

Executive Summary

Proposed city-wide ordinance to prohibit unauthorized camping

Many cities and towns throughout the United States have adopted ordinances that prohibit unauthorized camping on public and private property. While camping restrictions have sometimes been subjected to legal challenges, state and federal courts (including the U.S. Supreme Court) have generally upheld laws prohibiting the act of camping on public property without a permit or other proper authorization. As recently as last year, the District Court in Boulder County upheld a Boulder ordinance prohibiting camping on any public property in that city. Also, in the last six months a number of federal district courts around the country have upheld local no-camping ordinances and similar laws in litigation arising out of the Occupy Wall Street movement.

Municipal ordinances prohibiting unauthorized camping are adopted under the police power and are justified on the basis of protecting the health, safety and general welfare of the public. It is appropriate to prohibit camping upon property which is not intended or designed to be used for that purpose because: (1) it creates an unsafe and potentially disorderly environment for the persons engaged in the camping as well as persons coming into contact with the campers; (2) it creates unsanitary and unhealthful conditions that may affect both the campers and the general public; (3) it tends to degrade or even destroy the property upon which the camping is occurring, particularly where the encampment is large and ongoing; and (4) it detracts from the use of the property for its intended purpose.

As explained below, there are currently a number of other state and city laws regulating the unauthorized use of public and private property generally. However, Denver has no existing law which specifically and directly prohibits the act of unauthorized camping on a city-wide basis. The proposed ordinance will do so, defining the word “camping” to include any temporary habitation on public or private property accompanied by the use of any form of shelter from the elements. The proposed ordinance would *not* prohibit the mere act of sleeping on public or private property.

Note: The proposed ordinance includes special provisions which limit the authority of the police to cite or arrest anyone for violating the ordinance before: (A) issuing verbal and written warnings; and (B) invoking the assistance of a human services outreach worker to assess the needs of the camper. These limitations are identical to the provisions of the 2005 “sit-lie” ordinance which restrict the act of sitting or lying on the surface of streets and sidewalks in the downtown area.

The following is a list of other related state and city laws that are already on the books:

- Denver ordinances currently prohibit the act of unauthorized “camping” and overnight sleeping only “in or upon any park, parkway, mountain park, or other recreational facility.” § 39-7, D.R.M.C. Denver parks are also subject to an overnight curfew in any event, without regard to whether or not a person may technically be “camping.” § 39-3, D.R.M.C.

- Other existing state and city laws, without specifically mentioning the act of camping, may be interpreted to apply to persons who would camp on public property, particularly when camping would interfere with the use of the public property by others. For example:
 - City law prohibits any and all unauthorized “encumbrances” on streets and sidewalks. § 49-246, D.R.M.C.
 - State and city laws prohibit any obstruction of any street or sidewalk (“to render impassable or to render passage unreasonably inconvenient or hazardous”). § 38-86, D.R.M.C.
 - It is generally unlawful to trespass on private property for the purpose of camping or any other purpose without the consent of the owner. § 38-115, D.R.M.C.
 - It is also unlawful to trespass on public property whenever the property has been “closed” and notice of the closure is given with signs. § 38-86, D.R.M.C. (This law has been used to prohibit overnight camping and sleeping on the grounds of the City and County Building.)
 - Under state law, it is generally unlawful to conduct any activity on public property in violation of any rule or regulation promulgated by “any officer or agency having the power of control, management or supervision of the building or property.” § 18-9-117, C.R.S.

- In 2005 Denver adopted an ordinance generally prohibiting the act of sitting or lying on the surface of the public right-of-way in the Downtown Denver Business Improvement District only, and only between the hours of 7:00 a.m. and 9:00 p.m. § 38-86.1, D.R.M.C. No existing city ordinance specifically addresses overnight camping or sleeping on public property in the downtown area.