



CITY ADDRESSES HOMELESSNESS

The City of Houston adopts two ordinances to address homeless issues.

LIVING IN A major metropolitan city can be an exciting and dynamic experience. However, one of the byproducts of being in such a large city is we also have a fairly substantial and visible homeless population. According to the website for the Coalition for the Homeless of Houston/Harris County, in 2014 Houston's homeless count on a given night was approximately 5,351 persons. An additional 1,525 individuals who self-reported as homeless were in the Harris County jail on the night of the count. The website states that there were 27,728 individuals who accessed some type of homeless service in 2013.

We can't escape the fact that issues relating to our homeless population affect the apartment industry. If your community is adjacent to or near a park, hike and bike trail or underpass frequented by the homeless, it could affect the upkeep and cleanliness of the area, encourage drug activity, affect the reputation of the community, present security concerns for your residents or even decrease the value of your property.

Any law addressing homelessness must strike a balance between compassion and public safety. In April, the City of Houston attempted to strike such a balance by adopting two ordinances, one relating to encampments in public places and the other relating to impeding the use of a roadway, sidewalk or building. Let's take a look at what these new laws provide and how you might be able to use them to help your community.

Why have an encampment ordinance?

The preamble to the ordinance provides some insight into what the city was thinking. The city notes the following:

- Notwithstanding the efforts of the city and certain other governmental entities and non-profit organizations, from time to time, homeless persons erect tents or other temporary structures in the city's public places for use as living quarters.

- On occasion, such structures have been used to shield criminal acts from public view, threatening the safety of the general public and persons in or near the structures.

- On occasion, homeless persons have used heating or cooking devices in public places, which present a fire hazard threatening the safety of the general public and persons near the devices.

- 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 persons using the places.

- 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, to assist homeless persons, the city regularly collaborates with Harris County for mental health services for the homeless population.

The city took these concerns and resources into consideration in developing its approach under the ordinance.

What concerns are addressed with the ordinance impeding the use of a roadway, sidewalk or building?

The city notes the following in the preamble to this ordinance:

- There were 63,851 accidents involving vehicles in the city in 2012, 70,817 accidents in 2013, 79,747 accidents in 2014, 86,704 accidents in 2016 and 85,968 accidents in 2016.

- There were 1,170 accidents involving vehicles and pedestrians in 2012, 1,223 accidents in 2013, 1,236 accidents in 2014, 1,283 accidents in 2015 and 1,315 accidents in 2016.

- There were 50 fatal accidents involving vehicles and pedestrians in 2012, 45 fatal accidents in 2013, 50 fatal accidents in 2014, 63 fatal

accidents in 2015 and 81 fatal accidents in 2016.

The city considered these statistics (which may or may not relate to incidents involving homeless persons) in structuring its ordinance.

What is unlawful under the encampment ordinance?

Encampment in a public place in the city is unlawful. The term "encampment" is defined as:

- 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

- The unauthorized use of a heating device; or

- The unauthorized accumulation of personal property that would not fit in a container 3 feet high, 3 feet wide and 3 feet deep.

A "public place" is 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.

What does the impediment ordinance make unlawful?

It is unlawful for an individual to impede the use of a roadway, block a sidewalk or the entrance or exit to a building. The term "impede" means to render the use of a roadway unreasonably difficult or dangerous. The term "block" means to render a sidewalk or the entrance or exit to a building impossible.

What is the procedure for enforcing the encampment ordinance?

Any person who violates the ordinance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$500. Each day a violation continues is considered a separate offense.

A police officer may issue a citation for a violation *if prior to issuing the citation:*

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- 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 or the person's arrest; and
- The person has not complied after the officer has provided a reasonable time for the person to comply.

The written warning from the police officer may be accompanied by information regarding the availability of medical treatment or social services.

A police officer may arrest a person for a violation of this ordinance **if prior to the arrest:**

- The officer has tendered the written warning and provided the reasonable time for the person to comply;
- The officer has attempted to ascertain whether the person is in need of emergency medical treatment or social services and, if the person is in need of treatment or services, the officer has made reasonable efforts to obtain assistance; and
- One of the following: (i) the officer has concluded the person may be in need of treatment or services, but is unable to obtain the assistance contemplated by the ordinance; (ii) personnel from the police department or outreach organization have evaluated the person's condition and concluded that there is no immediate need for emergency medical treatment or social services; or (iii) the police department or outreach organization have 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.

How is the impediment ordinance enforced?

No police officer is to issue a citation, make an arrest or otherwise enforce the ordinance against any person unless the officer first requests or orders the person to refrain from the alleged prohibited conduct and the person fails to comply. Any person who violates this ordinance is guilty of a misdemeanor and upon conviction, shall be punished by a fine not to exceed \$500. Each day a violation continues is also considered a separate offense.

What should we do to seek help under the new ordinances?

Both ordinances require police involvement. Additionally, both ordinances require that the police give the offending person a warning notice before a citation can be issued or an arrest can be made. Consequently, if you see anyone violating either ordinance, the best practice is to contact the police. Time will tell on how the police will react to complaints under the new ordinances. However, the ordinances provide the police with authority to do what they need to do to resolve the situation.

It should be noted that you don't have to be the one to call the police. Any resident can call the police if they are concerned about a situation. You may want to let residents know about the ordinances so that they can take steps to contact the police if there is a problem.

Dealing with the homeless population presents difficulties and potentially uncomfortable situations. Hopefully the city's ordinances will assist in appropriate cases. 

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