



MEMORANDUM

TO: Mayor and Council Members

FROM: J. Rodney Gonzales, Assistant City Manager
Kristi A. Samilpa, Senior Executive Assistant, Homeless Strategy Office

DATE: August 30, 2019

SUBJECT: Update from the Homeless Strategy Office

On June 20, 2019, Austin City Council adopted Resolution No. 20190620-184 (the Resolution) regarding options to address homelessness. This update responds to Council's direction to:

- Propose reasonable time and place opportunities and limitations on camping, sitting and lying; and
- Provide possible options for non-criminal remedies or tools related to time and place limitations on camping, sitting, and lying.

Previous Updates

On [August 5, 2019](#), the Homeless Strategy Office (HSO) provided an update to Council on several initiatives underway, including the onboarding of incoming Homeless Strategy Officer Lori Pampilo Harris, the creation of new housing-focused shelters, new developments that include supportive housing and continuum of care housing units, and proposed increases for homelessness initiatives for Fiscal Year 2019/20. Additionally, on [August 16, 2019](#), the HSO provided an update regarding authorized encampments and parking lots and the need for continued collaborations to identify and implement solutions to address homelessness.

The Number of Individuals Experience Homelessness Who are Unsheltered

The [2019 Point-in-Time](#) (PIT) count identified 1,037 individuals experiencing homelessness who are unsheltered within the **City of Austin**, representing 34 additional individuals (a 3.4% increase) from the 2018 PIT count. However, over this same time period, the total number of individuals experiencing homelessness who successfully moved into housing increased by 233. The mixed data reflects the complex nature and challenges associated with homelessness that are confronting major cities across the United States.

The 2019 PIT count demonstrated that while more individuals may transfer into housing, it does not translate into a reduction in the number of unsheltered individuals. Although the *Housing First* approach is identified as the preferred sustained solution, it is an approach that takes time, collaborative partnerships, and there are not enough current housing options for all individuals experiencing homelessness. In addition to systemic issues such as low wages insufficient to afford housing and a financially out-of-reach healthcare system, there are other issues such as fleeing from an abusive relationship/family, having a mental/physical disability that prevents the ability to work, being kicked out for being LGBTQ, financial crisis, and addiction/substance dependence which contribute to the number of

individuals becoming homeless. Without access to a support network or shelter, there are individuals who live and sleep outside or in vehicles with no access to kitchens, restroom/bath facilities, food/belongings storage, cooking appliances, and safe protection.

Limitations Criteria

Individuals experiencing homelessness are living/sleeping outside and are occupying spaces that are not safe for themselves and will place their possessions in areas that then create unsafe conditions for themselves and the public. Any limitations considered for identifying where an individual should not live/sleep will need to be carefully thought through in terms of enforcement and an individual's constitutional rights. As the City Council considers limitations, the Law Department stands ready to assist with providing a legal analysis of those limitations from a constitutional rights perspective.

In the two months since the June 20th Council resolution, the Homeless Strategy Office (HSO) has researched and conducted stakeholder meetings focused on identifying limitation criteria to ensure the health and safety of those experiencing homelessness. Staff research and stakeholder discussions focused on areas with high pedestrian traffic, high vehicular traffic, and floodways. These areas were not constructed for habitation and, on their own, create challenges for anyone living/sleeping in these spaces.

High Pedestrian Traffic Areas. HSO consulted with Austin Transportation Department regarding sidewalk accessibility concerns. In May 2019, City Council amended City Code Chapters 12-1 (Traffic Regulation and Administration) and 12-2 (Bicycles) relating to the operation of micro-mobility devices and bicycles on sidewalks and roadways. In particular, the amendments created new parking guidelines for micro-mobility devices to prevent the obstruction of pedestrian and vehicular traffic and to allow for at least three (3) feet of clearance for accessibility. In the same manner that parking micro-mobility devices can obstruct pedestrian traffic, the objects belonging to individuals experiencing homelessness could also obstruct pedestrian traffic.

Limitations criteria in high pedestrian traffic areas focused on objects could be modeled after [City Code Section 12-2-15 Parking](#) which placed parking restrictions on micro-mobility. The restrictions prevent parking micro-mobility devices as follows:

- In a manner that obstructs pedestrian or vehicle traffic;
- In a space designated as a vehicle parking place or between two designated vehicle parking places;
- In a manner that obstructs transit stops, shelters, or platforms;
- On any part of an accessibility ramp for person with disabilities, or in any manner that would restrict the movement of persons with disabilities;
- In designated and marked special use zones, including, but not limited to, commercial service zones, passenger loading zones, customer service zones and valet zones;
- In a manner that obstructs fire suppression appurtenances, building entryways, exits, or vehicular driveways;
- On or near railroad or light rail tracks or crossings;
- In a manner that obstructs street furniture that pedestrians access, including, but not limited to, benches and parking pay stations; or
- On any private property without the permission of the owner.

Regarding limitations criteria to address object size and footprint, Council could consider the approach used by the City of Berkeley, California to develop a [Shared Sidewalk Policy](#). In 2017, the Berkeley City Council created an ad-hoc committee to formulate encampment and sidewalk policies. Within the sidewalk policy, Berkeley defines objects as occupying more than 9-square feet of space.

High Vehicular Traffic Areas. There are health and safety issues that arise when individuals live/sleep within high vehicular traffic areas. Although these areas have been developed to safely allow pedestrians to walk through, the habitation of these areas come with health risks. Vehicles emit pollutants such as nitrogen oxide, carbon monoxide, atmospheric particulate matter less than 2.5 micrometers in diameter, elemental carbon, organic carbon, and trace metals. These air pollutants cause asthma, cancer, heart attacks, strokes, reduced lung function, and pre-term births. The University of Southern California website for "[Living Near Busy Roads or Traffic Pollution](#)" provides multiple studies on the negative effects of traffic-related air pollution for pregnant women, developing fetuses, children, teenagers, adults, and seniors. The City Council could consider limitations criteria focused on safe habitation distance from high vehicle traffic areas to reduce an individual's exposure to traffic-related air pollution.

As indicated in the [memo of August 16th](#), the HSO engaged with the Vision Zero team within the Austin Transportation Department (ATD). The Vision Zero team focuses on traffic-related deaths and serious injuries, which is considered a "preventable public health problem." According to the [2018 City of Austin Pedestrian Safety Action Plan](#), individuals experiencing homelessness are at higher risk for pedestrian fatalities. A key reason for this is the exposure risk present when someone is nearby or in-between moving vehicles for long periods of time, and areas adjacent to higher speed roadways are particularly dangerous. Raised street infrastructure, including median strips, median islands, and intersection islands are the primary locations in our City where this exposure risk is greatest. There are some larger, flat areas with some underpass infrastructure with significant buffer distances from moving traffic which are relatively safer locations. The City Council could consider limitations criteria focused on locations where pedestrian exposure risk to moving vehicles is greatest.

High Flood Risk Areas. Austin lies in the heart of Flash Flood Alley and has numerous creeks and waterways throughout the city that are subject to recurrent flash flooding events. These flash flood events occur quickly and have been known to imperil the lives of the public. The core element of Austin's approach to reducing the risks associated with flooding is prevention, and a cornerstone of that approach is the regulation of development, redevelopment, and other activities within delineated floodplains. The City's floodplain regulations are based primarily on the delineated limits of 100-year floodplains. A recently completed rainfall study from the National Oceanic and Atmospheric Administration, known as Atlas 14, concluded that larger and more frequent flooding events are expected in Austin. Another key conclusion of the study is that the current (pre-Atlas 14) 500-year floodplain maps are representative of the actual 100-year flood risk.

On December 12, 2018, WPD issued a memorandum to City Council (**see Attachment A**) concerning encampment cleanups. Within that memorandum, WPD conveyed their concern that it is important keep individuals from living or camping in flood-prone locations such as in culverts or under bridges where flash floods could occur rapidly. WPD will soon bring to Council a proposal to change City code to adopt the pre-Atlas 14 500-year floodplain as the regulatory floodplain on an interim basis until new maps become available. Accordingly, the City Council could consider criteria consistent with longstanding floodplain regulation policy that prevents camping within the regulatory floodplain.

Non-criminal Remedies or Tools Related to Time and Place Limitations on Camping, Sitting and Lying
The City of Austin currently provides non-criminal remedies and resources for individuals experiencing homelessness. On June 14, 2019, the Law Department provided Council with background information about Downtown Austin Community Court (DACC) procedures followed by City prosecutors, Judges, and Court staff in dealing with cases involving "vulnerable defendants", also considered in the memo as individuals who may be suffering from homelessness, mental health conditions, or substance use (**see Attachment B**). The memo described how the first line of action for vulnerable defendants is to address the individuals' quality of life needs and how individuals may be provided deferred prosecutions, negotiated dispositions, and expunctions.

Additionally, the [Homeless Outreach Street Team \(HOST\)](#) is a collaborative initiative that primarily operates in the Downtown and West Campus area. HOST uses a proactive approach to address an individual's needs before they reach a state of crisis and begin to violate laws or ordinances. Part of HOST's goals are to reduce arrests, citations, and jail bookings of individuals experiencing homelessness. HOST is a partnership between three City departments (Austin Police Department, Emergency Medical Services, DACC) and Integral Care, the Local Mental Health and Intellectual and Developmental Disability Authority. The DACC and HOST represent models that are suggested in the Police Executive Research Forum June 2018 publication, "[The Police Response to Homelessness.](#)"

With the creation and implementation of the HOST team in 2016, the City has invested in a non-criminal remedy utilizing a multi-disciplinary approach to proactively engaging high-risk high-needs individuals experiencing homelessness. Utilizing the resources available at DACC, HOST has been successful in linking individuals to the DACC Intensive Case Management Program (ICM) which specializes in serving highly acute, extremely vulnerable individuals by providing Critical Time Interventions and a client-centered and housing-focused approach. These individuals are typically frequent utilizers of all public systems, and DACC's ICM Program focuses on rehabilitating and stabilizing these individuals using an evidenced-based model of wraparound interventions to help achieve long-term stability. ICM staff have the clinical expertise to deescalate situations and motivate individuals to engage in services by developing rapport and creating trusting relationships. In addition to connecting individuals with public benefits and housing, DACC funds and manages social service contracts that provide access to transitional and permanent supportive housing, peer support services, substance use treatment and an array of comprehensive social service supports.

Conclusion

The Resolution adopted by Council on June 20, 2019 included various directives related to homelessness and sought a response during August to the request for options for reasonable time/place opportunities and limitations on camping, sitting, lying; possible options for non-criminal remedies or tools; possible options for parking areas; and possible options for safe storage. While staff hoped to provide options for safe storage this month, additional research and discussion with partner organizations is required. In addition to the memos issued on August 5th and August 16th, this memo concludes staff's response in addressing the other immediate directives requested by Council. Combined, the three memos provide options and resources for Council policy discussions and as Council explores the topics presented on the Council Message Board document titled [Continuing to Take Immediate Action to Address Homelessness in Austin.](#)

Homelessness is a complex issue that requires a variety of solutions working in concert with one another. The HSO is dedicated to working with partner organizations to put systems and infrastructure in place so that homelessness is rare, brief, and non-recurring. The HSO will continue to coordinate responses related to the remaining Council directives and will provide periodic updates as requested in the Resolution.

Please feel free to contact us with any questions.

CC: Spencer Cronk, City Manager
CMO Executive Team
City Directors and Assistant Directors

Attachment A: December 12, 2018 Memorandum from Watershed Protection Department
Attachment B: June 14, 2019 Memorandum from Law Department

ATTACHMENT A

DECEMBER 12, 2018

WATERSHED PROTECTION MEMO:
HOMELESS ENCAMPMENT CLEANUPS



TO: Mayor and Council
FROM: Sara Boone Hartley, Interim Director, WPD 
DATE: December 12, 2018
SUBJECT: Homeless Encampment Cleanups – Watershed Protection Department

The purpose of this memorandum is to provide an update on actions the Watershed Protection Department (WPD) is taking to clean up homeless encampments on properties managed by WPD. This is in response to CIUR #2107 and the City Council direction as stated in a FY19 budget rider which reads:

The outside vendor that will be contracted (by WPD) to supplement in-house resources for encampment clean-up shall work in coordination with social service providers. The vendor shall be required to provide regular memorandums to the Health and Human Services Committee. It is the intention of the City Council that before an RFP is put out that the City Manager shall give notice and an update to Council on how the City will work to protect the property rights of residents, especially people experiencing homelessness, with the intention of not seizing property of residents. Budget Rider FY19_Rider F.

Procurement of Services for Encampment Clean Up Projects

WPD is in the process of contracting with a qualified vendor to provide resources to augment the Department's field operations capacity for clean-ups of homeless encampments on properties managed by WPD. The objective, from a Watershed Protection mission perspective, is to ensure timely removal of potential obstructions to the conveyance of floodwaters and environmental hazards in and near streams. It is also important that we do all we can to keep individuals from living or camping in flood-prone locations, such as in culverts or under bridges where flash floods could occur rapidly. Clean-ups conducted by WPD or an outside vendor will be coordinated with social service providers and done in a manner that respects the personal property and rights of individuals residing in homeless encampments.

As an initial step, WPD is developing a pilot project to test and refine clean-up protocols and procedures. Nine chronic “hot spots” have been identified and will be the focus of the pilot. The contract will also provide for clean-ups by the vendor at other locations on an as-needed basis. The pilot project will be for approximately one year, and the results of the pilot will be used to better inform the procurement of vendor services for a multi-year period. Key elements of the pilot are:

- WPD will enter into a short-term, low-value (approximately \$60,000) contract with the vendor that is currently providing homeless encampment clean-up services to the Texas Department of Transportation (TXDOT).
- WPD will take a services-first approach to encampments on Watershed property. This means that we intend to initiate all engagements along with Integral Care’s Programs for Assistance in the Transition from Homeless (PATH) team for outreach and we will ensure that all encampment residents can connect to services. Recognizing that Austin does not have enough shelter space, storage, or other accommodations for people experiencing homelessness, WPD would like to limit clean-ups to the sites where environmental health and safety are most at risk. Once outreach is conducted, WPD will assess the health and safety of a site and prioritize it for possible clean-up.
- Periodic checks will be conducted by the PATH team and WPD to check on the wellbeing of the residents and the site. For sites that are prioritized for clean-up due to imminent health or safety risks, intensive outreach will be conducted with the PATH team over the course of 30 days to help the residents engage with formal services and be prepared to leave on a certain date. Similar models have been used in San Francisco and Seattle and are recognized as a national best practice
- Mental Health First Aid training will be provided to all vendors and WPD personnel who engage in clean-ups. As needed, WPD will provide support to the vendor. For example, WPD could provide operators and heavy equipment that can be used to remove bulky materials from challenging locations.
- The contract with the City will include provisions to ensure compliance with all City ordinances and requirements.

Assessment and Response Protocol

The Watershed Protection Department has developed a Standard Operating Procedure to guide our assessment of site conditions before initiating a clean-up of a homeless encampment. The objective is to ensure that we have a good understanding of the nature of the site conditions, the extent and occupancy of the site, and the nature of materials that may be present. Key factors for WPD to assess before initiating a clean-up include employee and vendor safety, the flood risk of the site, the presence of potentially hazardous materials, and other threats to water quality or natural resources. Such

assessments will include the participation of City of Austin public safety personnel and social service providers.

Please note that if the initial assessment of a site indicates there is not a serious or imminent threat to public safety, WPD will consider options that may include only partial clean-up of the site or even deferred action. In such cases, and as with large-scale clean-ups performed by the vendor, WPD will engage social service providers to provide other forms of assistance to the residents of an encampment.

Other Strategies

WPD is also developing other strategies to address issues associated with homeless encampments on the properties we manage. Specifically, we are developing another pilot project to test best practices that have been used in other communities like “Leave No Trace” (LNT). LNT is a program that has been used to address the issues of off-road travel, waste disposal, pet waste, and the protection of natural resources on recreational properties. The principles and practices of LNT can also be applied to homeless encampments, such as proper waste disposal, camping in areas that are not flood-prone, minimizing campfire impacts and safety concerns and respect for wildlife and the environment.

There are times when LNT may be preferable to removing a homeless encampment, and it should improve sanitary conditions, minimize risks to the homeless population, and prevent or minimize impacts to the environment. Residents of homeless encampments will be engaged and given instructions and educational materials about LNT principles and best practices. Integral Care or other social services providers will also be engaged for outreach and case management services to people experiencing homelessness.

As soon as we move forward on contracts, agreements, schedules and cost estimates, we will provide another update. If you or your staff have any questions, please contact Jose Guerrero, Assistant Director, WPD, at (512) 974-3541 or at jose.guerrero@austintexas.gov.

cc: Spencer Cronk, City Manager
Joe Pantalione, Interim Assistant City Manager
Michael L. Personett, Assistant Director, WPD
Jose Guerrero, P.E., Assistant Director, WPD
Ramesh Swaminathan, P.E., Managing Engineer, WPD

ATTACHMENT B

JUNE 14, 2019

LAW DEPARTMENT MEMO:
DOWNTOWN AUSTIN COMMUNITY COURT
PROCEDURES AND SOCIAL SERVICES



MEMORANDUM

TO: MAYOR AND COUNCIL

FROM: ANNE MORGAN, CITY ATTORNEY
RANDY ORTEGA, ASSISTANT CITY ATTORNEY

DATE: JUNE 14, 2019

SUBJECT: **Procedures and Social Services provided by the Downtown Austin Community Court (DACC) in response to Camping, Sitting/Lying Down/Sleeping, and Aggressive Solicitation Citations**

This memorandum provides background information for the Council about the procedures followed at the DACC by our City prosecutors, Judges, and Court staff in dealing with citations involving individuals who appear to be suffering from homelessness, mental conditions, or substance abuse (called “vulnerable defendants” in this memorandum). This memorandum is intended as general information for the Council and not as a confidential attorney-client communication.

Overview

The DACC is a criminal court, and all defendants there are entitled to and do receive all Due Process rights in accord with state and federal law at all points in the administration of their cases. In addition to these legal guarantees, the DACC has a number of steps in place that are intended to assist vulnerable defendants both in processing their citations in court, and in addressing their quality of life issues. We also note that the work of our City prosecutors at DACC is guided by the requirements of state law,¹ which provide that the primary duty of criminal prosecutors is “not to convict, but to see that justice is done.”

In addition to the general information in this memorandum, Council is also aware that the Downtown Community Court Advisory Committee meets bi-monthly to discuss a wide range of issues involving the DACC, and the results of the work of the Judges, Court staff, and City prosecutors at the DACC. These meetings typically begin with DACC case-managed client testimonials for those who have attained housing, employment, rehabilitation, medical and mental health stability among other quality of life goals.

¹ Tex. Code of Crim. Procedure, Sec. 2.01.

From Citation to First Appearance at Court

Vulnerable defendants and other individuals will enter the DACC system in several different ways:

- (1) The individual may be cited with a Class C misdemeanor citation and released to appear at DACC at a specified date and time.
- (2) Vulnerable defendants may be transported to DACC by the Austin Police Dept. (APD) from the Travis County Central Booking facility for a constitutionally required magistration process at DACC following a Class C misdemeanor arrest.² [Note: this special magistration process was created specifically for DACC so that only the DACC judge will magistrate DACC defendants. This procedure allows these defendants to have access to case management services at DACC (discussed below), and promotes the goal of having one designated DACC judge who develops positive, trusting relationships with DACC defendants.]
- (3) An individual may be arrested based on an outstanding warrant issued for upon a failure to appear in court after a cite-release, jail-release, or for failing to comply with prior court orders.
- (4) An individual may be offered case management services at DACC by APD's Homeless Outreach Street Team ("HOST") regardless of whether the person faces criminal charges at DACC or in any other jurisdiction. Such offers are voluntary, and vulnerable defendants are not required to accept them. HOST referrals are prioritized at DACC though the court's Intensive Case Management program.
- (5) An individual may voluntarily walk in to DACC and request services, including case management.
- (6) An individual may be referred to DACC by an Austin Municipal Court judge or by a social service agency/homeless service provider who knows that the individual has a history with DACC or that the individual is a vulnerable defendant.

From First Appearance through Final Disposition

Regardless of the channel through which a vulnerable defendant enters the DACC system, the first line of action by the DACC Judge, court staff, and City prosecutors is to address the individual's quality of life needs.

² Once at DACC, defendants may resolve their cases by plea, set their cases for trial, or may be "released to appear" at a future date at DACC for disposition of their cases. ("Released to appear" allows time to seek counsel, consider legal options, or de-stress from the custody scenario).

Triage Meeting. Quality of life issues are addressed by connecting a vulnerable defendant to a case manager (clinical social worker) for a triage meeting. Issues discussed are a coordinated assessment (housing need ranking), financial and employment resources, drug and alcohol rehabilitation, food and social security benefits, opportunities for evaluation for mental health treatment or medical treatment, and necessary documents such as identification, birth certificate, or social security card. If an individual shows signs of a mental health crisis, the DACC prosecutor or clinical case manager deploys the adopted court procedures to contact the crisis intervention team for a mental health evaluation pursuant to Texas Health and Safety Code Ch. 573.

Deferred Prosecutions. After the triage meeting, the DACC prosecutor will meet with both the case manager and the defendant to determine if the vulnerable defendant is a candidate for a deferred prosecution³ (an agreement between the prosecutor and defendant leading to a dismissal without court intervention) or, if the vulnerable defendant is better suited for criminal justice process due to recidivism or repeated unhealthy behaviors. Often the DACC prosecutor will also contact the Texas Dept. of Public Safety Driver License Division to facilitate the clearance of holds and warrant lifts to ease attainment of a driver license or state issued ID for the vulnerable defendant.

Negotiated Dispositions. If the normal criminal justice approach is required, the DACC prosecutor provides the option for a jury or bench trial, deferred disposition, or conviction, and gives the defendant the opportunity to visit with legal counsel prior to selection of the disposition route. The prosecutor cannot “force” or prefer any of these options – it is solely the defendant’s decision whether to accept any of these offers, to seek legal counsel, or take the case to trial.

If a defendant chooses a deferred disposition but is financially unable to pay the required court expense fees, the DACC Judge will allow the defendant to substitute community service for the court fees. The DACC prosecutor will track each vulnerable defendant’s progress to ensure cooperative follow through with the case management program. Should an individual choose a conviction, jail credit obtained from arrests pre-arraignment or pre-bail for higher charges, and jail or prison time for higher charges that arose on or after the at-issue offense date of offense may statutorily apply.

Mental Illness Issues and Other Charges in the Criminal Justice System. If a defendant shows signs of mental illness, the prosecutor will contact the Travis County Mental Health Public Defender (MHPD) to determine if there is a sentence or disposition already in place for the same defendant for any higher offenses (e.g. a Class A or B misdemeanor, or a state jail felony). This process is also followed for defendants who may be facing higher charges and who do not suffer from mental health conditions that permit MHPD representation. If a sentence or plea agreement is already in place for the higher offense, the DACC prosecutor usually tailors the

³ Deferred prosecution agreements result in a dismissal of the citation once the agreed disposition goals have been attained. Such goals may include successful completion of an agreed number of hours of community service and/or counseling. In the case of vulnerable defendants, successful participation in rehabilitation programs may be substituted for all of the community service hours at the discretion of the DACC case manager.

disposition of the case to the higher charge. In some cases the DACC prosecutor will elect to continue offering DACC case disposition options in addition to the penalties be levied at the higher court, where doing so would serve the “interests of justice.”

In addition to the above processes, the Travis County MHPD regularly provides to the DACC prosecutor a list of individuals who have been determined to be Incompetent and Unlikely to Regain (IUTR). Such individuals have been determined to be unable to participate on their own in a criminal court proceeding because of a mental health issue. The DACC prosecutor searches all municipal court records to determine whether any such IUTR individuals have pending cases; if so, the prosecutor will dismiss any open DACC or Austin Municipal Court cases against the individual in accord with federal Constitutional law. If appropriate, these vulnerable defendants may be referred by the Court to Austin/Travis County Integral Care or service providers to provide mental health services including medication.

Expunctions. Information concerning the expunction (record clearance) process is provided to defendants at DACC. Expunction fees may be waived in the interest of justice due to a financial burden. We also note that the DPS Crime Records Reporting Service does not accept Class C criminal cases. Thus, citations or arrests would not appear on an official state criminal record (as distinguished from driving history), and would only appear in a city or county record system.