

# 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.

- 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.



# Lawsuit

- 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

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 DDPHE 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.

	Public Works “Regular Cleaning” Area	Public Works Outside “Regular Cleaning” Area	Large-Scale Encumbrance Removal (Multi-Agency)	Parks
Definition	PW removal and storage of property found within the permanently-posted area (currently between 22 <sup>nd</sup> , 24 <sup>th</sup> , Larimer & Arapahoe).	PW removal and storage of property found <i>outside</i> the posted area for regular cleanings or large-scale encumbrance removal.	Coordinated multi-agency cleanup of a specific area, defined, planned and posted typically 7-days in advance.	Parks staff removal of property found in designated parks and recreation areas.
Legal Basis	Encumbrance ordinance	Encumbrance ordinance	Encumbrance ordinance (and possibly other health & safety ordinances and regulations)	Encumbrance ordinance and Parks Rules
Notice Required	Permanent signs posted in the area.	48-hour notice affixed to property (for unattended and attended property).	7-day notice; may include permanent signs, but notice must be affixed to permanent locations, such as poles, etc.	48-hour notice affixed to property (for unattended and attended property).
Process	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.	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.	Coordinated cleanup of the defined area, led by PW with assistance of DPD; hazmat contractor; outreach workers; possibly DSD or other work crews; DDPHE staff. PW follows procedure and protocols similar to regular cleanings. DPD accompanies PW crews to keep the peace and/or arrest, when necessary, for applicable ordinance violations.	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.
Other	The Settlement sets forth a procedure by which the permanently-posted area may be expanded.	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.	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.	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.

# 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	<p>City continues to use the written protocol that was developed by Solid Waste for prior large-scale encumbrance removals:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- Trash or litter may be disposed of immediately.</li> <li>- Soiled clothing, sleeping bags, bedding, etc. may be disposed of immediately.</li> <li>- Weapons are brought to the attention of DPD.</li> <li>- If there is any question concerning whether an item is trash or property, assume the property has value and should be collected and stored.</li> </ul>
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 Minoru Yasui Plaza, M-F 0700-0900 and 1500-1900.
Trash Receptacles, Portable toilets, Needle Disposal	City has installed 2 port-o-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
  - 8<sup>th</sup> Amendment prohibition against cruel & unusual punishment
  - The ADA

- Trial court granted the motion to dismiss ruling that the ordinance violates the **8<sup>th</sup> 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
  - Shelters operate well-below capacity. Nightly.

## **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, assisted 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.





A photograph of an outdoor encampment on a dirt field with trees in the background. In the foreground, there is a large, semi-transparent circular graphic containing text. The background shows several tents, including a prominent one with a purple and blue patterned interior. A person in a dark uniform and mask is standing near a bicycle and a wheelchair. Other items like a shopping cart, a water cooler, and various bags are scattered around.

## 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



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT



# Conditions After



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT



# 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



# “Safe Outdoor Spaces”

## Temporary Safe Outdoor Space for Unsheltered Individuals

*Proposal by Colorado Village Collaborative, Interfaith Alliance of Colorado, Radian, St. Francis Center, and The Salvation Army*

- Because of the significant increase in number and size of encampments + 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

### What is a Safe Outdoor Space?

A safe, healthy, secure, staffed, resource and service rich environment that prioritizes people experiencing homelessness who are not accessing existing services or resources. An SOS includes the following facilities and services:

- Tents, bathrooms, handwashing, electricity, wireless internet, showers, laundry, and food access
- Wellness screenings and links to hotels and health care services
- Outreach workers and case management

### The Purpose:

1. Harm reduction approach intended to mitigate the spread of COVID-19 among people experiencing homelessness.
2. Expand outreach to those not accessing existing services, creating equitable links to hotels, health care, and ongoing case management and housing resources.

### Our Model:

- Staffed 14 hrs/day by Colorado Village Collaborative with security services overnight
- Outreach and case management provided by St. Francis Center and The Salvation Army
- Wellness screenings conducted daily, creating links to hotels and health care services
- Food provided through partnerships with faith community and existing food service providers
- Camping resources and other supplies will be garnered through partnerships with the faith community

### Cost and Scale:

Assuming in-kind contributions from Faith Community and City and County of Denver

- 50 people = \$25.65 person/night
- 100 people = \$24.62 person/night

# “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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