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Legal and Practical Considerations for Regulating Homeless Encampments

CITY OF DURANGO CAMPING AND SHELTERING

PRESENTED BY DIRK NELSON, DURANGO CITY ATTORNEY

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Martin v. City of Boise, 920 F. 3d 584 (2019)

UNITED STATES COURT OF
APPEALS, NINTH CIRCUIT.

The Eighth Amendment Holding in *Boise*

“Our holding is a narrow one. Like the *Jones* panel, “we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.” *Id. at 1138*. We hold only that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in public.” *Id.* That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.⁸”



Footnotes

8. Naturally, our holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. *See Jones, 444 F.3d at 1123*. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. *Id. at 1136*.



Berzon Concurrence in the Denial of a Rehearing

“The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. *Martin*, 902 F.3d at 1035. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.”



Durango's Initial Response to *Boise*

Indoor shelter not available.

City owns 5300 acres of parks and open space adjacent to the City.

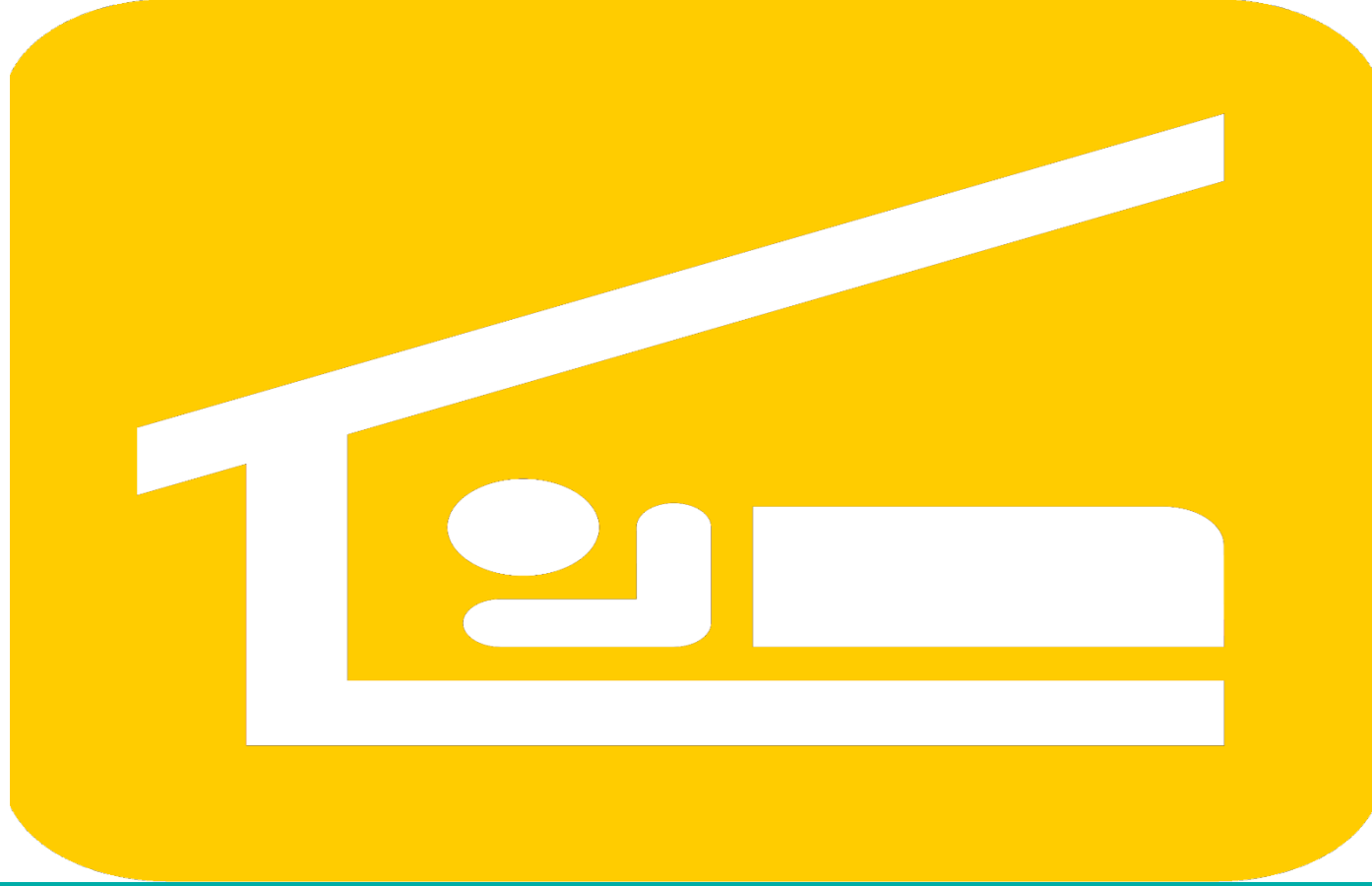
Placed moratorium on enforcement of sleeping in City owned open space.

Worked with ACLU and local advocates to educate as to available space for sheltering.

Worked on revising Camping and Sheltering Ordinance.



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What Does Shelter Mean?

Practical considerations for applying *Boise*



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City of Durango Code Definitions for Camping in Open Space

The term “Camp” or “Camping” shall mean the temporary use or occupancy of a location for the purposes of a living accommodation. The following activities or actions shall be considered in determining whether a person has camped or is camping as described in this section:

Sleeping or making preparations for sleep in the location, including the use of bedding or other articles to assist in sleeping, with or without cover.

The presence or use of any item or cover that serves as or is intended to help protect the person from the weather or other elements, including the use of any item other than clothing, including the use of a sleeping bag, blankets, tent, tarp, structure, motor vehicle, or other material of any kind.

The presence or use of a campfire, camp stove or other heating source or cooking device and activities related to preparation of food or meals.

The keeping or storing of personal property on, in or near the location.

The duration of or the recurrence of the use, particularly uses that are longer than the period from one hour prior to sunset of one day to one hour following sunrise of the next day.



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City of Durango Code Definitions for Sheltering in Open Space

The term “Shelter” or “Sheltering” shall mean the use of property owned or managed by the City as authorized by the written action of the City Manager or other City officer designated by the City Manager allowing for temporary overnight sleeping arrangements on a designated parcel of property for a period not to exceed the time between one hour before sunset of one day and one hour after sunrise of the next day, with or without the use of cover or other protection from the elements and on terms and conditions specified pursuant to the provisions of the City code.



City of Durango

Napping, resting and sheltering

- Incidental napping or resting shall be allowed inside City buildings that are generally open to the public, such as the Library, Transit Center and the Recreation Center, provided that the person shall not recline or lay down on floors, couches or other furniture or do anything to disturb other occupants of those areas.
- Incidental napping, resting and picnicking is allowed in parks, playgrounds, recreation facilities, open space, areas adjacent to trails and areas surrounding public buildings during times when those areas are open to the public, provided that such uses do not interfere with the primary uses intended for those areas and provided that such uses do not otherwise violate any other provision of the City code.
- Sheltering in designated areas on City owned or managed property for specific periods of time may be allowed by written action of the City Manager or other City officer designed by the City Manager during periods of time when findings have been made that adequate overnight sheltering is not otherwise available in or near the City.



City of Durango

Some examples of where camping and sheltering is not allowed in the City.

- All parks, playgrounds, recreational facilities and parking lots.
- The Animas River Trail and all property along or adjacent to the Animas River Trail.
- Natural surface trails.
- All other City owned or managed trails or hard surface trails and areas adjacent to those areas.
- All areas surrounding or located adjacent to City owned or managed buildings.
- All public streets, sidewalks and any other public right of way as defined in section 17-60 (c)(1), subject to the provisions of section 17-65 regarding the occupancy of vehicles.
- All City owned or managed parking lots.



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City of Durango

Limited Camping on Public Lands Surrounding Durango

Camping on Public Lands

There is limited camping on public lands surrounding Durango. Please see map and camping regulations pertaining to each location.

-  City Property: No Camping; Dogs must be on leash
-  La Plata County Property: No Camping
-  Bureau of Reclamation: No Camping or public access
-  Bureau of Land Management: **Camping is only for recreational purposes**, and no more than 14 days in one place, after which, must move 30 miles away, then after 14 days, move to a completely new site 30 miles away again.
-  State Wildlife Areas: Camping is not permitted unless during designated hunting seasons. Residential use is prohibited. Dogs must be on leash.
-  US Forest Service: No more than 14 days in one place, after which, must move 3 miles away. May stay for another 14 days. There is a maximum of 28 days of camping in a 60 day period.
-  Camping prohibited on area public lands
-  Private Lands

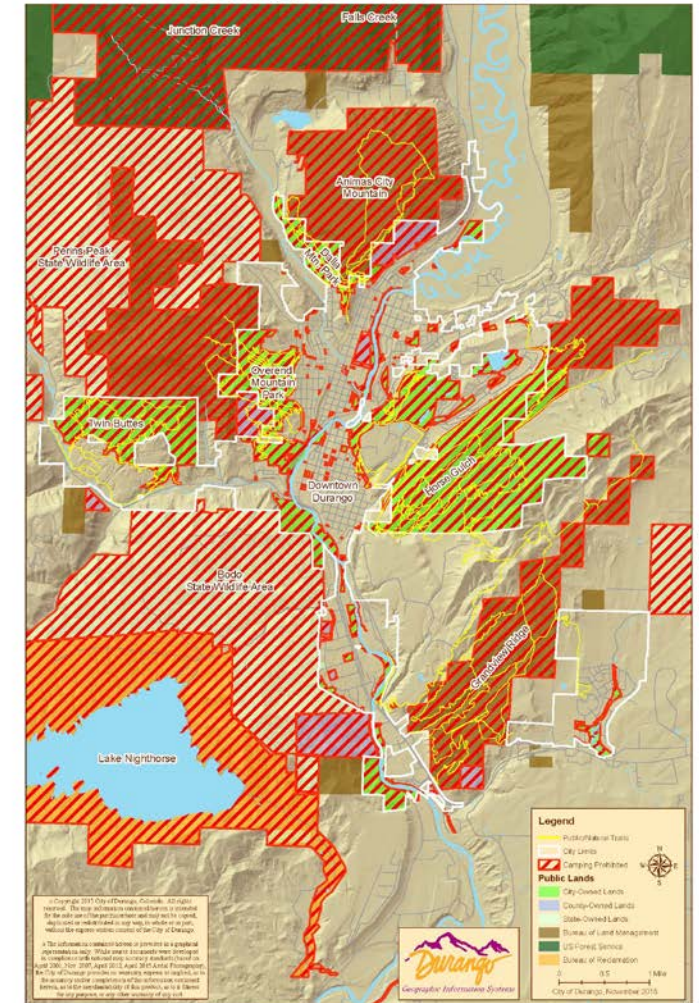
Fires on Public Lands

Camp fires are prohibited on public lands with no camping. In areas where camping is permitted, use existing fire rings and campers must responsibly attend to all fires.

Wildlife and Camping

When camping on public lands, keep camps clean. Trash and food attracts bears.

Camping on Public Lands



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A Brief History of Homeless Camping in the Durango Area after *Boise*.

La Plata County owned property commonly referred to as the Tech Center.

Property near the Cemetery in Durango-close to the social services center.

Escalante School - temporary camp site during the 416 Fire.

Purple Cliffs.



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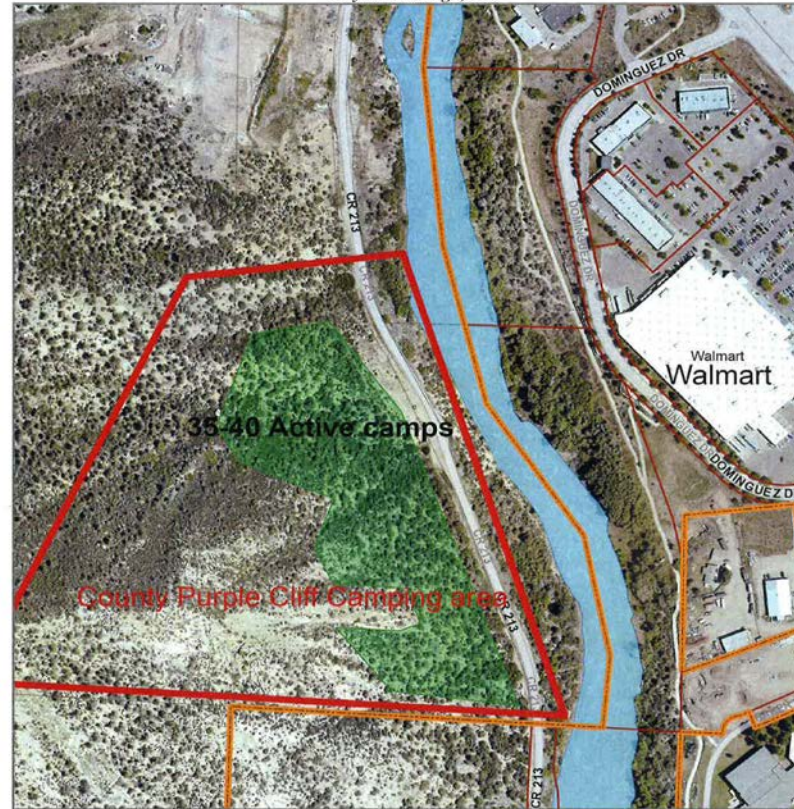
Purple Cliffs Homeless Camp

Last year La Plata County Commissioners designated 200 acres near Purple Cliffs (south of downtown Durango) for homeless camping. There are between 35-40 campsites located here.

8/4/2020

Durango Maps

City of Durango, CO

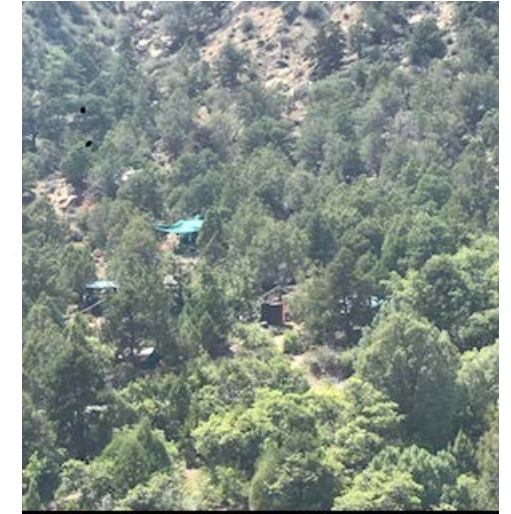


1	LA POSTA RD	3	LA POSTA RD
2	LA POSTA RD		



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Map Scale
1 inch = 332 feet
8/4/2020



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Purple Cliffs Homeless Camp Improvements

Donation box

Bulletin board

Kitchen

Potable water

Hand washing station

Shower

Portable johns

Temporary transit service



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What's Ahead

Durango City Council this spring adopted the City of Durango and La Plata County Strategic Plan on Homelessness.

In July Durango City Council approved the development of 40 permanent supportive housing units called "Espero Apartments" near its social services campus west of downtown Durango.

Local group proposes permanent camp sites near the social services campus and Espero Apartments.



VIEW OF THE NORTH FACADE

Rendering of Espero Apartments.



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THANK YOU

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