



Land Use, Transportation & Infrastructure Committee Summary Minutes

Tuesday, April 03, 2012

10:30 AM City & County Building, Room 391

Members Present: Lehmann, Lopez, Robb, Shepherd, Susman

Members Absent: Montero

Other Council Present: Brown, Brooks, Herndon, Nevitt, Ortega, Kniech

Committee Staff: Gretchen Williams

Presentation

BR12-0241 Adopts an ordinance to prohibit unauthorized camping on public or private property; defines camping; and sets forth specific procedures for enforcing the prohibition.

Councilman Albus Brooks

Councilwoman Robb stated that this draft is only for discussion today; no action will be taken until later, after a series of opportunities to discuss it. The proposed bill prohibits camping without permission on any public or private property, including on any public right-of-way or infrastructure.

Councilman Brooks said the proposal will be discussed in many venues, including the Council's Health, Safety, Education & Services Committee, the Homeless Commission and InterNeighborhood Cooperation, before coming back to this Committee for action. Council will hold a courtesy public hearing before voting. He said Councilmembers Nevitt, Brown, Lehmann and Faatz are co-sponsors, and the Mayor's office supports the bill.

He said Denver is one of the most compassionate and thoughtful in the country; and that we can all agree it is inhumane for anyone to be sleeping outside. The numbers in Denver are increasingly alarming. One evening, he counted 168 people sleeping on the 16th Street Mall.

Councilman Brooks, responding to the pins worn by some in the gallery, emphasized that this is not about arresting and handcuffing homeless people.

Today there are approximately 10,400 homeless people in the jail system for various offenses, but not for homelessness, and that will never be the case. The proposed ordinance is about safety and sanitation. The intent is to advise folks to go toward housing and services.

The City also has a responsibility to protect our commercial areas and private property as well as the public investments in the public good. These two responsibilities require constantly striving for a balance.

David Broadwell, Assistant City Attorney, presented an overview of the considerable legal research and case law around this pure public policy issue (see attached PowerPoint presentation).

Denver has enacted related but different laws. The Sit/Lie ordinance is limited to daytime hours and to the Downtown core. City parks have been closed at 11:00 p.m. and have prohibited tents since at least 1927.

One key element of proposed ordinance is the new ban on camping on private property. Trespassing is already illegal; this ban can be used when trespassing cannot be proved.

The procedures in the bill include required oral and written warnings before any action. Assessment and intervention by human services outreach workers are required. In contrast, Denver's park curfew allows citation of anyone in the park after 11:00, with no assessment or intervention required.

It is difficult to determine how many cities have some type of ban in place because they all handle it differently so it is in different parts of their codes. But cities across the country do have such laws, including the Colorado cities of Boulder, Ft. Collins, Colorado Springs, and Aspen, which adopted its ordinance in 1974. Historically, camping ban ordinances were adopted by beach towns and ski towns, places that seasonally draw large, itinerant crowds.

Legal action over the years has been largely First Amendment challenges. *Clark v. Community for Creative Non-Violence* in 1984 was about camping on the National Mall in D.C. The Supreme Court upheld the restrictions adopted by the National Park Service, in part because of the need to preserve the Mall for the rightful use and benefit of all people.

The Occupy Movement sued several times between Nov. 2011 and Feb. 2012, and the states have always prevailed in court.

Mr. Broadwell stated that the courts have been clear that the ban must be about behavior, not status. The City cannot appear to be targeting one particular class.

Councilwoman Kniech said that there is Eighth Amendment case law as well, some regarding enforcement of such a law when no shelter beds are available. Mr.

Broadwell indicated he had not seen that consideration written into any ordinance he has reviewed to date.

Councilman Lopez noted that some of the issues fall under the Health, Safety, and Education & Services (HSES) Committee.

Councilwoman Robb noted that the HSES Committee will discuss the bill at its meeting on April 17 before coming back to this Committee on April 24. Three committee discussions will take place.

Bennie Milliner, Director of Denver's Road Home (DRH) at the Department of Human Services, presented the information attached to this summary. The status of a homeless person is irrelevant – it could be chronic, episodic, or short-term. Denver's numbers would be higher if not for the Road Home program, which has invested over \$50 million, including \$15 million of private funding. Homelessness has a high cost if something is not done. Denver has reduced its chronic homeless individuals to well under 300. The census of Jan 2011 indicates the greatest portion includes children.

He said an important point is that homelessness is a metro Denver problem, not just the City of Denver's problem.

Mr. Milliner said DRH is neither an advocate nor an opponent of the proposed legislation. Our job continues either way. Part of the ordinance is to tie some level of human service to contacts in the field. As of today, we do not have a bed or mat for every single homeless person, but Denver did not meet that need when we enacted the Sit/Lie Ordinance either. We move ahead. Some initial assessment will be done by the police officers to determine the type of services needed. We do not want to put outreach workers in an enforcement role. Our primary function is to move people to sustainability through Housing First.

We do need to look for additional shelter capacity and outreach worker availability if this bill is adopted, but we need to work on these anyway.

Councilman Lopez said he sees it more as a health and safety issue than a land use and transportation issue. Do we have the resources to end homelessness? Can we reach those with mental issues and families?

Mr. Milliner said it will require more resources, and we need to build our services to mental health and families.

Councilman Lopez said he wants more at-length discussion on those populations. Where will those folks go when asked to leave? And a jail bed is not acceptable.

Councilwoman Robb said she had invited four individuals representing various communities and organizations to speak.

John Parvensky, Colorado Coalition for the Homeless, said no person should have to sleep on the streets but also should not be jailed for being homeless when the shelters are full. We are losing shelter beds, and there is a significant lack of mental health care; existing services are at capacity. We need to do more of what DRH is doing. We know what works.

Tami Door, Downtown Denver Partnership, said there has been much news coverage of the impacts on Downtown with the mass camping. The Partnership helped create DRH and continues to raise funds to support its work. We have worked on policy. We need a serious solution. She noted that there has not been one single citation in court on the Sit/Lie Ordinance.

Randle Loeb, representing Occupy Denver, said the economic crisis offers a challenge to reform our communities. A number of people in this room are homeless or close to being homeless. If we pass this, Denver will be one of the cruelest cities in the country.

Lindy Eichenbaum Lent, Civic Center Conservancy, said the Conservancy supports this ordinance to ensure that the park's public amenities are available and safe for the general public. We are involved in efforts to work with DRH. These are not mutually exclusive goals. Our parks and sidewalks are not overflow shelters.

Councilwoman Shepherd said Council needs a longer courtesy hearing than one hour.

Councilwoman Ortega thanked Councilman Brooks for bringing this to Committee for information only. This will be on the Homeless Commission agenda for discussion, and the Commission will have the same thoughtful conversation as it did with the Sit/Lie Ordinance.

Bill Requests

BR12-0249 Rezones from U-SU-C1 (urban context, residential single-unit) to U-MX-2x (urban context, mixed commercial use, low intensity) property containing a commercial structure at 4100 Federal in Council District 1.

Theresa Lucero, Community Planning & Development

The site is in the Sunnyside Neighborhood on the northeast corner of Federal and W. 41st Ave. It contains a one-story commercial building constructed in 1925; it has consistently been used for commercial purposes.

The proposed zoning is U-MX-2x, which is for low-scale commercial uses embedded in residential neighborhoods.

The Sunnyside Neighborhood sent a letter supporting the continued commercial use of the property.

Staff found that the proposal is consistent with the adopted plans: Comprehensive Plan 2000; Blueprint Denver; and the Sunnyside Neighborhood Plan, which says that commercial uses should be concentrated. This property is located on a residential block, but it was originally commercial. Under the originally proposed U-MX-2, the list of allowed uses would be expanded to include uses such as gas stations and drive-through restaurants, some without any neighborhood notice.

On March 21, the Planning Board recommended that the original application for U-MX-2 be replaced with an application for U-MX-2x since the allowed commercial uses are more limited and in line with the neighborhood plan. The applicant agreed.

A motion offered by Councilmember Lehmann, duly seconded by Councilmember Lopez to file the bill carried by the following vote:

AYES: Lehmann, Lopez, Robb(3)
NAYS: (None)
ABSENT: Montero, Shepherd, Susman(3)
ABSTAIN: (None)