Regulating Homeless Encampments. In Denver.
Unauthorized Camping Ordinance

- §38-86.2 – Unauthorized Camping on Public or Property Prohibited

- Maximum penalty of 60 days jail
Unauthorized Camping Ordinance

- §38-86.2(a) Unlawful to camp on **private property** without the express written consent of the property owner & only in locations where camping is done in accordance with any other applicable city law.

- §38-86.2(b) Unlawful to camp on **public property** except in any location where camping has been expressly allowed by the officer or agency having the control, management and supervision of the public property in question.
Required Steps to Enforce

- Police cannot issue a citation or enforce the ordinance unless:
  - **VERBAL NOTICE** – verbally notifies the person that they are in violation of the camping ban and must comply
  - **WRITTEN NOTICE** – if person fails to comply, officer must give written notice to the person that they are in violation and must comply or possibly face charges, **AND**
  - **SERVICES** –
    - officer must ascertain if person needs medical or human services, such as mental health treatment, drug or alcohol rehab, or homeless services assistance
    - If person may be in need of services, officer must make reasonable efforts to contact and obtain services of a designated outreach worker
  - **SERGEANT APPROVAL** – before citing or arresting for a violation
What is “camping”?  

• “Camp” means to reside or dwell temporarily in a place, with shelter.

• “Shelter” includes any tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing.

• “Reside or dwell” includes conducting such activities as eating, sleeping, or the storage of personal possessions.
• In 2016, a class-action lawsuit was filed against Denver for the city’s practice of cleaning up encampments and “discarding” personal property
• Settlement reached in 2019
• Provides additional notice requirements for certain types of encumbrance cleanups
### Lawsuit – Settlement Terms

**SUMMARY OF PROPERTY REMOVAL AND STORAGE PROCEDURES GOVERNED BY THE SETTLEMENT AGREEMENT**

**PLEASE NOTE:** The Settlement Agreement does not govern: (1) Regular enforcement by DPD of the urban camping ordinance; (2) Regular enforcement by DPD, DFD, or DDPE of health & safety ordinances and regulations; (3) Enforcement of any other relevant law (e.g. interference, failure to obey).

**PLEASE ALSO NOTE:** The procedures below apply to all personal property, not just property belonging to individuals experiencing homelessness.

<table>
<thead>
<tr>
<th>Public Works &quot;Regular Cleaning&quot; Area</th>
<th>Public Works Outside &quot;Regular Cleaning&quot; Area</th>
<th>Large-Scale Encumbrance Removal (Multi-Agency)</th>
<th>Parks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>PW removal and storage of property found within the permanently-posted area (currently between 22nd, 24th, Aurum &amp; Arapahoe).</td>
<td>Coordinated multi-agency cleanup of a specific area, defined, planned and posted typically 7-days in advance.</td>
<td>Parks staff removal of property found in designated parks and recreation areas.</td>
</tr>
<tr>
<td>Legal Basis</td>
<td>Encumbrance ordinance</td>
<td>Encumbrance ordinance (and possibly other health &amp; safety ordinances and regulations)</td>
<td>Encumbrance ordinance and Parks Rules</td>
</tr>
<tr>
<td>Notice Required</td>
<td>Permanent signs posted in the area.</td>
<td>7-day notice; may include permanent signs, but notice must be affixed to permanent locations, such as poles, etc.</td>
<td>48-hour notice affixed to property (for unattended and attended property).</td>
</tr>
<tr>
<td>Process</td>
<td>PW crews ensure that ROW is clear, and power wash. Those present are asked to move; they may voluntarily store property, or return with property once the area has been cleaned so long as ROW remains clear. DPD may be present to keep the peace.</td>
<td>PW staff (or DPD designees) post the property and return in 48 hours. If owner is present, they should move their property or voluntarily store it. Any unattended property will be removed per PW protocol. DPD accompanies PW crews to keep the peace and/or arrest, when necessary, for applicable ordinance violations.</td>
<td>Parks staff post property and speak with the owner, if present. After 48 hours, if owner is still present, owner may move with the property or voluntarily store it. Parks staff will initially move property to closest temporary storage unit and then the property will be transferred to designated storage facility.</td>
</tr>
<tr>
<td>Other</td>
<td>DPD has been authorized by PW to post isolated property without informing PW leadership of each individual posting. PW should be informed when multiple individuals are found encumbering any ROW.</td>
<td>The Settlement allows large-scale encumbrance removals with less than 7-day notice if required for public health or safety reasons. Notice should be reasonable and reasoning documented.</td>
<td>Parks follows the existing PW protocol to determine if property should be disposed of or stored. DPD may accompany Park Rangers to keep the peace and/or arrest, when necessary, for applicable ordinance violations.</td>
</tr>
</tbody>
</table>
## Lawsuit – Settlement Terms

### SUMMARY OF OTHER TERMS OF THE SETTLEMENT AGREEMENT

| Determination of what is stored and what is a public health or safety risk | City continues to use the written protocol that was developed by Solid Waste for prior large-scale encumbrance removals:  
- Any item of personal property that does not pose a health or safety risk and could reasonably be assumed to have value to any person will be collected and stored. Sensitive personal items or documents will be stored.  
- Property that presents an immediate risk to public health or safety should be disposed of immediately. Such property should be disposed of in its entirety, not sorted through.  
- Trash or litter may be disposed of immediately.  
- Soiled clothing, sleeping bags, bedding, etc. may be disposed of immediately.  
- Weapons are brought to the attention of DPD.  
- If there is any question concerning whether an item is trash or property, assume the property has value and should be collected and stored. |
| Storage Facility Hours | Storage facility is manned by contractor 0600-0830 MTWF and 1200-1800 Th. The facility is currently located at 1449 Galapago St. These hours may be adjusted due to lack of use or if a public health or safety risk exists. |
| Public Notification System | City will work with service and outreach providers to provide information about locations from which property was collected and stored. TS is also in the process of developing a website for online notification. |
| Storage Lockers | City will provide approximately 200 storage lockers and combination locks in the Minouri Yasui Plaza, M-F 0700-0900 and 1500-1900. |
| Trash Receptacles, Portable toilets, Needle Disposal | City has installed 2 port-a-lets in Sonny Lawson Park* and to look at other possible restroom locations. Sharps disposal boxes have been placed in Governor’s Park, Lincoln/La Alma Park, Macintosh Park, and Sonny Lawson Park. PW and Parks have also placed 15 additional trash receptacles in Ballpark neighborhood and trash receptacles will be expanded by 25% in parks during spring/summer. |
| Mobile Health Unit | City commits to RFQ for a mobile health unit to serve that experiencing homelessness. The RFQ did not obtain any qualified applicants so DDPHE is working towards creating its own mobile health unit which will distribute supplies and provide other services. |
| PLAY Program, Denver Day Works, Work Release | PLAY program at recreation centers will allow use of homeless ID cards and will allow use of labor pay stubs and letters from shelters/homeless providers as documentation for proof of income. City commits to consider further expansion of Denver Day Works (based upon budget availability and use of inmates to assist with regular cleanups will cease by the end of December, 2019. |
| IDs and Rx medication | City will store IDs indefinitely (or to their expiration date) and Rx medications until their expiration date. |
| Training for City Employees and Contractors | City will provide appropriate training on the protocols and procedures as well as homeless sensitivity training for those who regularly interact with people experiencing homelessness. |
| Advisory Group | City commits to host and facilitate quarterly meetings of an advisory group of people experiencing homelessness and their representatives. At least one Mayoral official will be present for the meetings and the City will provide a facilitator. |
Constitutional Challenge to our camping ordinance

• **Context** – municipal criminal case
• **Procedural posture** – hearing on motion to dismiss before trial
• **Defendant** – not homeless, but an activist
  – Insisted on getting a ticket
  – Then packed up and went home
• **Motion to Dismiss** – Denver’s camping ordinance violated the constitution in four ways:
  – Equal Protection Clause
  – Due Process Clause
  – 8th Amendment prohibition against cruel & unusual punishment
  – The ADA
Court Ruling in Motion to Dismiss

• Trial court granted the motion to dismiss ruling that the ordinance violates the 8th amendment under the reasoning of *Martin*
  – As-applied versus facial challenge

• Heard testimony that:
  – Some people are turned away from shelters
  – If *every* homeless person sought shelter, there would not be enough beds available
Impact of COVID-19
CDC Guidance

- If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.

- Encourage those staying in encampments to set up their tents/sleeping quarters with at least 12 feet x 12 feet of space per individual.

- Consider the **balance of the risks** when addressing options.
Impact of COVID-19
What did we do?

- Denver stopped enforcing the camping ordinance
- Tried to clean encampment areas without making people move
- Increased testing in shelters and encampments
- Increased outreach efforts and MHCD presence
- Increased shelter capacity – National Western Center and the Denver Coliseum
- Secured motel rooms as “Activated Respite Rooms” for COVID-positive individuals and “Protective Action Rooms” for high-risk individuals
Impact of COVID-19
What happened?

• Significant increase in the **number of camps**

• And they’ve gotten **bigger**

• Evidence that people were coming into Denver from other locations

• Evidence that other jurisdictions were dropping people off at the NWC and the Coliseum

• Increased **public health concerns** in the encampments
Impact of COVID-19
What happened?

- Increased public health concerns
  - Rat infestations
  - 1,000s of used needles
  - Propane tanks
  - Fires / explosion / burn injuries
  - Shootings – 1 homicide
  - Fights and stabbings
Where are we now?

- Under the Denver Revised Municipal Code, DDPHE has broad public health authority
- We have had to take steps to clean up several extremely large encampments
- And to close areas for remediation of public health risks and to give the area time to recover given the extreme impact
Encampment Cleanups Partners and Roles

- **DDPHE**: Area Closure due to public health concerns including trash, human waste, sharps, and rodent activity. Monitoring the closure as well as assessing the area for abatement and sanitization concerns. Comms handling media inquiries.

- **Parks and Rec**: Helped with outreach prior to clean up, assisted in the closure of the park, assisting in the cleaning of the park, helps monitor the closure area, enforces the curfew at the park.

- **DPD**: Law enforcement needs, security needs, HOT team involved in outreach and service connections.

- **CSP**: Law enforcement needs, provided fencing to enclose the park, security needs, continue to hold and monitor the park. State also provided their own abatement crew after city cleaning was done.
Encampment Cleanups
Partners and Roles

- **DOTI/EHS**: Provided crew for cleaning and handling of hazardous waste. Large equipment including bobcat and trash trucks, provided storage for PEH that wanted it. Provided trash bags for PEH and cleaning staff. All things clearing and collecting.
- **HOST**: Connection with services, transportation to services.
- **MHCD**: On-site responder to help PEH connect to services.
- **CAO**: On-site legal guidance.
- **MO**: On-site representation.
Conditions Before
Where are we now?

• Conducting large-scale cleanups of encumbrance ordinance pursuant to settlement terms

• DPD is enforcing the unauthorized camping ordinance

• Facing increased and more violent protest situations
Because of the significant increase in number and size of encampments and deterioration in health and safety conditions, Mayor Hancock agreed to support a temporary sanctioned space for unsheltered persons experiencing homelessness can live during the pandemic.

The Colorado Village Collaborative will staff and manage these spaces 24/7.

Each area would provide space for 50 tents on a temporary basis.
“Safe Outdoor Spaces”

- **CHALLENGES**
  - Finding a site
    - Neighborhood opposition
    - Zoning issues
    - Flood plain
    - Underpasses/ Highways
    - Distance from services
    - Parking lots
    - Parks?
  - **Insurance issues**
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