

Legal Q&A

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When is an individual considered homeless?

The United State Department of Housing and Urban Development (HUD) provides four broad categories of homelessness:

- Individuals and families who lack a fixed, regular, and adequate nighttime residence, which includes a subset for an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or a place not meant for human habitation immediately before entering that institution;
- Individuals and families who will imminently lose their primary nighttime residence;
- Unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes who do not otherwise qualify as homeless under this definition; or
- Individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member.

What negative effects can a large homeless population have on a city?

A large homeless population can be draining on a community. Homeless individuals that lack access to proper medical care may choose an emergency room at a hospital for medical services rather than a primary care medical office. This option is significantly more expensive and typically the homeless individual is unable to pay the bill, so the cost is passed on to insurance companies and the average customer in a community. Homeless individuals spend more time in local jails than the housed population for petty offenses, which increases the costs to run the facility. Additionally, a large homeless population can affect a city's ability to attract tourists.

What is affordable housing?

Affordable housing is housing for which the occupant pays less than 30 percent of their income. Housing that is considered to be "affordable" will differ between communities, depending on the median family income of the area.

What is Section 8 housing?

"Section 8" refers to Section 8 of the federal Housing Act of 1937. This section authorizes project-based rental assistance programs under which a participating owner, or landlord, is required to reserve units in a building for low-income tenants, in return for a federal government guarantee to make up the difference between the tenant's contribution and the rent in the owner's contract with the government.

What is a Section 8 voucher?

Section 8 of the federal Housing Act also authorizes vouchers for low-income individuals. HUD manages the Housing Choice Voucher Program, which provides financial assistance directly to the landlord for a family that qualifies. The Housing Choice Voucher Program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments, and are free to choose any housing option that meets the requirements of the program.

Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from HUD to administer the voucher program. A list of public housing authorities in Texas can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/contacts/tx

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.

Can a city make being homeless illegal?

No. Laws that punish status or condition rather than criminal conduct have been struck down by courts as constituting cruel and unusual punishment. These types of laws fail to give fair notice of prohibited conduct and encourage arbitrary arrests and convictions. Additionally, courts have overturned vagrancy laws, or laws that criminalize being homeless, as impermissible restrictions on an individual's right to travel. *See Papachristou v. City of Jacksonville*, 45 U.S. 156, 162(1972); *Handler v. Denver*, 77 P.2d 132, 135 (Colo. 1938); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1578 (S.D. Fla. 1992).

Can the city enact a loitering prohibition?

Maybe. In a 1983 decision in *Kolender v. Lawson*, the United State Supreme Court invalidated a California loitering statute requiring street wanderers to present valid identification when stopped by police officers. The Court held that the statute was too vague to satisfy due process requirements. The Court followed this decision with its decision in *Chicago v. Morales*, which struck down a Chicago ordinance preventing loitering by gang members on due process grounds.

An ordinance that is general in nature that criminalizes loitering on a public street would most likely be struck down by a court for vagueness. However, if the wording of the ordinance is sufficient to set forth guidelines for law enforcement officers narrowly tailoring the restriction to those who loiter with a specific illegal purpose, then a loitering ordinance may pass constitutional muster. City officials will want to work closely with their local legal counsel if they desire to adopt such an ordinance.

Can a city prevent homeless people from panhandling in all public places?

No. Litigation related to bans on panhandling has centered on First Amendment free speech claims. Courts have ruled that outlawing panhandling in all public places was unconstitutional. *See generally Young v. New York City Transit Auth.*, 903 F.2d 146 (2d Cir. 1990); *Speet v. Schuette*, 889 F. Supp. 2d 969 (W.D. Mich. 2012). Instead, any limits on panhandling on public sidewalks trigger strict scrutiny, meaning the regulations must be narrowly tailored to serve a significant governmental interest and must be the least restrictive means for achieving that interest. Courts have found that safety and traffic congestion may be significant interests but “mere annoyance” is not a sufficiently compelling reason to absolutely deprive an individual of his or her First Amendment rights.

What strategies have cities used to reduce homelessness?

- Participating in the “Mayors Challenge to End Veteran Homelessness,” a program designed to equip city leaders with tools to combat veteran homelessness. For more information on how to participate, you can visit the Department of Housing and Urban Development’s Mayors Challenge page at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/veteran_information/mayors_challenge/mayors_and_staff;
- Seeking state grants awarded by the Texas Department of Housing and Community Affairs or federal grants awarded by HUD;
- Educating law enforcement officers on alternatives to issuing citations and supporting police department partnerships with mental health partners;
- Recruiting landlords in the city to assist in providing housing opportunities for individuals and families experiencing homelessness;
- Educating municipal court personnel on providing referrals to municipal court defendants to non-profit groups in the city that provide housing and other services;
- Issuing general obligation bonds for the purpose of expanding affordable housing in the city;
- Creating a housing authority to assist with providing affordable housing within the city.

What is a housing authority?

A housing authority is a public body that is created for clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing exists and for providing safe and sanitary housing for persons of low income.

The housing authority may provide for the construction, improvement, alteration, or repair of a housing project, or part of a housing project, in its area of operation. A housing authority may also lease or rent housing, land, buildings, structures, or facilities included in a housing project.

A housing authority is able to borrow money or accept grants or other financial assistance from the federal government for a housing project in the authority's area of operation, or form a partnership or another entity to raise capital for a housing project to be owned by the partnership or other entity.

How does our city create a housing authority?

The city council may declare by resolution that there is a need for a housing authority in the city if it finds that there is: (1) unsanitary or unsafe inhabited housing in the city; or (2) a shortage of safe or sanitary housing in the city available to persons of low income at rentals that they can afford. TEX. LOC. GOV'T CODE § 392.011. The council may determine on its own motion if there is a need for a housing authority but must determine there is a need upon receiving a petition signed by at least 100 qualified voters of the city.

Who appoints members of a housing authority?

Each municipal housing authority is governed by either five, seven, nine, or 11 commissioners. The mayor of the city appoints the commissioners of the authority, and an appointed commissioner of the authority may not be an officer or employee of the city. TEX. LOC. GOV'T CODE § 392.031. After the appointment, a certificate of the appointment of a commissioner must be filed with the city secretary.

A city with a municipal housing authority composed of five commissioners must appoint at least one commissioner to the authority who is a tenant of a public housing project over which the authority has jurisdiction. TEX. LOC. GOV'T CODE § 392.0331. A city with a municipality with a municipal housing authority composed of seven or more commissioners must appoint at least two commissioners to the authority who are tenants of a public housing project over which the authority has jurisdiction.

What is the term of office for a housing authority commissioner?

Initially, a housing authority with five commissioners must have two designated to serve one-year terms and three designated to serve two-year terms. A housing authority with seven commissioners must have three designated to serve one-year terms and four designated to serve two-year terms. A housing authority with nine commissioners must have four designated to serve one-year terms and five designated to serve two-year terms. Finally, a housing authority with 11 commissioners must have five designated to serve one-year terms and six designated to serve two-year terms. Subsequent municipal housing commissioners are appointed for two-year terms. If there is a vacancy on the housing authority board, the mayor appoints someone to fill the unexpired term. TEX. LOC. GOV'T CODE § 392.034.

How can a housing authority commissioner be removed?

The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office. Before a commissioner may be removed, the commissioner must be given: (1) a copy of the charges before the 10th day before the date of a

hearing on the charges; and (2) an opportunity to be heard in person or by counsel at the hearing. A record of the proceedings with the charges and findings must be filed in the office of the city secretary.

Can a housing authority issue bonds?

Housing authorities have specific statutory authority to issue bonds to further the housing authorities' objectives in providing safe, affordable housing. TEX. LOC. GOV'T CODE § 392.081. These bonds are not considered to be a debt of the city and are payable only from the funds and property of the housing authority. TEX. LOC. GOV'T CODE § 392.085.

Can a city sell property for affordable housing for less than fair market value?

Yes. Unless the city received the property through use of condemnation, a city can sell or convey land to an entity for the development of low-income or moderate-income housing for less than its fair market value, as long as the conveyance of land serves a public purpose. TEX. LOC. GOV'T CODE § 272.001(g).

Additionally, a city is not required to comply with statutory competitive bidding requirements when selling land to: (1) a nonprofit organization that develops housing for low-income individuals and families as a primary activity to promote community-based revitalization of the municipality; (2) a 5101(c)(3) nonprofit corporation whose purpose is to develop affordable housing and engages primarily in the building, repair, rental, or sale of housing for low-income individuals and families; or (3) a religious organization that owns other property located in the city that is tax exempt and has entered into a written agreement with the city regarding the revitalization of the land. TEX. LOC. GOV'T CODE § 253.010(a).

A city may by ordinance determine the individuals and families who qualify as low-income individuals and families. In adopting the ordinance, the city must consider median income of individuals and median family income in the area. TEX. LOC. GOV'T CODE § 253.010(b).

Can a city donate money directly to homeless shelter?

Maybe. As a general rule, a gratuitous donation or gift by a city is prohibited by the Texas Constitution, art. III, §52, and art. XI, §3, which, in part, state that the legislature may not authorize any county, city, or other political subdivision of the state to lend its credit or grant public money or anything of value in aid of an individual, association or corporation. The purpose of these provisions is to prevent local governments from appropriating public money for private purposes. However, if a city determines that an expenditure accomplishes a valid public purpose, the fact that one or more individuals or corporations might benefit does not invalidate the expenditure. The key question is whether a valid public purpose is being *directly* accomplished by the expenditure. The determination of whether a particular expenditure accomplishes a public purpose must be made by the city council.

The council's determination as to public purpose is subject to judicial review. However, if the council goes on record recognizing the expenditure as a valid public purpose, the courts are not

likely to overturn that determination. Courts are hesitant to second guess the legislative determinations of local governments. Accordingly, in the absence of fraud on the part of the council, or a total lack of evidence that an expenditure serves a public purpose, a court is not apt to declare a particular city expenditure to be invalid.