 **WHEREAS**, the Fifth Circuit Court of Appeals has found requiring
25 unaffordable secured bail amounts results in the “absolute deprivation of [indigent
26 arrestees’] most basic liberty interests—freedom from incarceration,” *ODonnell v.*
27 *Harris County*, 892 F.3d 147, 162 (5th Cir. 2018); and

28 **WHEREAS**, pretrial detention separates people from their families,
29 communities, and livelihoods, and research shows that even short stays in jail
30 destabilize families, increase recidivism rates, and lead to an increase in new charges;
31 and

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

35 **WHEREAS**, research shows that people detained pretrial are more likely to
36 be convicted, more likely to be sentenced to jail, less likely to be sentenced to
37 probation, and are given longer sentences than similarly situated people released
38 pretrial; and

39 **WHEREAS**, “release on unsecured personal bonds or with no financial
40 conditions is no less effective than release on secured money bail at achieving the

41 goals of appearance at trial or avoidance of new criminal activity during pretrial
42 release,” *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1103 (S.D. Tex. 2017);
43 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 personal bond fees and fees associated with nonfinancial conditions of release for
59 indigent arrestees; and the use of monetary bail for most misdemeanor arrestees and,
60 in cases where it can be considered, requires a judicial officer to make an

61 individualized determination of ability to pay at a hearing with counsel, consider
62 alternatives for those who cannot pay, and if unaffordable money bail is required,
63 make a finding that detention is necessary to meet a compelling interest; and

64 **WHEREAS**, to comply with the Due Process Clause and Equal Protection
65 Clause of the U.S. Constitution, precedent dictates that magistrate judges, including
66 Austin Municipal Court judges acting as magistrates, may not require unaffordable
67 monetary bail as a condition of release unless they first inquire into the person's
68 present ability to make a payment and make findings on the record concerning ability
69 to pay, provide a meaningful opportunity at a hearing with counsel to make
70 arguments in support of release and for alternative conditions of release, impose only
71 the least restrictive conditions of release necessary to reasonably prevent flight from
72 the jurisdiction or reasonably assure public safety, and if unaffordable money bail is
73 imposed, make a finding on the record that totally incapacitating the person is
74 necessary to meet a compelling government interest, and that counsel must be
75 provided for indigent defendants at bail hearings; and

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

80 **WHEREAS**, any bail reform policy should ensure efficient pretrial release

81 prior to magistration without a lengthy pretrial services interview or magistration for
82 most people charged with misdemeanors, state-jail felonies, and all other felony
83 offenses that do not involve the use or threatened use of physical harm to another
84 person; and

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

90 **WHEREAS**, the Council passed Ordinance No. 20171012-014 to establish the
91 Judicial Committee and its charges to appoint Municipal Court Judges and evaluate
92 their performance; and

93 **WHEREAS**, in 2018, the Council adopted Strategic Direction 2023, which
94 includes “Fair Administration of Justice” as one of Council’s Top Ten indicators of
95 success toward the strategic outcomes in the plan, as well as a number of other
96 indicators of equity in interactions with government and strategies to improve equity;
97 and

98 **WHEREAS**, on February 6, 2020, the Travis County Courts at Law Judges
99 issued Standing Order for Personal Bonds on Misdemeanor Cases in Travis County
100 (C-1-CR-11-100054) that outlined a procedure for releasing all persons arrested for

101 misdemeanor crimes on personal bonds except in certain circumstances; and

102 **WHEREAS**, the Interlocal Agreement provides that the City and Travis
103 County will convene a working group in 2020 to review the terms of that agreement
104 and propose changes and/or amendments to it; **NOW, THEREFORE, BE IT**
105 **RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

106 The Council supports the standing order issued by Travis County Courts at
107 Law Judges on February 6, 2020, and the standing order issued by the Travis County
108 District Courts on March 23, 2020, as they represent movement toward a more
109 efficient process for pretrial release. The Council encourages further reforms by
110 Travis County and the State of Texas to improve equity and end wealth-based
111 detention.

112 **BE IT FURTHER RESOLVED:**

113 The Council reaffirms its commitment to eliminating wealth-based detention
114 and its commitment that persons must never remain in jail unless pretrial detention
115 is the least restrictive means to reasonably assure public safety and appearance in
116 court.

117 **BE IT FURTHER RESOLVED:**

118 The Council affirms the policy of the City that magistration hearings
119 conducted by judges of the City of Austin Municipal Court at the Central Booking
120 Facility should afford arrested persons all rights guaranteed under the U.S.

121 Constitution and Texas state law, and should provide at a minimum the following
122 procedural safeguards for arrested persons to the extent permitted by state law:

- 123 • Interpretation services if there is any indication that the person does not speak
124 English fluently or is hearing-impaired.
- 125 • Information provided to arrestees in plain language at or before magistration
126 describing the following important legal rights:
 - 127 ○ The right to retain legal counsel and have counsel present during any
128 interviews with peace officers or attorneys representing the state, and
129 the right to appointment of legal counsel if the person cannot afford
130 counsel, including procedures for requesting appointment of counsel;
 - 131 ○ The right to terminate any such interviews at any time;
 - 132 ○ The right to remain silent, and notice that any statement made by the
133 person may be used against the person; and
 - 134 ○ The right to notice of the specific criminal charges against the person.
- 135 • Application of the following definition of “indigent” to determine whether a
136 person arrested has the present ability to pay any amount of secured bail or to
137 pay a fee or cost associated with a personal bond or a non-financial condition
138 of release, including but not limited to, a personal bond fee, a supervision fee,
139 a fee for electronic monitoring, or a fee for an interlock device; a person may
140 be presumed to be indigent if the person meets any of the following conditions:

- 141 ○ Is eligible for appointed counsel;
- 142 ○ Has income at or below 200% of the federal poverty guidelines;
- 143 ○ Is a full-time student;
- 144 ○ Is incarcerated, or residing in a mental health or other treatment
- 145 program;
- 146 ○ Is receiving means-tested public assistance; or
- 147 ○ Is otherwise unable to pay the fee or cost without substantial hardship.
- 148 • Administrative procedures to provide magistrates and persons arrested with all
- 149 information gathered by Travis County Pre-Trial Services, including any risk
- 150 assessment score, the data that was used to determine the risk assessment score,
- 151 and NCIC/TCIC criminal history.
- 152 • The opportunity for a person arrested to be heard during magistration
- 153 concerning any factors relevant to the person’s release, detention, and the
- 154 availability of alternative conditions; to present evidence available at that time
- 155 to the person arrested concerning those factors; and to contest any evidence
- 156 presented at the magistration concerning those factors.
- 157 • An administrative procedure to track the magistrate’s reasons for detaining an
- 158 arrestee following magistration when the arrestee is eligible under state law for
- 159 release on personal bond at magistration, including a written record of those
- 160 reasons and of the required conditions for release set by the magistrate (if any).

- 161 • Administrative procedures to assure that arrestees are not detained following
162 magistration, except to the extent consistent with state and federal law.
- 163 • Administrative procedures to assure that misdemeanor arrestees who are not
164 released at magistration are promptly given a constitutionally adequate bail
165 hearing with counsel before a Travis County judicial officer, who may impose
166 financial and nonfinancial conditions of release.
- 167 • Administrative procedures that give magistrates sufficient information to
168 determine in cases where detention following magistration results solely from
169 an arrestee’s inability to pay a cash bail, surety bond, or fee that no less
170 restrictive conditions of release are sufficient to protect the safety of other
171 persons or prevent flight from the jurisdiction; and which give magistrates the
172 ability to make findings that such arrestee is indigent or otherwise lack the
173 ability to pay such bail, bond, or fee.

174 **BE IT FURTHER RESOLVED:**

175 The City Manager is directed to engage with Travis County through the
176 working group process described in the Interlocal Agreement with the goal of
177 amending the Interlocal Agreement to create administrative procedures and a
178 physical environment for the magistration process that enhances the opportunity for
179 Municipal Court Judges acting as magistrates to: (1) release arrested persons on
180 personal bond whenever the magistrate determines it appropriate under the law and

181 the facts; and (2) impose the least-restrictive pretrial conditions necessary to
182 reasonably assure public safety and prevent flight from prosecution when release
183 on personal bond is not appropriate. Without limitation, the City Manager is
184 directed to include in discussions with Travis County for amendments to the
185 Interlocal Agreement the administrative procedural safeguards described above in
186 this resolution and in addition the following specific subjects:

- 187 • Sufficient space or accommodation to allow public access to the magistration
188 courtroom and public observation of magistration proceedings;
- 189 • Representation by counsel at magistration hearings;
- 190 • An administrative process for giving arrested persons clear notice in writing
191 of the rights at stake in the magistration in plain language understandable to
192 non-lawyers; and
- 193 • A method for providing the City with data on arrested persons who remain
194 detained in jail after magistration at the Central Booking Facility, including at
195 a minimum for each person who remains detained:
 - 196 ○ The charges against the person;
 - 197 ○ The bond amount set by the magistrate;
 - 198 ○ Whether the person was determined by the magistrate to be indigent;
 - 199 and
 - 200 ○ The reason(s) the person was detained following magistration.

201 **BE IT FURTHER RESOLVED:**

202 The City Manager is directed to provide a report to the Council Judicial
203 Committee in at its August 2020 meeting, or the soonest meeting thereafter, outlining
204 the steps that have been taken to implement this resolution, with additional updates
205 on implementation to the Judicial Committee every subsequent six months. These
206 updates should include analysis of the data collected about arrested persons who
207 remained detained in in jail after magistration at the Central Booking Facility, as
208 described in this Resolution, once such data becomes available. The City Manager is
209 further directed to make such data reports available on the City's public website.

210 **BE IT FURTHER RESOLVED:**

211 When evaluating candidates for appointment as judges to the City of Austin
212 Municipal Court, the Judicial Committee may consider information concerning
213 arrested persons who remained detained after magistration, as described in this
214 resolution.

215 **BE IT FURTHER RESOLVED:**

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

- 220
- the amount of money Austin residents have paid and continue to pay to for-profit

- 221 bail bond companies;
- 222 • the amount of money Austin residents otherwise pay in secured bail;
 - 223 • the amount of money paid in personal bond fees as well as fees associated with
 - 224 non-financial conditions of release such as GPS and electronic monitoring,
 - 225 ignition interlock devices, SCRAM devices (ankle alcohol monitoring devices),
 - 226 and drug tests;
 - 227 • other financial consequences associated with pretrial detention such as lost wages
 - 228 and employment; and
 - 229 • any other relevant financial or equity impacts, including but not limited to effects
 - 230 on health, medical care, care for dependent children and family members, ability
 - 231 to pay rent and other bills, and ability to make payments toward debts such as car
 - 232 liens and student loan debt.

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

235

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