

Audit Report

Homelessness Assistance Audit Series: City Policies Related to Homelessness

November 2017



City ordinances that limit or ban camping, sitting or lying down in public spaces, and panhandling may create barriers for people as they attempt to exit homelessness because they can lead to a criminal record or arrest warrants. Even if a citation does not result in a criminal record, it does not appear to be an effective means of connecting that individual to the services they need, nor is it an efficient use of City resources.

Lastly, other U.S. cities have faced lawsuits challenging the enforcement of similar ordinances. In some of those cases, rulings against the cities have been based on conditions that also appear to exist in Austin.

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Cover: 7th Street, Office of the City Auditor.

Objective

The objective of this audit was to determine if City ordinances align with City efforts to achieve desired outcomes for people experiencing homelessness.

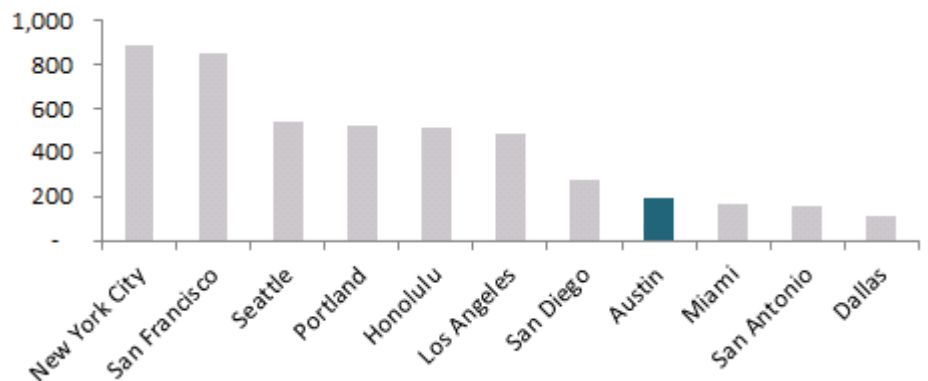
Due to the complex nature of the topic, we plan to evaluate the City’s homelessness assistance efforts in a series of audits. Future reports are planned to analyze coordination of the City’s homelessness assistance efforts, how the City allocates resources to address homelessness, and the outcomes of these efforts. This report is the first in that series.

Background

More than 7,000 people used homelessness assistance services in 2016, a 14% increase since 2013.

One day each year, Austin’s Ending Community Homelessness Organization (ECHO) coordinates a count of the City’s homeless population. This annual “Point in Time Count” is required for communities that receive funding from the United States Department of Housing and Urban Development. The 2017 count identified a total of just over 2,000 people experiencing homelessness in Austin, which is similar to the results of previous counts.¹ However, ECHO noted in its 2017 “Needs and Gaps” report that more than 7,000 people used homelessness services in 2016, a 14% increase since 2013. When compared to the counts done by other cities in 2016 (as shown in Exhibit 1), Austin had more people experiencing homelessness per capita than other large Texas cities. However, Austin’s count was significantly lower than several other cities that received Federal funding in 2016.

Exhibit 1: 2016 Rate of Homeless Per 100,000 People in Select U.S. Cities



SOURCE: OCA analysis of Point in Time counts conducted by various Continuum of Care organizations, September 2017

¹ The count identified 832 people sleeping in shelters, 834 unsheltered people, and 370 people in transitional housing.

The National Law Center on Homelessness and Poverty reviewed municipal codes in 187 cities to identify ordinances that relate to the criminalization of homelessness. According to this analysis, Austin has three such ordinances, which are shown in Exhibit 2. Violations of each ordinance are classified as a Class C misdemeanor and can result in a fine of up to \$500.

Exhibit 2: Austin City Ordinances Associated with Homelessness



Panhandling (§9.4.13)

- Bans certain actions such as making physical contact and using obscene or abusive language and gestures while soliciting
- Bans solicitation within 25 feet of an ATM/bank or at sidewalk cafes
- Bans solicitation in the downtown area from 7pm to 7am



Camping (§9.4.11)

- Bans camping in public areas of the City
- Defines camping as storing personal belongings, using a tent/car as a living accommodation, and cooking
- Does not apply to permitted camping or cooking in a park



Sit/Lie (§9.4.14)

- Bans sitting or lying in parts of downtown
- Does not apply in situations such as a medical emergency, viewing a parade, waiting for public transit, or using a bench provided by a public agency or property owner

SOURCE: OCA analysis of *The National Law Center on Homelessness and Poverty's "No Safe Place"* report and Austin City Code, September 2017

What We Found

Summary

City ordinances that limit or ban camping, sitting or lying down in public spaces, and panhandling may create barriers for people as they attempt to exit homelessness because they can lead to a criminal record or arrest warrants. Even if a citation does not result in a criminal record, it does not appear to be an effective means of connecting that individual to the services they need, nor is it an efficient use of City resources.

Lastly, other U.S. cities have faced lawsuits challenging the enforcement of similar ordinances. In some of those cases, rulings against the cities have been based on conditions that also appear to exist in Austin.

Finding

Select City ordinances may create barriers for people attempting to exit homelessness, do not appear to effectively or efficiently connect people experiencing homelessness to services, and may increase the risk the City will be sued.

Most citations for violating the City's camping, sit/lie, or panhandling ordinances resulted in an arrest warrant because the cited person failed to appear in court.

Ordinances may create barriers to exiting homelessness.

According to data from the Downtown Austin Community Court (DACC) there were about 18,000 citations issued to people for violating the City's camping, sit/lie, or panhandling ordinances between fiscal year 2014 and fiscal year 2016. The data indicated that for about 90% of the citations, the person failed to appear in court. A warrant was issued in 72% of the cases when the cited person failed to appear in court.²

Many landlords and employers require applicants pass a criminal background check, and an active arrest warrant may disqualify a person from consideration for an apartment or job. Affordable housing property managers stated that a conviction for violating one of these ordinances would not automatically eliminate an applicant and that they consider criminal records on a case-by-case basis. One location's written policy stated that applications could be denied for any non-felony conviction within the past 10 years.

In addition to possibly impacting a person's ability to secure housing or employment, an arrest warrant may create additional obstacles even after someone has been housed. For example, if arrest warrants are not appropriately addressed, the cited individual may be jailed which may then increase the risk of that person losing employment. Also, the additional fines associated with a warrant may limit the person's ability to continue paying for housing and other household expenses.³

Ordinances are not an effective or efficient method for connecting people to services.

During interviews, some stakeholders asserted that in addition to maintaining public order, the City's sit/lie ordinance is an effective way to connect people experiencing homelessness to services. This is because DACC offers case management and rehabilitative services in an effort to

² According to court staff, warrants were not issued in every case because a defendant dealt with their case before the warrant become active.

³ State law regarding warrants for fine-only offenses was recently changed. It is unclear at this time how, or if, these changes will impact this issue.

help people exit homelessness. These stakeholders appear to genuinely care about helping people experiencing homelessness, however there is limited evidence that the sit/lie ordinance is an effective or efficient way to connect people to services.

The Downtown Austin Community Court maintains a waitlist for its case management services.

First, DACC management asserted that limited resources prevent them from giving case management services to everyone who may need it. DACC maintains a waitlist for its case management services, and prioritizes people based on the number of citations the person has received in the past year. As a result, only people with multiple citations are typically eligible for DACC's case management services.

Second, the Austin Police Department (APD) has greatly reduced the number of sit/lie citations they issue. According to DACC data, APD wrote 63% fewer sit/lie citations in fiscal year 2016 than they did in fiscal year 2014. APD's unofficial policy is to give people 30 minutes to move before issuing a citation. Enforcement of this policy may be one of the factors contributing to the decrease in the number of citations issued by APD. If citations are a method to connect people to services, reducing the number of citations is not an effective way to accomplish this goal.

Nearly 25% of cited individuals refused case management services.

Additionally, not everyone who is eligible for case management services at DACC takes advantage of the program. According to DACC data, 65 people received more than 20 citations in fiscal year 2014.⁴ DACC reported that nearly 25% of those individuals refused case management services. DACC was able to successfully provide services to some of them though. DACC reported that five of the 65 individuals are currently housed, including the most frequent offender of the sit/lie and camping ordinances.⁵ We could not determine outcomes for the majority of those 65 people because we were not allowed access to data in the Homelessness Management Information System at the time of this audit.⁶

Persons cited outside of the Downtown Austin Community Court's jurisdiction do not have the same opportunity to connect to case management services.

Another issue is that persons who do not address their citations at DACC may not have an opportunity to connect to case management services. Specifically, the City's Municipal Court handles citations but does not offer case management services.⁷ The Municipal Court reported handling about 6,300 citations for violations of the three ordinances between fiscal year 2014 and fiscal year 2016.

Beyond considering the efficacy of enforcing these ordinances as a method for connecting people to services, this process is not efficient and may not be the best use of City resources. As shown in Exhibit 3, enforcing these ordinances includes APD issuing citations and holding hearings through DACC or the Municipal Court. This may involve a trial, monitoring of community service activities, and processing fines.

⁴ These 65 individuals received a total of 2,592 citations for camping or sitting/lying in fiscal year 2014, an average of 40 per person.

⁵ This person received more than 120 citations in fiscal year 2014 alone.

⁶ The Homelessness Management Information System is managed by ECHO.

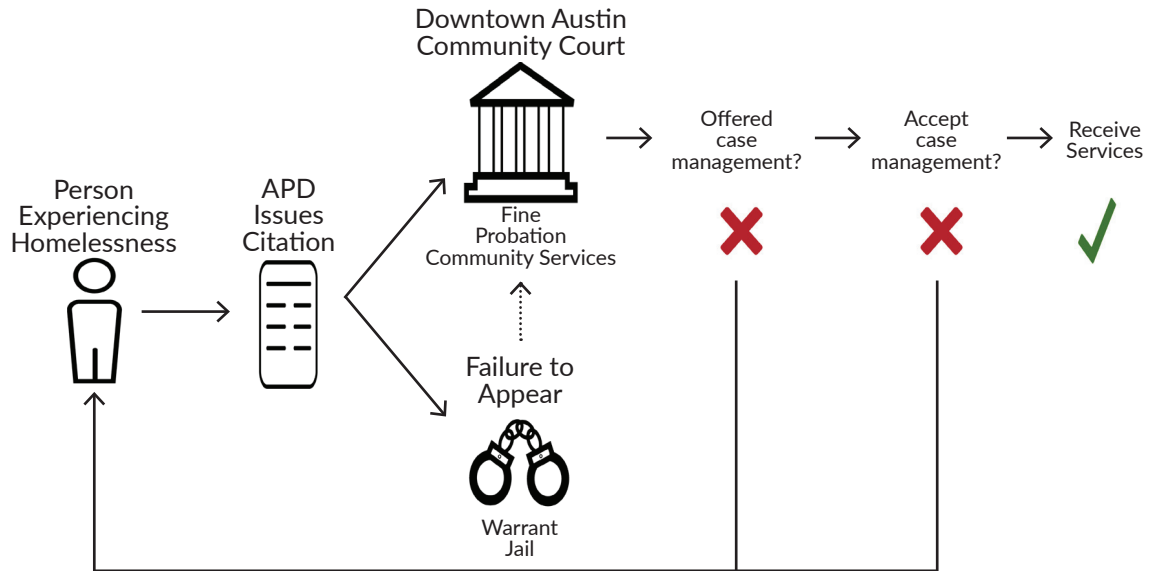
⁷ The Municipal Court may refer people to DACC.

As noted earlier, this process results in only a small percentage of people actually receiving case management services.

The City pays Travis County around \$6 million per year for jail services, a portion of which is due to holding people cited for violating City ordinances.

Finally, enforcing these ordinances increases what the City pays to Travis County to hold people experiencing homelessness in jail. Under an interlocal agreement, the City reimburses Travis County around \$6 million per year for jail services. DACC frequently uses jail time served as credit towards the fine associated with the citation. Between fiscal year 2014 and fiscal year 2016, DACC credited defendants nearly \$600,000 for jail time served.⁸

Exhibit 3: Citing People Experiencing Homelessness is Not an Effective Way to Connect Them to Services



SOURCE: OCA analysis of the City's process for handling violations of the panhandling, sit/lie, and camping ordinances, September 2017

Ordinances increase the City's legal risk.

Cities around the country have faced recent lawsuits related to their camping ordinances.⁹ The basic premise of these suits is that when homeless shelters are full, people experiencing homelessness have no way to comply with the ordinance because there is nowhere else for them to go.

In August 2017, a U.S. District Judge ordered that the City of Houston temporarily halt enforcement of its camping ordinance because Houston's emergency shelters were full. In his decision, the Judge wrote that enforcing the ordinance would cause people experiencing homelessness "irreparable harm by violating their Eighth Amendment right to be free from cruel and unusual punishment due to their status of 'homelessness.'"

In a ruling against Houston, a U.S. district Judge wrote that enforcing the city's camping ordinance would cause "irreparable harm by violating their Eighth Amendment right to be free from cruel and unusual punishment due to their status of 'homelessness.'"

⁸ This amount is not solely attributed to cases involving people experiencing homelessness or citations for violating one of the ordinances identified in this report.

⁹ Jones v. City of Los Angeles, 444 F. 3d 1118, (9th Cir. 2006); United States Department of Justice Statement of Interest filed in Bell V. City of Boise, 709 F. 3d 890, 893 (9th Cir. 2013); Temporary Restraining Order filed in Kohr et all v. City of Houston, Case Number 2:2017cv01473, filed in United States Federal Court - Texas Southern District.

Austin's camping ordinance is similar to Houston's and emergency shelters in Austin are effectively full most nights of the year. Although some shelters may report empty beds on some nights, shelter practices and policies often result in beds not being available to every person who may need one. For example, a shelter may not accept clients after a certain time, or may only serve a certain demographic.¹⁰

Additionally, a 2015 Supreme Court ruling has recently been used to challenge elements of panhandling ordinances in other cities. Specifically, courts have ruled against cities whose ordinances limit when panhandling can occur, or ordinances that require panhandlers to be certain distances from a particular location. Austin's panhandling ordinance includes both of these restrictions.

Since similar conditions exist in Austin, there is an increased risk that the City will be sued for enforcing these ordinances. Although this would not necessarily result in a decision against the City, defending the ordinances would result in a financial cost and possible reputation damage to the City.

Additional Observation

A major hurdle to addressing the issue of homelessness is adequate shelter capacity. This directly relates to the legal risks associated with the ordinances. Lack of capacity also impacts the ability of DACC case managers to secure successful outcomes for the people they interact with.

The City is making some efforts to address this, such as identifying City buildings that could be used as temporary emergency shelters. However, a full analysis of the City's capacity needs, and efforts to address any deficiencies that may exist, was not within the scope of this audit. The Office of the City Auditor plans to address this topic as part of future audits in the Homelessness Assistance Audit series.

¹⁰ Specific curfew times vary from shelter to shelter, but ranged from 6:15 pm to 9 pm for the shelters interviewed. Some shelters only serve women or families with children.

Recommendations and Management Response

1 | The City Attorney should reassess the City's camping, sit/lie, and panhandling ordinances to determine what legal risk they pose to the City. Further, the City Attorney should report the results of this review to City Council.

Management Response: Agree

Proposed Implementation Plan: A memorandum to Mayor and Council Members will be sent regarding the three ordinances.

Proposed Implementation Date: April 6, 2018

2 | The City Manager should work with City Council to determine if the City's camping, sit/lie, and panhandling ordinances are still aligned with the City Council's vision for addressing the issue of homelessness, or whether the ordinances should be revised or repealed.

Management Response: Agree

Proposed Implementation Plan: The City Manager designated Interim Assistant City Manager Sara Hensley to lead the overall Homelessness effort. This includes working with the City Attorney's Office to review the current camping, sit/lie and panhandling ordinances. A cross departmental team has been formed to look at all the Council Resolutions regarding Homelessness. The current camping, sit/lie and panhandling ordinances have been added to the work plan for review in the overall context. Once the information from the City Attorney's Office is received, the information will be included in the discussion as it relates to any recommended revisions or repeals. The team will produce an overall "holistic" recommendation for Council to consider as a part of their vision for addressing homelessness.

Proposed Implementation Date: April 6, 2018

3 | If the ordinances are not repealed, the City Manager should identify and implement changes to make the enforcement of the City's camping, sit/lie, and panhandling ordinances more effective and efficient. Changes may include, but are not limited to:

- Expanding DACC case management resources and ensuring that all citations involving people experiencing homelessness are handled by DACC;
- Implementing strategies to encourage more people experiencing homelessness to accept case management services;
- Implementing strategies to reduce arrest warrants issued in response to people experiencing homelessness who fail to appear in court following citation; and
- Implementing strategies to reduce the number of people experiencing homelessness in jail for violating these ordinances.

Management Response: Agree with caveats

Proposed Implementation Plan: A City Team has been formed that is reviewing all things related to homelessness: grants, general fund dollars allocated, staffing, efforts with non-profits, education institutions and the faith community, contracts, agreements, pilot programs and Council Resolutions. The overall goal is to discover what is currently working, who is not at the table, how we can better

spend and allocate the dollars and resources, who are the most effective providers of services, what are the services most needed, recommendations related to the ARCH and how we ultimately form a “global” mission to serve our individuals and families experiencing homelessness. This is a monumental task that will hopefully align the resources to the most effective efforts in addressing homelessness.

- The Expansion of the DACC case management resources would take time, budget dollars and City Council approval. If found to be the most effective effort, additional resources will be requested.
- Implementing strategies to encourage more people experiencing homelessness to accept case management services is a tedious and long term effort. First, trust must be built and there has to be a continuum of care that follows the individuals. Every effort will be made to encourage more individuals to accept case management; however, more resources may be needed.
- Implementing strategies to reduce arrest warrants is already underway as the HOST team works to assist homeless individuals. The more successful we are aligning homeless individuals with services, the more likely we will be able to reduce the number of arrest warrants issued.
- Implementing strategies to reduce the number of people experiencing homelessness that end up in jail for violating these ordinances is also difficult. Many times, they do not understand or may not have the capacity to understand the ordinance. However, if we are successful in providing more or better aligned resources to address individuals experiencing homelessness, then the number in jail should be reduced.

Proposed Implementation Date: April 6, 2018

Scope

The audit scope included the City's current efforts related to enforcement of the sit/lie and camping ordinances, as well as the results of enforcing those ordinances since fiscal year 2014.

Methodology

To complete this audit, we performed the following steps:

- Interviewed staff with Austin Police Department, Law Department, Downtown Austin Community Court, and Municipal Court;
- Interviewed local service providers and stakeholders including shelters, affordable housing providers, employers, Ending Community Homeless Commission, and the Downtown Austin Alliance;
- Reviewed court decisions from cases related to sit/lie, solicitation, and camping ordinances.
- Observed court operations at the Downtown Austin Community Court;
- Reviewed court records related to citations for violations of sit/lie, solicitation, and/or camping ordinances;
- Reviewed outcomes for a sample of 65 frequent offenders using information from Travis County jail records, internal Downtown Austin Community Court records, and the Homeless Management Information System; and
- Evaluated internal controls related to City ordinances that may criminalize homelessness.

Audit Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve City services. We conduct performance audits to review aspects of a City service or program and provide recommendations for improvement.

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