

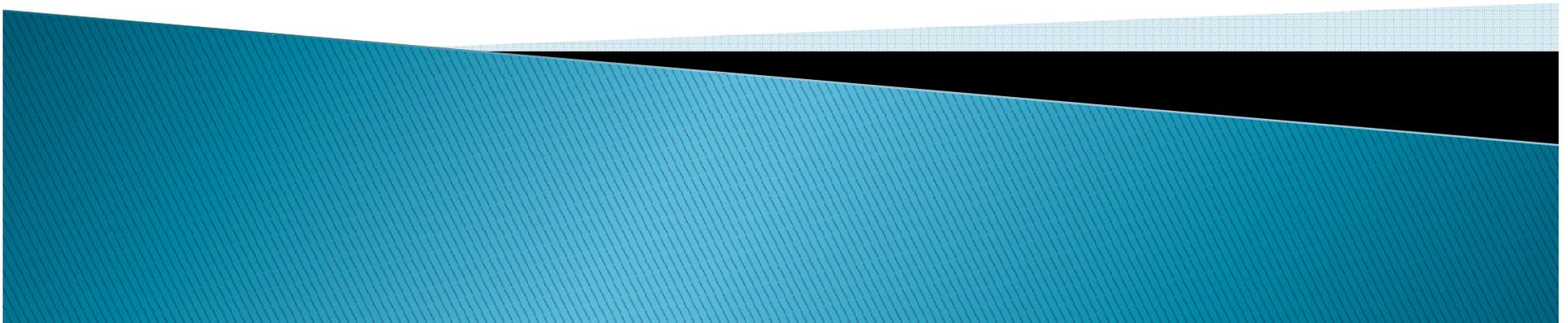
Proposed Ordinance to Prohibit Unauthorized Camping on Public and Private Property in Denver

Background and Legal Considerations

Presented by:

David W. Broadwell, Assistant City Attorney

April 3, 2012



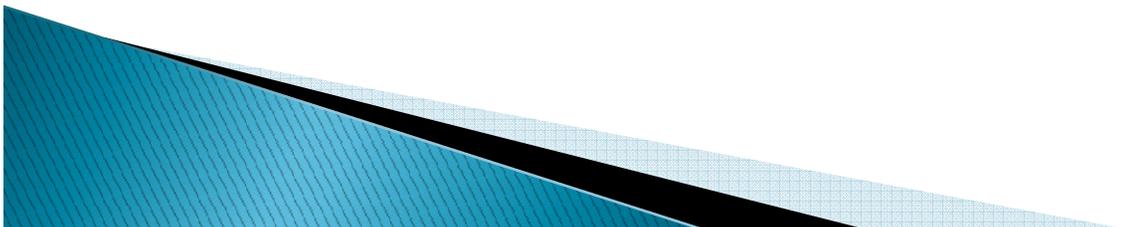
Rationale for Urban Camping Restrictions

- Health, safety and sanitation impacts on the general public
- Health, safety and sanitation impacts on the persons engaged in camping
- Preservation of public property for its intended purpose
- Keeping the public property accessible to all
- Protecting public property from deterioration, damage or destruction
- Preserving the viability and economic vitality of commercial areas
- Preserving the quality of life for permanent residents



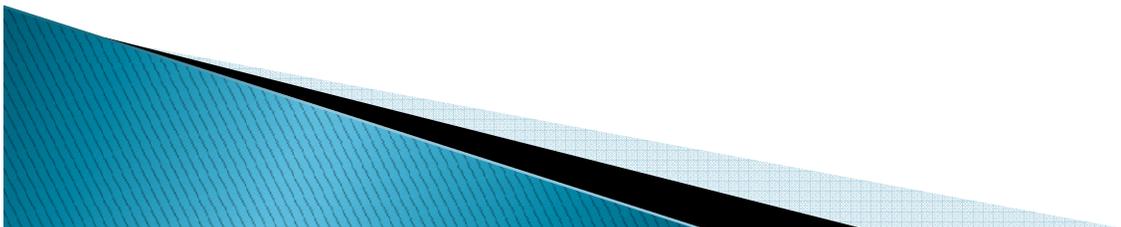
Preexisting State and City Laws

- Downtown “sit-lie” restrictions, 7 a.m. to 9 p.m.
- Ordinances prohibiting camping in parks, and imposing 11 p.m. park curfew
- City right-of-way encumbrance ordinance
- State and city laws prohibiting obstruction of sidewalks
- State laws prohibiting use of public property in violation of applicable rules and regulations
- City laws prohibiting occupancy of public property that has been closed
- State and city laws prohibiting trespass on private property



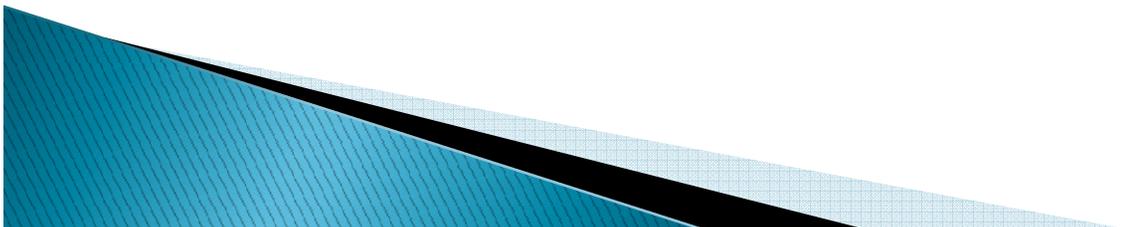
Key Elements of Proposed Ordinance to Prohibit Unauthorized Camping on Public or Private Property

- Prohibits unauthorized camping on public property generally
- Prohibits camping on private property without the written consent of the owner
- Defines “camping” to mean dwelling temporarily in a place with some form of “shelter” while conducting daily activities such as eating, sleeping and storage of personal property
- Does not prohibit merely sleeping on public or private property
- Would still allow “permitted” activities on public property, e.g. through a right-of-way occupancy permit
- Contains special pre-requisites for enforcement



Prerequisites to Enforcement

- Copied verbatim for 2005 “Sit-Lie” ordinance
- These limitations do not exist in any other city law
- Oral warning to violator required
- Written warning to violator required
- Initial assessment of whether person is in need of “medical or human services assistance”
- Intervention by human services outreach worker

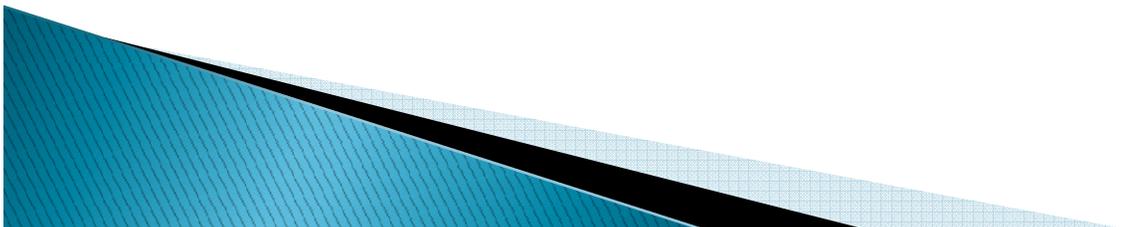


Camping Restrictions in Other Colorado Cities

Boulder (2001)

5-6-10 Camping or Lodging on Property Without Consent

No person shall camp within any park, parkway, recreation area, open space or other city property...For purposes of this section “camp” means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. But the term does not include napping during the day or picnicking. The term “shelter” includes, without limitation, any cover or protection from the elements other than clothing. The phrase “during the day” means from one hour after “sunrise” until “sunset”...

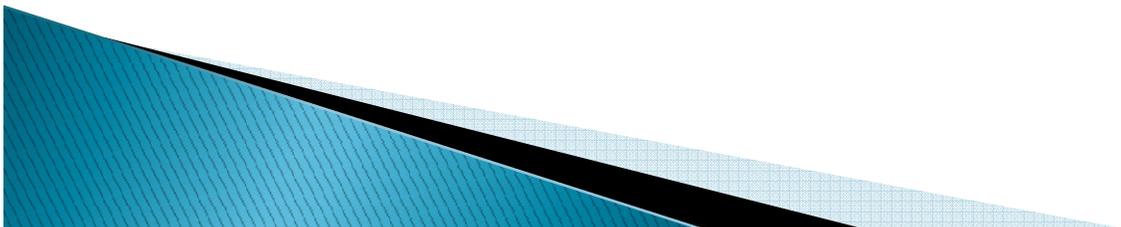


Camping Restrictions in Other Colorado Cities (cont.)

Fort Collins (1999)

Sec. 17-181. Camping on public property restricted.

It shall be unlawful for any person to camp or pitch a tent, or knowingly permit any persons to camp or pitch a tent, on public property within the City. *Camping*, for the purposes of this Section, shall mean to sleep, spend the night, reside or dwell temporarily with or without bedding or other camping gear and with or without shelter, or to conduct activities of daily living such as eating or sleeping, in such place unless such person is camping in compliance with Chapter 23 in natural or recreation area. *Camping* shall not include incidental napping or picnicking.



Camping Restrictions in Other Colorado Cities (cont.)

Colorado Springs (2010)

9.6.110: Camping on Public Property Prohibited

It is unlawful for any person to camp on any public property, except as may be specifically authorized by the appropriate governmental authority...for purposes of this section “camp” or “camping” means to use the public area for living accommodation including, but not limited to, the activities and circumstances listed below. These activities and circumstances may be considered in determining whether reasonable grounds for belief have arisen that a person has “camped” or is “camping” in violation of this section.

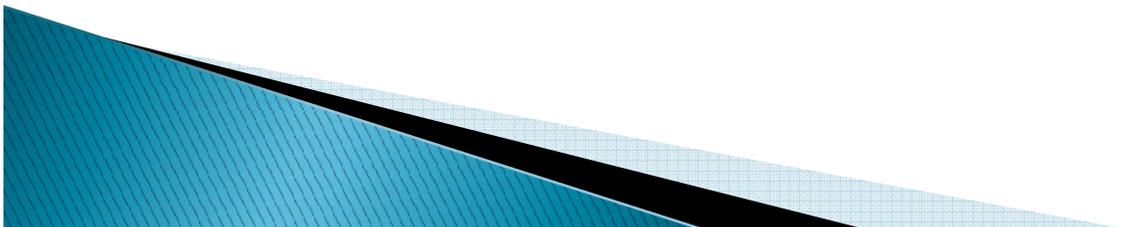


Camping Restrictions in Other Colorado Cities (cont.)

Colorado Springs (2010)

9.6.110: Camping on Public Property Prohibited

- Sleeping or making preparations to sleep, including the lying down of bedding for the purpose of sleeping
- Occupying a shelter out of doors, “Shelter” shall mean any cover or protection from the elements other than clothing, such as a tent, shack, sleeping bag, or other structure or material
- The presence or use of a campfire, camp stove or other heating source or cooking device
- Keeping or storing personal property



Camping Restrictions in Other Colorado Cities (cont.)

Aspen (1974)

Sec. 15.04.330. Occupying or sleeping on certain places and in vehicles prohibited.

It shall be unlawful for any person to occupy, lodge or sleep in any vacant or unoccupied barn, garage, shed, shop or other building or structure without owning the same or without permission of the owner or person entitled to the possession of the same or sleep in any vacant lot or any public place whatsoever during the hours of darkness.



Camping Restrictions in Other Western U.S. Cities

Seattle

- Camping in parks prohibited
- Downtown sit-lie ordinance

Portland

- Camping prohibited on public property and public right-of-way city-wide

San Francisco

- Camping and overnight sleeping prohibited in parks

Los Angeles

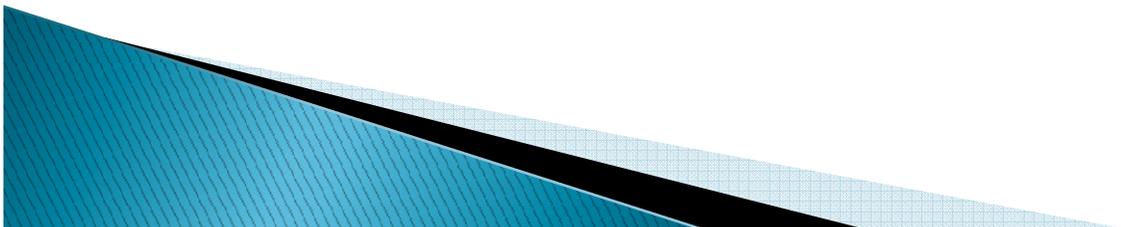
- “No person shall sit, lie or sleep in or upon any street, sidewalk or other public way”

San Diego

- Overnight camping prohibited on designated public properties (parks, beaches, etc.)
- “Encroachments” on public property strictly enforced

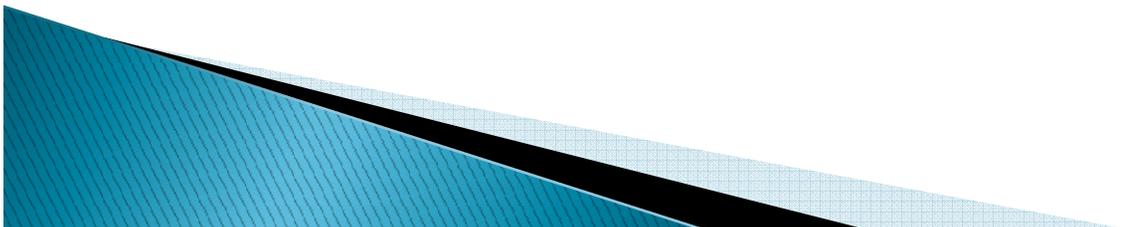
Phoenix

- Camping prohibited on public property and public rights-of-way city-wide



First Amendment Challenges to Camping Restrictions

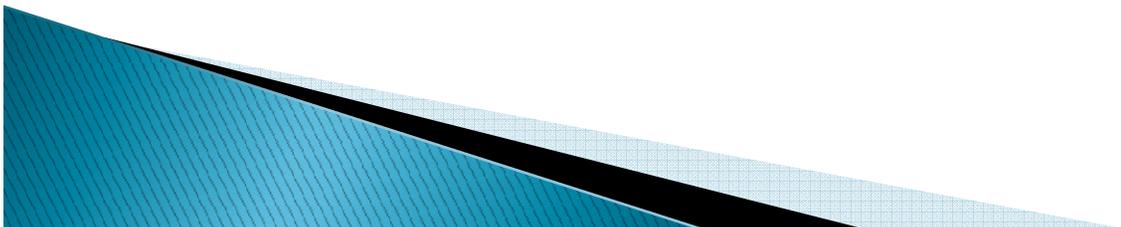
- Clark v. Community for Creative Non-Violence (1984)
U.S. Supreme Court upholds overnight camping and sleeping restrictions on the national mall in Washington D.C.
- Recent case law arising from “Occupy Wall Street” movement
- Between November, 2011 and February 2012, Occupy protestors have sued repeatedly attempting to enjoin the enforcement of state and local laws prohibiting unauthorized camping and similar laws.



First Amendment Challenges to Camping Restrictions (cont.)

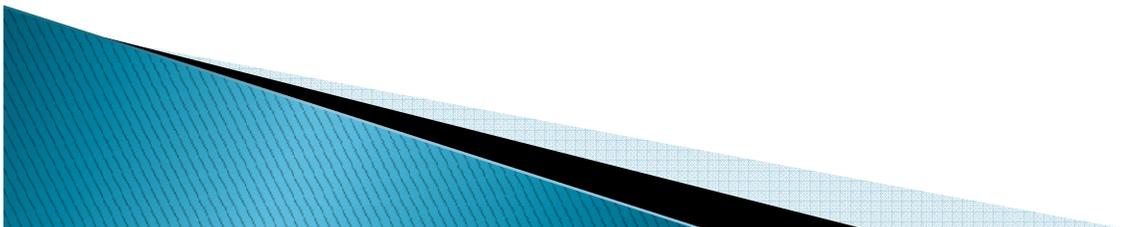
Sixteen different Federal district courts have denied injunctive relief and allowed the enforcement of these laws in relation to Occupy encampments.

In December, 2011, the federal district court in Colorado denied an injunction against Denver's sidewalk encumbrance and park curfew ordinances.



Other Constitutional Challenges to Camping Restrictions

- Eighth Amendment; cruel and unusual punishment; “status crime”
- “Right to travel”
- Due process; void for vagueness
- Equal protection



Key principle:

Camping laws target behavior, not status, and are equally applicable to any person who engages in that behavior, regardless of the person's motivation for doing so.

