



COLORADO
MUNICIPAL
LEAGUE

ANNUAL SEMINAR ON MUNICIPAL LAW

Legal Stakes in Urban Camping

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Urban Camping and Associated Issues

Urban camping challenges municipalities to address public health and safety risks in a humane and lawful manner, within the limitations of the municipality's resources and capacity. This session will explore the constitutional and statutory limitations on municipal regulations of urban camping and interacting with unhoused persons on municipal property.



Homeless in Colorado

36%



Percentage of the unhoused population that is experiencing chronic homelessness

36%

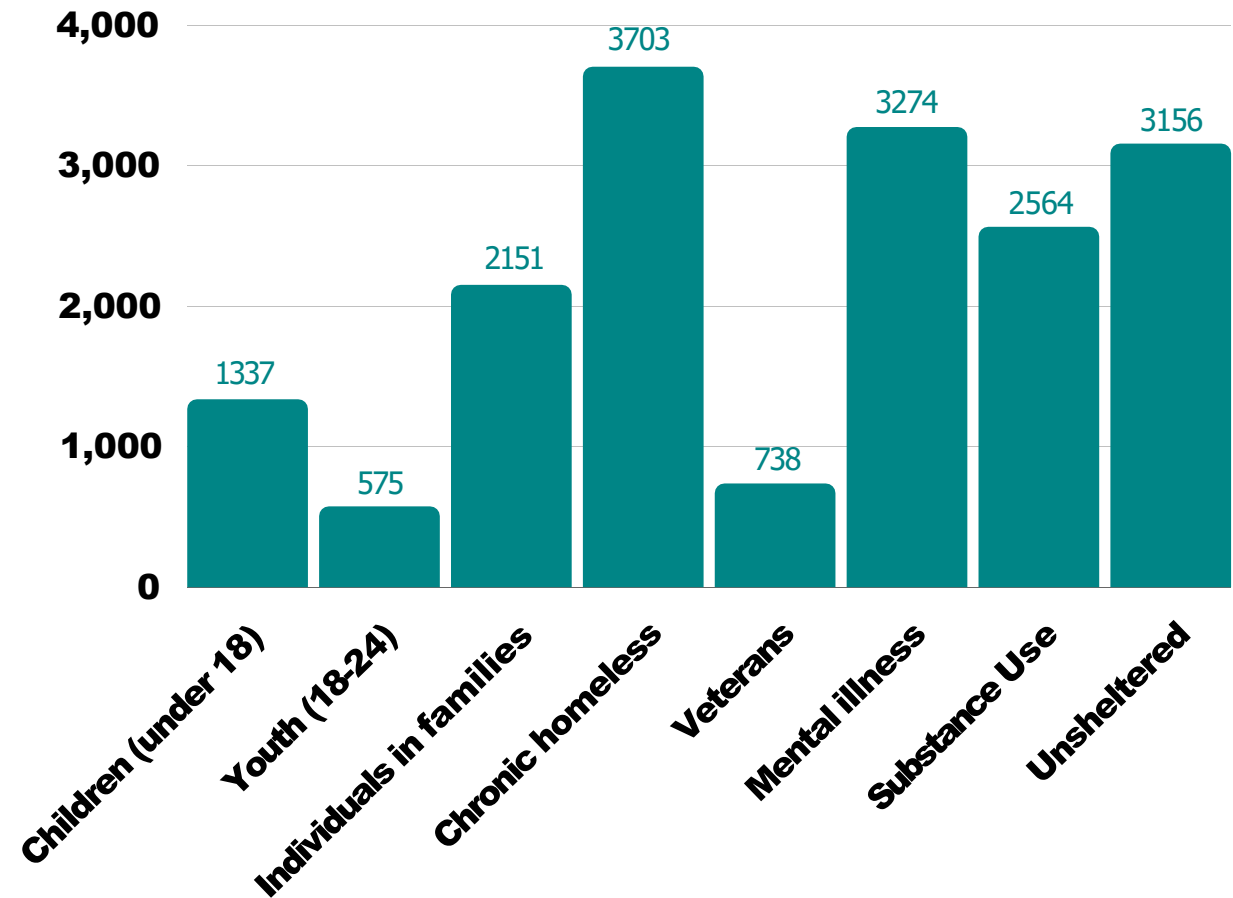


Decrease in the number of individuals in families with children seeking homelessness services since 2017

130%



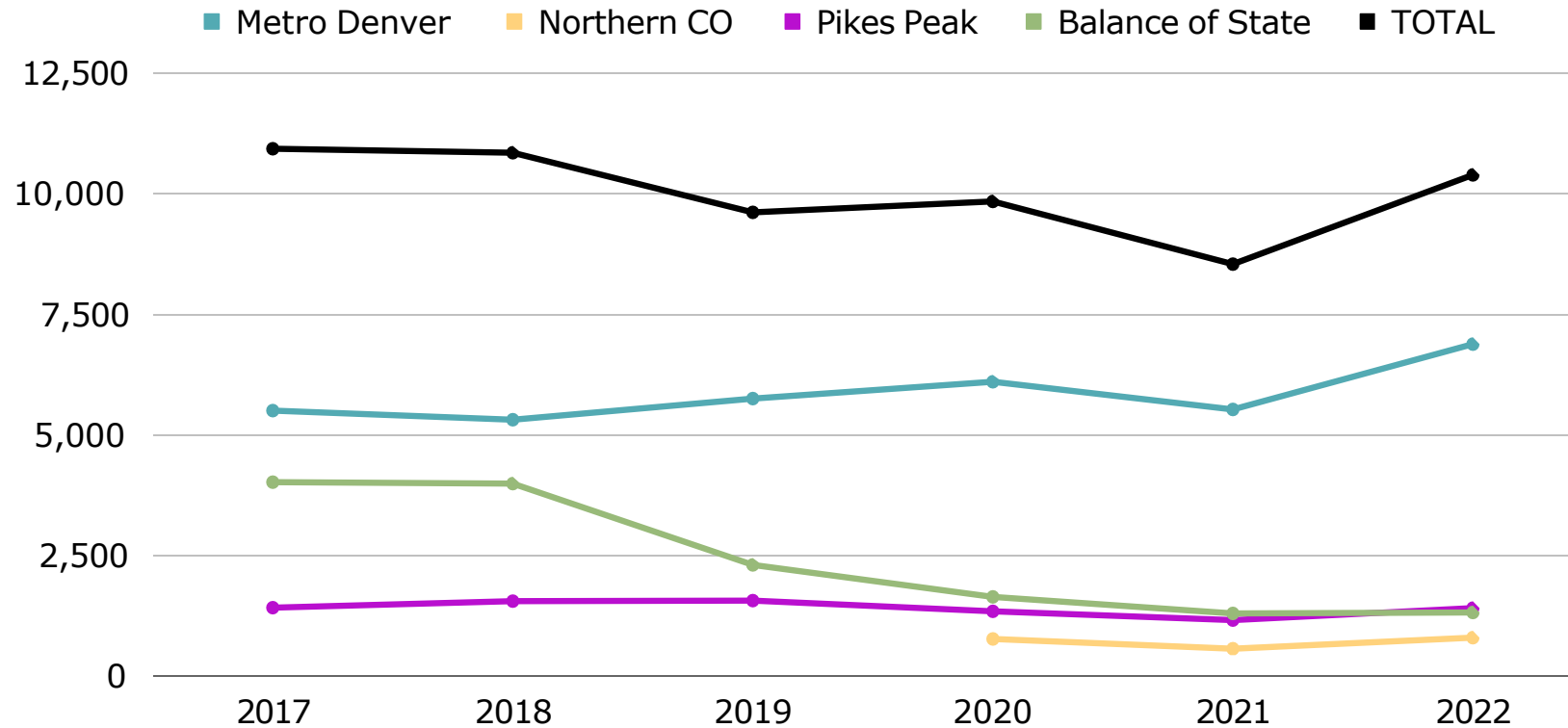
Increase in chronic homelessness in CO over the last ten years



*These numbers represent various subgroups and do not constitute parts of a whole.

Point in Time Counts

TOTAL HOMELESSNESS IN COLORADO



THE COLORADO STATE OF
HOMELESSNESS REPORT 2022



THOUGH APPROXIMATIONS VARY, WE ESTIMATE THE TRUE NUMBER OF PEOPLE EXPERIENCING HOMELESSNESS IN CO IS BETWEEN 10,000-53,000

10,397



Total number of Coloradans experiencing homelessness according to PIT count

15,374



Students experiencing homelessness, doubled-up, or unstably housed in the 2020-2021 school year

32,233



People who accessed homelessness services according to HMIS data

53,000



Individuals without stable housing covered by Medicaid in 2019

Agenda

1. Constitutional Issues Relating to Unhoused Persons
2. Current Legal Landscape Concerning Camping Bans
3. Legal Issues Regarding Camp Cleanups
4. Median Safety and Free Speech Implications
5. Loveland's Experience
6. Solutions and Strategies?

Constitutional Issues

1. 1st Amendment – Panhandling/Camping - Freedom of Speech/Freedom of Assembly
2. 4th Amendment – Abatements and Unlawful Seizures
3. 8th Amendment – Camping Bans – Cruel and Unusual Punishment
4. 14th Amendment – Camping bans and Abatements - Due Process

Camping Bans

Eighth Amendment challenges involve unhoused individuals challenging enforcement of camping bans without adequate alternatives available for shelter.



Legal Limitations

- **Eighth Amendment**: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
- ***Martin v. City of Boise***, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that the Cruel and Unusual Punishments Clause prevents cities from enforcing criminal restrictions on public camping unless the person has “access to adequate temporary shelter.” Id. at 617 & n.8.
 - Question remaining, what is adequate temporary shelter? High and low barrier shelters?
- ***Johnson v. City of Grants Pass***, 72 F.4th 868 (9th Cir. 2023), the Ninth Circuit extended *Martin* to a class-wide injunction prohibiting the City of Grants Pass from enforcing its public camping ordinance even through civil citations.
 - City of Grants Pass has filed cert with SCOTUS.
 - Question presented, “Does the enforcement of generally applicable laws regulating camping on public property constitute “cruel and unusual punishment” prohibited by the Eighth Amendment?”

Notice Requirement for Abatement

Fourth and Fourteenth Amendment challenges involve unhoused individuals challenging the notice and opportunity to be heard before removal and disposal of property.



Legal Limitations

- **The Lyall Settlement:** In 2016, a group of plaintiffs led by Raymond Lyall sued the City and County of Denver for how it cleared a homeless encampment. The parties reached a settlement in 2019 — which outlines the city's minimum obligations before it can seize and throw away property at an encampment of people experiencing homelessness.
 - Requirements:
 - 48-hour minimum notice
 - 60-day storage of property
 - Webpage with information on how to retrieve property (including location and hours of the storage facility)
 - *What about Emergency health concerns?*

Practical Challenges

- *How much notice is enough?*
- *What to store?*
- *Where to store?*
- *How long to store?*
- *Costs...*

Median Safety

First Amendment challenges
involving Median Safety
Ordinances



Legal Limitations

- According to the Supreme Court, "the solicitation of charitable contributions is protected speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 108 S. Ct. 2667 (1988).
- Although the Supreme Court and the 10th Circuit have not specifically concluded "panhandling" is protected speech, the 10th Circuit has assumed such in *Evans v. Sandy City*, 928 F.3d 1171 (2019), and multiple circuits that has considered panhandling directly has concluded it is protected speech (2nd Circuit, 4th Circuit, 6th Circuit, and 11th Circuit).
- *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."

Legal Limitations continued

- In *Browne v. City of Grand Junction*, 136 F.Supp 3d 1276 (2015), the U.S. District Court of Colorado found, after applying a *Reed* analysis, that provisions of the City of Grand Junction's panhandling ordinance were content-based and were not narrowly tailored on the vague basis of protecting public safety.
- *McCraw v. City of Oklahoma City* 973 F.3d 1057 (10th Cir. 2020). 10th Circuit found that medians traditional public fora. Failure to identify harm, and not least obtrusive means.
- *Brewer v. City of Albuquerque* 18th F.4th 1205 (10th Cir. 2021). 10th Circuit found that the ordinance was not narrowly tailored enough. A rise in empirical data?
- Municipalities can only enforce panhandling ordinances that are the least restrictive means to achieve their purpose of protecting the public safety.

Case Study

City of Loveland

- With a focus on public health, safety, mitigating unreasonable risk of fire, and preservation of public and private property, Loveland City Council passed an emergency unauthorized encampment ban on May 17, 2022 that allows the City to move anyone camping illegally overnight on public property.
- To fully enforce the ban, the City needs to offer overnight shelter space and temporary storage for valuables to anyone that will need to move. Individuals living in unauthorized encampments can choose to relocate to shelter, or they can choose to find somewhere else to go, otherwise risking citations or even arrest.
- Loveland did not have City-provided, year-round shelter space or storage before the ban. The Loveland Resource Center, provides daytime and overflow night shelter services, and the South Railroad Facility Shelter is the City's main overnight shelter.



City of Loveland

ENCAMPMENT BAN: A YEAR OF LESSONS LEARNED(ING?)



WHAT WE FACED



WHAT IS THE PROCESS?

THERE ARE TWO OPTIONS FOR CAMPERS ONCE THEY RECEIVE NOTICE.

CITY GIVES NOTICE*

*City can only enforce on public property.
Unauthorized encampments on private property
need to be handled by the property owner with
a trespassing call.

SHELTER

- Accept move to shelter
- Select valuables to storage
- Moved to shelter
- Meet with staff/connect to services

MOVE ON

- Decline shelter offer
- Notified to leave
- Don't comply = issued citation
- Citations or other consequences

Loveland's Costs

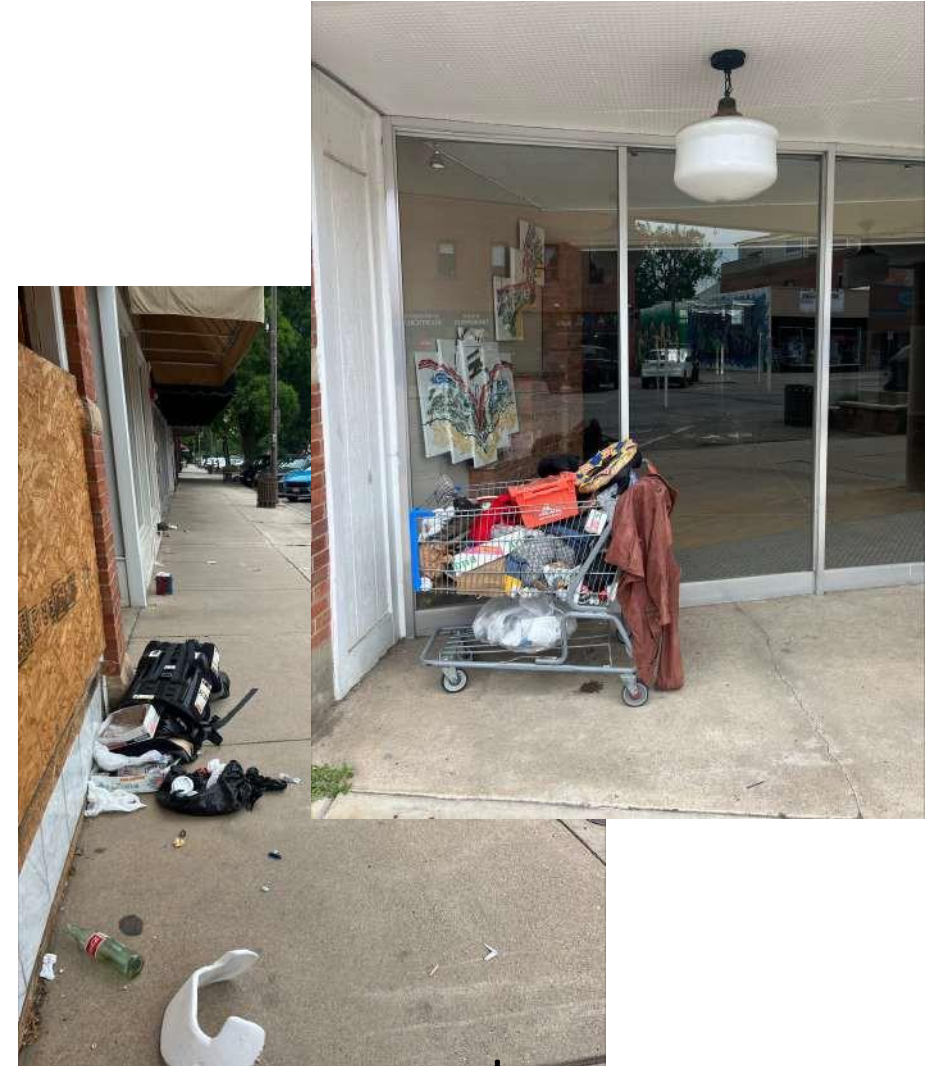
City of Loveland

- **223 total encampments removed, and 201 total campers moved removed since June 2022.**
- **147 total unduplicated people who use the Day Center and Overnight Shelter.**
- **Year-to-date encampment expenses: \$1,831,108.54**
- **An additional \$1.5 million appropriated in September 2023**

IMPACTS & CHALLENGES

Impacts to Core Downtown

- Increased Presence & Activity Downtown
- Loitering & Littering; Panhandling
- Illegal and Aggressive Behavior
- Community Frustration & Fear
- Legal, Enforcement Options



Solutions and Strategies

1. Narrowly tailoring the issues
2. Community Partnerships
3. Mitigating expectations..



Questions and Discussion





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Thank You!

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