



CITY OF KILLEEN

MUNICIPAL COURT COLLECTIONS PROCESS

**DESPITE SETBACKS FROM STAFFING CHALLENGES
MUNICIPAL COURT BUILDS A COLLECTIONS PROGRAM
BASED ON BEST PRACTICES**

Audit Report #20-01

A Report to the City of Killeen Audit Committee

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| Committee Chair | Jim Kilpatrick |
| Committee Members | Jose Segarra |
| | Juan Rivera |
| | Jack Ralston |
| | Bob Blair |



Prepared by

The Internal Audit Department
Matthew Grady, City Auditor
DECEMBER 2019

EXECUTIVE SUMMARY



AUDIT REPORT HIGHLIGHTS

Why Was This Audit Conducted?

The City Auditor included this audit his FY 2019 Audit Plan, based on discussions with the external auditor and the Audit Committee concerning the court's collection efforts in FY 2017 and FY 2018.

What Was Recommended?

The City Auditor recommended that management continue to develop its collections program, and incorporate additional tools, as needed to enforce compliance with City ordinances and enhance the court's collection efforts.

Municipal Court Collections Process Audit

Mayor and Council,

I am pleased to present this audit of the Municipal Court's collections process for past due fines.

Objectives and Scope

The objective of the audit was to evaluate Municipal Court's collections process as compared to recommended national and state best practices. The scope of the audit focused on, but was not limited to collections activity for the period of October 2017 through September 2019.

Audit Results

Management made significant progress during the period under review building a viable collections program based on established best practices. However, that progress was overshadowed by increasing workforce instability caused by rising turnover. Staff turnover more than doubled during the review period, going from 21 percent in FY 2017 to 52 percent in FY 2019. For deputy clerks, who handled collection efforts as a collateral duty, the attrition rate peaked at 82 percent in FY 2019. While the wave of turnover had subsided by the time audit fieldwork began, the constant churning of staff had a noticeable impact on collection activity. This was attributed to management's decision to focus its limited resources on customer-driven, operational priorities, which had a negative impact on collection efforts. The shift in priorities was reflected in the court's collection rates, which fell from 57 percent in FY 2017 to 33 percent in FY 2019. In turn, fines due at year's end increased from \$2.3 million in FY 2017, to \$3.2 million in FY 2019. Despite these challenges, management succeeded in implementing several best practice improvements that should enhance collections going forward. Most important among these was the creation of a full-time collections unit, which effectively elevates the status of collections activity from that of a part-time, collateral duty to a collections program.

The City Auditor appreciates the cooperation of Municipal Court management and staff during this audit.

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INTRODUCTION

The City Auditor conducted this performance audit of Municipal Court's Collections Process pursuant to Article III, Chapter 40 of the City Charter, as Amended May 11, 2013, and in accordance with the City Auditor's Annual Audit Plan, approved by the Audit Committee, November 20, 2018, and amended on February 7, 2019.

The audit was conducted for several reasons: (1) collection of past due fines is an important function, both as an enforcement tool, and as a source of revenue; (2) Municipal Court's collections process has not previously been audited by the City Auditor; and (3) the City's external auditors identified lack of follow-up on delinquent payments in their review of court case files, during their audit of the fiscal year (FY) 2017 comprehensive annual financial report (CAFR).

The objective of the audit was to evaluate Municipal Court's collections process as it compares to recommended national and state best practices. The scope of the audit focused on, but was not limited to collections activity for October 2017 through September 2019.

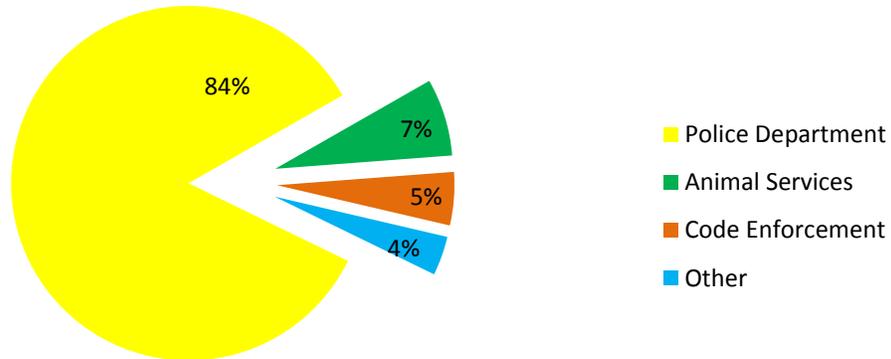
Background

Municipal Court's enforcement of City ordinances through the collections process plays an important role in maintaining the integrity of the City's judicial system. The Court's investment of its authority and resources in pursuing unpaid fines speaks to the basic societal precept that all individuals should be held accountable for their actions under the law.

Fine revenue arises primarily from citations issued by city enforcement officers. The overwhelming majority of these citations come from the Killeen Police Department, Animal Services, and Code Enforcement, the three of which account for over 90 percent of total cases filed in Municipal Court. Other sources include the Fire Department, Municipal Court, Texas Department of Public Safety, the Central Texas College Campus Police, and Texas Department of Parks and Wildlife.

In FY 2019, for example, cases filed by Municipal Court totaled 16,384, of which 13,847 or 84 percent originated from citations issued by the Killeen Police Department. The combined total of Police Department, Animal Services, and Code Enforcement citations issued accounted for 96 percent of case filings in FY 2019, as shown in the following chart.

Municipal Court Cases Filed by Department - FY 2019



Source: Municipal Court case management system

From Citation to Fine

The fine process typically begins with issuance of a citation for violation of a City ordinance, such as traffic violation, cruelty to animals, or failing to maintain one's property. The process then moves through Municipal Court as follows:

- ▶ **Citation:** A citation for violation of a City ordinance contains a notice to appear before Municipal Court at a specified date, usually about two weeks out from the citation date. A copy of the citation is forwarded to Municipal Court.
- ▶ **Initial Court Appearance:** The defendant's initial appearance at Municipal Court can go one of several ways:
 - (1) The defendant can pay the fine levied, which results in a guilty judgment/conviction, and closes out the case. Municipal Court allows payments with cash/money order or debit/credit card. Payments can be made online, by mail, or in person at a Municipal Court customer service window.
 - (2) If the defendant is unable to pay, he or she can complete a form requesting an extension to pay, or a payment plan.
 - (3) If the defendant wants to enter a not guilty plea, they must appear before the judge. If the judge accepts the plea, the defendant is set for pre-trial/trial.

- ▶ **Payment Plan/Extension to Pay:** If the defendant wishes to pay the fine, but is unable to pay it in whole, he or she must complete a request for an extension or for a payment plan, which includes a worksheet for monthly income and expenses. Typically, the defendant will make a partial payment upfront, and then agree to pay the balance at a future date, either through a lump-sum payment under an extension, or a through a series of monthly payments under a payment plan.

The Collections Process

Municipal Court’s collections process for unpaid fines involves a series of escalating steps that begins with a phone call and/or text message, then proceeds to written correspondence, a formal court hearing, and may ultimately end in the issuance of an arrest warrant.



Source: Internet

The process begins when a payment becomes at least 30 days past due. When this happens, the collection specialist will notify the defendant of their past due status via telephone call and/or text message. Prior to the creation of the collection specialist position in FY 2019, collections activity was typically handled by deputy clerks.

If the defendant fails to respond to the collection specialist’s outreach within 30 days, the collection specialist will send the defendant a formal notice to appear for an Order to Show Cause (OSC) hearing. An OSC hearing requires that the defendant appear before the court to explain the reason for their delinquency, which the judge will consider before rendering a decision.

If the defendant fails to appear for their OSC hearing, the judge may issue a *capias pro fine* warrant, an arrest warrant issued when a defendant has plead guilty, agreed to make payments under a court-ordered plan, and then defaulted on that payment plan.

Use of External Entities

In addition to its internal collections activities, Municipal Court has contracted or is in the process of establishing contracts with the following external entities to aid in its collections effort.

Linebarger Goggan Blair & Sampson, LLP

In FY 2013, Municipal Court contracted with the law firm of Linebarger Goggan Blair & Sampson LLP (Linebarger) to assist the court in the collection of delinquent court fines and fees. Under the terms of the contract, Municipal Court may engage the services of Linebarger on the collection of fines and fees more than 60 days past due. The firm receives a collection fee equivalent to 30 percent of the fines and fees collected pursuant to the court's agreement with the firm. As authorized under Chapter 103 of the Texas Code of Criminal Procedure, the court assesses this 30 percent fee on defendants when their outstanding fines are forwarded to Linebarger for collection services.

Driver's License Renewal

Killeen Municipal Court is one of more than 600 Texas municipal courts that make use of the "Failure-to-Appear" program under Chapter 706 of the Texas Transportation Code. Chapter 706 provides that a political subdivision may contract with the Department of Public Safety "to provide information necessary for the department to deny renewal of the driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court...". All citations issued by City departments contain the following warning statement:

STATE LAW WARNING: If you fail to appear in court as provided by law for the prosecution of this offense, you may be denied renewal of your driver's license.

Under the provisions of the code, participating local courts upload information on violators to OmniBase, a third-party vendor, who then transmits the information to the Department of Public Safety, which then flags the defendant for denial of driver's license renewal. The State imposes an administrative fee of \$30 upon defendants who fail to appear or pay their fines, of which \$20 goes to the State, \$6 is paid to the third-party vendor, OmniBase, and \$4 is retained by the City.

The provisions of Chapter 706 are somewhat limited as a deterrent in that driver's licenses are renewed only once every six years, and not everyone holds a Texas driver's license.

Vehicle Registration Renewal

According to management, Municipal Court is in the final stages of adopting the provisions of Chapter 702 of the Transportation Code, also referred to as the "Scofflaw program." Similar to Chapter 706, Chapter 702 also targets the renewal process, in this case, vehicle registration. Under Chapter 702, a county assessor-collector or the Department of Motor Vehicles "may refuse to register a motor vehicle if the assessor-collector or department receives under a contract information from a municipality that the owner of the vehicle has an *outstanding warrant* from that municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law."

Because vehicle registration renewal is required annually, the scofflaw provisions of Chapter 702 are considered a more effective enforcement tool than those of Chapter 706. However, the provisions of Chapter 702 are more restrictive, pertaining only to traffic violations. Outstanding violations stemming from Code Enforcement or Animal Services citations cannot be used to deny vehicle registration renewal. Further, whereas driver's license renewal may be denied on the basis of a failure to appear or failure to pay, vehicle registration renewal can only be denied on the basis of an outstanding warrant, related to a traffic fine. Finally, while the administrative costs of Chapter 706 provisions are borne by the defendant, local governments must pay a fee of \$23 for each file submitted, as well as 12 cents per record probed, flagged or cleared.

Prior Audits

The City's external auditors, in their annual audit of the City's financial statements for FY 2017 found that follow-up on payment plans in delinquency was not conducted for several case files reviewed. The Executive Director explained that this was due largely to the lack of staffing for collection efforts.

Statement of Compliance with 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 objective.

FINDINGS AND RECOMMENDATIONS

Municipal Court's collection efforts during the review period were marked by progress and setbacks, as management built a collections program amidst a period of growing workforce instability.

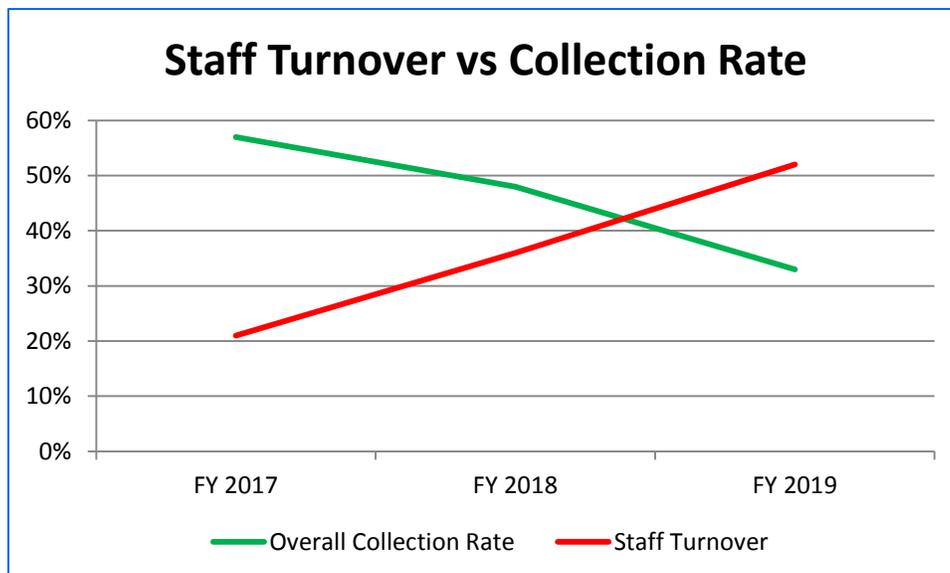
For Municipal Court, the collections process during the review period reflected, in the words of Charles Dickens, "the best of times," and "the worst of times." Management made significant progress in building a viable collections program for past due fines based on established best practices. However, the Court's progress was overshadowed by mounting workforce instability caused by rising turnover. The court's staff turnover rate more than doubled during the review period, rising from 21 percent in FY 2017 to 52 percent in FY 2019. Turnover amongst the court's deputy clerks, who handled collections as a collateral duty, was even greater, peaking at 82 percent in FY 2019. By the beginning of FY 2020, the period of workforce instability had subsided, which indicated that it was driven by a unique set of circumstances. However, the constant churning of staff during the period had a negative impact on collection rates, which showed a commensurate decline over the same period. Overall collection rates on cases filed fell from 57 percent in FY 2017 to 33 percent in FY 2019, while fines due as of the end of the fiscal year increased from \$2.3 million to \$3.2 million. This trend was due largely to management's decision to focus limited resources on customer-driven operational priorities, which had a detrimental impact on collateral duties, such as collections.

Staffing challenges aside, Municipal Court management did manage to lay the ground work for a more effective collections process going forward. Most important among these improvements was the creation of a full-time, standalone collections unit, which effectively elevates the status of collections activity from a part-time, collateral duty to a collections program. Other best practices in progress included the planned implementation of the State's vehicle registration "Scofflaw program," use of pre-warrant text messaging to encourage compliance, and use of skip-tracing to locate defendants with out-of-date or incorrect addresses.

Workforce Instability and Collection Rates

Municipal Court’s staff turnover rate, according to Human Resources more than doubled during the review period going from 21 percent in FY 2017, to 52 percent in FY 2019. By comparison, the citywide turnover rate in FY 2019 was 22 percent. Staff turnover in the court’s 11 deputy clerk positions was even greater, reaching 82 percent in FY 2019. This is significant because it was deputy clerks who typically handled collections activity, as a collateral duty. The problem was exacerbated by the fact that it takes four-to-six-weeks training to bring a newly hired deputy clerk fully online.

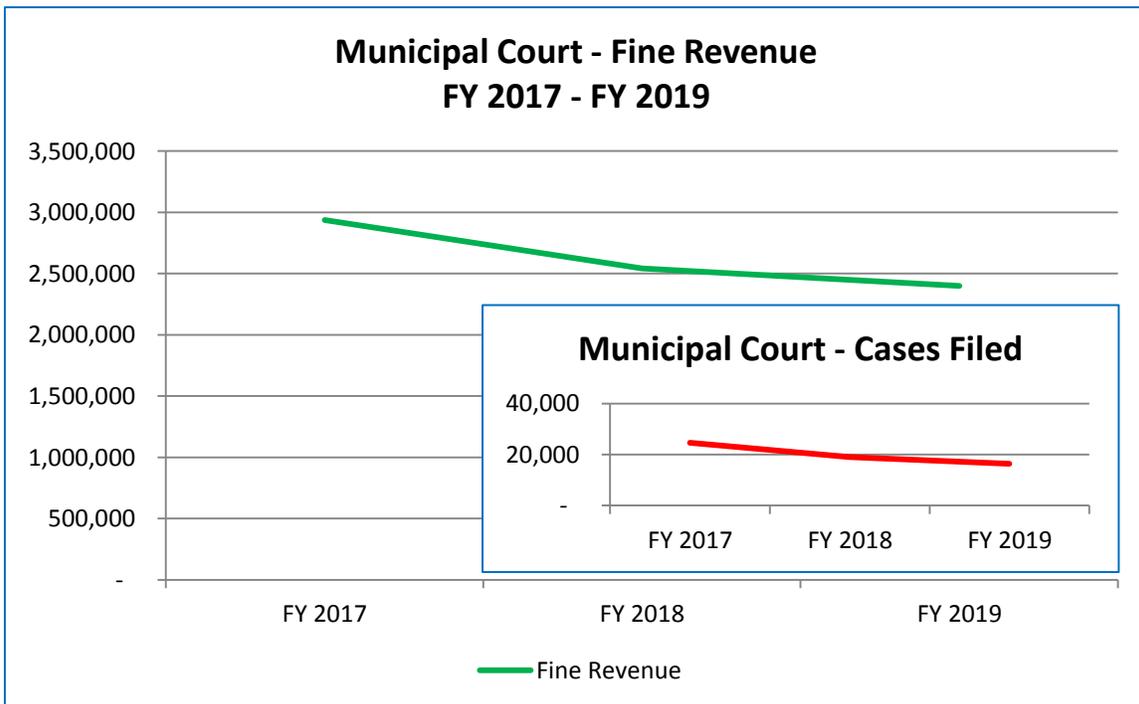
This period of workforce instability had subsided by the beginning of FY 2020, indicating that it was the result of a unique set of circumstances, rather than a systemic issue. However, the constant churning of staff during the review period, particularly at the deputy clerk level had an adverse impact on the court’s collection efforts. This was due in large part to management’s decision to prioritize the use of limited resources for operational duties, such as customer service windows, mail and email correspondence, and data entry over that of collections. It is not surprising then that the rise in staff turnover coincided with a commensurate decline in collection rates. From FY 2017 through FY 2019, as turnover steadily increased, the collections rate on active cases steadily declined, falling from 57 percent in FY 2017 to 33 percent in FY 2019.



Sources: Human Resources and the Court’s case management system

The falling collection rates were in turn reflected in the rise in the dollar amount of unpaid fines. Fines assessed, but not paid as of the end of the fiscal year rose steadily during the review period, going from \$2.3 million in FY 2017, to \$3.2 million in FY 2019. It should be noted that these totals represent fines due as of the end the fiscal year, not all of which are past due. However, for those fines that *are* past due, timely follow-up is critical. Industry experts generally view the first 90 days as the prime window of opportunity for collecting on past due accounts, after which the probability of collection declines rapidly.¹

Overall, fine revenue declined by 18 percent during the review period, falling from \$2.9 million in FY 2017 to \$2.4 million in FY 2019. The decline in revenue could not be attributed solely to the drop in collection rates; however, because cases filed also declined during the period. Total cases filed fell by 33 percent, from 24,632 in FY 2017, to 16,384 in FY 2019. Determination of the cause for the decline in cases filed was beyond the scope of this audit. However, the decline did coincide with budgeted cutbacks in animal control officer and police officer positions.



Source: Annual Budgets and the Court’s case management system

¹ While collection figures vary by industry, collections industry studies indicate the probability of collecting on accounts at 90 days past due ranges from 50 percent to 20 percent. The probability of collection declines to about 5 percent after 120 days.

Results of Case File Review

The City Auditor selected 25 case files for review that had active payment plans or payment extensions during the review period. The purpose of the review was to assess the timeliness and completeness of the court’s established follow-up procedures on past due fines. Cases were selected to include a representative sample of cases from the Police Department, Animal Services, and Code Enforcement. In general, the case file review confirmed the lapse in collection efforts acknowledged by management and reflected in the decline in collection rates during the review period.

Of the 25 case files reviewed, 23 were in delinquent status, i.e., the defendants had failed to make a scheduled payment within 30 days of their court-ordered due date. Number of days past-due ranged from 18 to 437 days as of October 29, 2019, the date of review. With regard to the court’s procedural steps for handling past due fines, the City Auditor noted the following:

| Procedure | Results |
|--|--|
| Telephone/Text/Email notification at 30 days past due | All 23 defendants in delinquent status were notified, but 11 or about half were not timely notified. Delays ranged from 30 days to more than 200 days, with an average delay of about 100 days. |
| Cases forwarded to Linebarger at 61 days past due | Of the 23 delinquent cases, 22 were at least 61 days past due, but none had yet been forwarded to Linebarger for additional collection activity. |
| Notice to Appear for Order to Show Cause Hearing | Notices to Appear for OSC hearings were sent to 20 of the 23 delinquent defendants who failed to timely respond to previous telephone/text/email outreach. |
| Issuance of <i>Capias Pro Fine</i> Warrant for Failure to Appear for OSC hearing | Of the 20 defendants given Notices to Appear, 14 failed to appear for their OSC hearings. As of the review date, <i>capias pro fine</i> warrants for the 14 were in the queue to be issued, but none had been issued. Management acknowledged the lapse in follow-up, and explained that they had placed a temporary moratorium on the issuance of <i>capias pro fine</i> warrants, due to limited staffing. |

While these results reflect negatively on the court's performance during the review period with regard to collections on past due fines, it is important to note that they are not the product of a systemic breakdown. Rather, they are the result of management's conscious decision to forego certain collections activities and focus its limited resources on the court's immediate, customer-driven, operational needs. It is also important to note that these results do not reflect the totality of management's efforts with regard to collections activity, particularly at the policy and planning level.

Building a Collections Program

Despite the impact of staffing challenges on collections activity, Municipal Court made substantial progress at the policy and planning level towards building a collections program based on best practices.



Source: Internet

In FY 2019, management implemented or initiated a number of steps designed to improve its collections process. Most important among these was the creation of a standalone collections unit, dedicated full-time to collections activity. In addition, management initiated the court's participation in the State's Scofflaw program for motor vehicle registrants, the use of pre-warrant text messaging, and the use of skip tracing. A brief description on the status of each follows:

Collections Unit: In FY 2019, Municipal Court management created and staffed a full-time collections specialist position. In FY 2020, management created and staffed a full-time collections clerk position. The creation of this full-time, collections unit effectively elevates the status of collections activity from that of a part-time, collateral duty to that of a collections program. The need to dedicate staff time to collection efforts is recognized by both the National Center for State Courts and Texas Office of Court Administration as a primary best practice (Appendix B).

Vehicle Registration Renewal: In FY 2019, Municipal Court management initiated the process of adopting the “scofflaw” provisions of Chapter 702 of the Texas Transportation Code to enhance its collection efforts. The Texas Office of Court Administration considers this a best practice. According to management, the court’s third party collection agent, Linebarger, has agreed to administer the process for the court, and will bear the administrative fees imposed by the State. At the time of this report, implementation of Chapter 702 provisions was pending legal review, as well as City Council review and approval of the inter-local agreement with the Texas Department of Motor Vehicles. In addition, the City’s citations must be modified to reflect the new provisions.



Source: Internet

Pre-warrant Text Messaging: In June 2019, management conducted a pilot test to evaluate the effectiveness of sending out text messages to defendants, for whom warrants were about to be issued. Management described the results as successful, and in fact, almost too successful in that the courthouse and its limited staff were overwhelmed by the number of respondents, who showed up to pay their fines. The success of the response was reflected in a surge in fine revenue for the month, which jumped 30 percent from about \$83,000 in May 2019 to \$108,000 in June. Management indicated that they planned to fully implement pre-warrant texting in FY 2020, once they have fully-trained staff in place to handle the potential influx.



Source: Internet

Skip Tracing: In FY 2019, management initiated a contract with the Experian credit bureau for skip-tracing services for delinquent debtors the court was unable to locate. Skip Tracing is an industry term for tracking down the whereabouts of individuals for various reasons, including debt collection. The term “skip” is derived from the colloquial phrase “to skip town.” The court receives a significant amount of returned mail from old or incorrect mailing addresses. Linebarger, the court’s third-party collections agent reported a 23 percent return mail rate, amounting to a cumulative total of 7,541 pieces of returned mail over the life of the contract, with a combined fine value of \$3.8 million. At the time of this report, the contract for skip-tracing services was pending final legal review. Both the National Center for State Courts and the Texas Office of Court Administration identify skip tracing as a best practice.



Source: Internet

Moving Forward

While management has made substantial progress in initiating a number of best practice improvements related to fine collection, it should continue to refine its efforts going forward.

Pre-delinquency Text Messaging: At present, the court’s collection efforts are focused primarily on post-delinquency actions. Given the positive results from the court’s pilot test of pre-warrant text messaging, management should consider expanding the scope of its text messaging activities to include pre-delinquency text messages to be sent out prior to the defendants’ initial court appearance. Management has expressed an interest in pursuing this more proactive approach. There would be additional costs associated with the expanded text services. However, those additional costs would be offset to the extent that pre-delinquency messaging prevented defendants from becoming delinquent, thereby precluding the need for post-delinquency follow-up.

Feedback on Returned Mail: As mentioned in the previous section, undeliverable mail in the collections process is a significant problem involving thousands of pieces of mail and millions in uncollected fines. While the use of skip tracing could help to mitigate the problem, the

most efficient solution is to obtain the best available address at the time of citation. Toward that end, Municipal Court should provide feedback to the citing departments to ensure that management is aware of both the frequency and associated fine value of returned mail related to citations issued by their respective departments. Management can then take corrective action, to the extent possible to improve the citation process.

Conclusion

Despite setbacks in collections activity brought about by a period of rising workforce instability, management has made substantial progress in strengthening its collections process using established best practices. Most important among management's improvements was its creation of a full-time, standalone collections unit, which effectively elevates the status of collections activity from a collateral duty to a collections program. Management's investment in its collections process should see a return in the form of increased compliance with City ordinances, and additional revenue from past due fines. Going forward, Municipal Court management should continue to refine its collections process, and experiment with new enforcement tools, as appropriate to further enhance the process.

Recommendations

The City Auditor recommends that the Executive Director of Municipal Court:

1. Continue to implement planned improvements currently in progress.
2. Develop a plan for the expanded use of text messaging to include pre-delinquency reminders sent to defendants before their initial court appearance.
3. Consider developing a report for citation-issuing departments on the frequency and associated fine value of return mail.

VIEWS OF RESPONSIBLE OFFICIALS

Municipal Court management agreed with the findings and recommendations in this report. Management's time estimate for implementation of the recommendations is provided in Appendix C. Input from both management and staff are reflected throughout this report.

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

The objective of the audit was to evaluate Municipal Court's collections process as it compares to recommended national and state best practices.

Scope and Methodology

The scope of the audit focused on, but was not limited to Municipal Court collections activity for the period of October 2017 through September 2019.

To address the audit objective, the City Auditor:

- ▶ Reviewed Municipal Court policies, procedures, and manuals related to the collection of past due fines.
- ▶ Selected a sample of cases in collections status to determine if collections procedures were performed, in accordance with Municipal Court policy and procedures.
- ▶ Reviewed and analyzed financial and workload data for the review period obtained from Municipal Court's case management system and the City's financial management system.
- ▶ Interviewed the Executive Director of Municipal Court, the Executive Assistant, and the Collections Specialist.
- ▶ Researched fine-collection best practices at the national and state level.

Sample Selection Criteria

To test Municipal's Court's compliance with its policies and procedures for collection of past due fines, the City Auditor selected a sample of 25 cases using the following criteria: (1) the cases should be active; (2) sample should include cases from the Police Department, Animal Services, and Code Enforcement; and (3) the sample should include both payment plans and payment extensions.

Statement of Compliance with 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.

COURT COLLECTIONS PROCESS BEST PRACTICES

The following is a list of collections process best practices identified by both the National Center for State Courts and the Texas Office of Court Administration.

Court Collections Process Best Practices

- ▶ Establishing written collections procedures;
- ▶ Dedicating staff time to collections;
- ▶ Setting expectations that all court costs, fees, and fines are due at the time of sentencing or pleading;
- ▶ Requiring defendants to complete an application for payment plans or payment extensions if payment in full is not made immediately;
- ▶ Verifying contact information;
- ▶ Scheduling Order to Show Cause hearings for defendants who become delinquent;
- ▶ Providing written notice of a defendant's next due date, and amounts due;
- ▶ Setting time-related goals (30 days collections, 60 days, 90 days, etc.)
- ▶ Using 3rd-party collections agencies;
- ▶ Using skip tracing through a credit bureau;
- ▶ Using the threat of, and issuance of *capias pro fine* and bench warrants;
- ▶ Flagging delinquent defendants for hold on driver's license renewal;
- ▶ Flagging delinquent defendants for hold on vehicle registration renewal;
- ▶ Providing post-warrant follow-up notices and calls.

MANAGEMENT RESPONSE

**CITY OF KILLEEN - CITY AUDITOR
Municipal Court Fine Collection**

| Rec No. | Recommendation | Lead Department(s) | Agree/Partially Agree/Do Not Agree/Comment | Estimated Implementation Date |
|----------------|--|---------------------------|---|--------------------------------------|
| 1. | Continue to implement planned improvements currently in progress. | Municipal Court | Agree | March 2020 |
| 2. | Develop a plan for the expanded use of text messaging to include pre-delinquency reminders sent to defendants before their initial court appearance. | Municipal Court | Agree | June 2020 |
| 3. | Consider developing a report for citation-issuing departments on the frequency and associated fine value of return mail. | Municipal Court | Agree | March 2020 |