

97th CML Annual Conference
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Collaborative Legal Responses to
 Homelessness Issues
 June 20, 2019, 3:15pm
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Contents of this presentation reflects the view of the presenter, not of CML.

Collaboration Needs

- Legal service needs across our City clients
 - Police, Parks, Public Works, City Manager
- Client Collaboration with diverse stakeholders
 - Public/City Council
 - Community Organizations/Service Providers
 - Businesses
 - BID, Chamber of Commerce


Welcome!






Legal Advising and Client Collaboration Issues

- Collaboration/Client management
 - Often the “quarterback” for collaboration efforts.
 - Keep in mind ethical obligation to educate/communicate with our clients under CRPC Rule 1.4.
 - Managing client needs and expectations.
 - Weighing legal requirements and client needs.
 - Considering multiple issues across non-legal disciplines.
 - Identifying workable solutions for clients.



Welcome!

- Discussing Arvada CAO’s collaborative efforts with City clients to address issues related to persons experiencing homelessness in our community.
- Focus on addressing “gaps” with legal responses while respecting the rights of stakeholders, including persons experiencing homelessness, property owners and the general public.



Legal Advising and Client Collaboration Projects

- Legal and policy considerations, research and drafting related to:
 - Encampment cleanups
 - First Amendment issues and “Auditors”
 - Repeal/Re-enactment of ordinances related to homelessness issues
 - Roadway soliciting/median occupancy
 - Loitering and trespass
 - “One Small Step” Arraignments

Focus Area- Encampment Cleanup

- Brings significant public scrutiny.
- **Stakeholders:** Police, Police (Evidence), Parks, Streets, Risk Management, Legal.



Focus Area- Encampment Cleanup

- Scope of the issue
 - how often is our team encountering camps?
 - what types of materials/property does our team typically find?
 - how much property might need to be stored/handled?
- Answers to these questions should guide the drafting of any associated policy.



Focus Area- Encampment Cleanup

Understanding the Law

- 4th Amendment/ 14th Amendment
 - right against unreasonable searches and seizures (compare abandoned v. temporarily unattended property)
 - right to due process
 - danger creation

“[T]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking.”

Lavan v. City of L.A., 693 F.3d 1022, 1032 (9th Cir. 2012) (citation omitted).

Focus Area- Encampment Cleanup

- Safety issues related to encampments
 - sanitation/contamination
 - culvert/floodway occupations
 - fire/shock hazards
 - Safety issues may create the need for exceptions to general policies and rules.
- Distinction between regulation of public and private property.



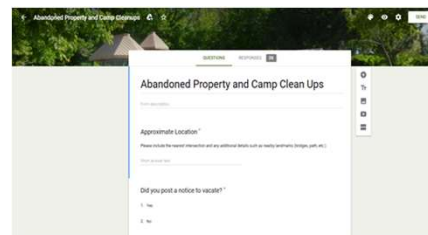
Focus Area- Encampment Cleanup

- Practical Examples of Legal Issues Which May Arise in the Context of Cleanups:
 - **Notice:** the alleged lack of notice (or effective notice);
 - **Method:** the alleged practice of giving affected persons only a brief time to gather what they can carry;
 - **Property Preservation:** the alleged failure to discriminate between valuable personal items that should be preserved, on the one hand, and trash or hazardous materials that should be discarded, on the other; and the affected persons' inability to reclaim stored property.
 - See *Lvall v. City of Denver*, Civil Action No. 16-cv-2155-WJM-CBS, 2018 U.S. Dist. LEXIS 48846, at *43-44 (D. Colo. Mar. 26, 2018).

Focus Area- Encampment Cleanup

Make compliance easy!

- Thorough and frequently repeated training;
- Easy methods of documentation/reporting.



Focus Area-Related 1st Amendment Considerations

Reed v. Town of Gilbert, Ariz

Sign code must survive strict scrutiny

Brown v. City of Grand Junction

Content Based vs Content Neutral



Focus Area-Safety and Trespass Issues

- Opportunities
 - Recent re-vitalization
 - RTD Gold Line
- Concerns related to homelessness
 - From businesses/residents
 - From visitors to the area
- Contributors
 - Library
 - Local Faith-Based Organization



EST. 1870
OLDE TOWN
ARVADA



1st Amendment Auditors



People ex rel. R. C.

"...it is not enough that words, gestures, or displays 'stir the public to anger,' 'invite dispute,' or 'create a disturbance'; they must 'produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.'"

18-9-106. Disorderly conduct

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

- (a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace;

Olde Town Legal Considerations

"Content Neutral" solutions- Focus on conduct and safety.

Use various available tools, including ordinances and policies.

Avoid discrimination against people experiencing homelessness.



3 Tiers of Public Property

Traditional Public Forum (Ex. Parks)

- Gov't may impose reasonable time/place/manner restrictions on speech

Designated Public Forum (Ex. CC Chambers)

- Gov't may regulate subject matter of speech, not viewpoints

Non-Public Forum

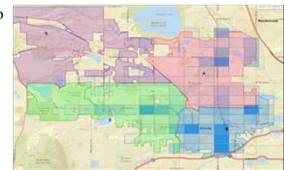
(Ex. Staff Offices)

- Gov't has much broader latitude to regulate



Pedestrian Safety Issues

- Pedestrian safety issues related to median occupation and soliciting along roadways.
 - Repealed and re-enacted existing municipal codes to comply with *Browne*.
 - Narrowly tailored to auto/pedestrian safety and supported by an overall increase in auto/pedestrian accidents.
 - Applicable to roadways/locations with high auto/pedestrian accident rates.



City of Arvada
35 MPH+ Speed Limits



Related Safety Issues

- Trespassing Issues
 - Addressing behaviors/trespassing on both private and public property.
 - Repeal of outdated “Loitering” ordinance
 - Language obsolete and addressed by municipal trespass ordinance and existing C.R.S.



OSS Navigators

- Navigators
 - APD Mental Health Co-Responders
 - Access to a variety of mental health related services.
 - Bridges to Opportunity Coordinators
 - Associated with local Community Table food bank.
 - Access to a wide variety of services, resources, and assistance.

Municipal Courts/Prosecution “One Small Step” Arraignments

- Traditional municipal ordinance enforcement/prosecution is often ineffective.
- Beginning May 2019- an alternative to traditional plea offers for persons experiencing homelessness.
- Focus on defendants taking “One Small Step” toward improving their circumstances.

OSS APD Partnership

- Arvada PD’s recently created Community Outreach Response Team will assist with OSS process.
 - COR officers are often familiar with defendants and develop rapport.
 - COR officers contact and remind defendants of upcoming court dates as possible.
 - COR officers present at OSS arraignments for consultation as appropriate.

Municipal Courts/Prosecution “One Small Step” Arraignments

- Alternative sentencing conditions in OSS plea offers.
- Referred to immediately available “Navigators” to discuss service needs.
- Navigators provide sentencing recommendations based on discussions.
- Traditional sentences are suspended on condition defendant participate and complete service referrals.

Emerging Regional Collaborative Efforts

- Multi-jurisdictional
 - High-level cooperation required
- Multi-disciplinary
 - Regional navigators
- Very Preliminary



Snapshot of Arvada's Responses

- In addition to our topics today, Arvada has implemented:
 - Dedicated page on City's website
 - Re-activating Olde Town square through movable furniture, yoga classes, library events, etc.
 - Portland Loo installation
 - Mobile shower trailer
 - Installing grates over culverts
 - Heightened patrols, including foot patrols, around Olde Town
 - Severe weather shelter network
 - Regular weed/overgrowth mitigation on publicly-owned vacant lands
 - Additional coordination with CDOT
 - Area closed signs
 - Trash and debris removal policy and procedure
 - Provided coordination and resources to faith community
 - Monthly inter-departmental staff meetings
 - Resources handout/flyer

Case Citations

- *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276
- *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218
- *People ex rel. R.C.*, 2016 COA 166
- *Lavan v. City of L.A.*, 693 F.3d 1022, 1032 (9th Cir. 2012).
- *Lyll v. City of Denver*, Civil Action No. 16-cv-2155-WJM-CBS, 2018 U.S. Dist. LEXIS 48846, at *43-44 (D. Colo. Mar. 26, 2018).

Take-Aways from Arvada's Experience

- Collaboration among our clients is critical
 - Varying resources required- there is no one solution.
- Educate your clients
 - As we tend to do... "Think like a lawyer"!
- Be prepared to try, fail, adjust, try again...
- Cooperation with other jurisdictions.
 - Issues often (always?) cross into neighboring jurisdictions.

Ordinance References

Arvada City Code:

https://library.municode.com/co/arvada/codes/code_of_ordinances

- 62-36. - Pedestrian hindering the flow of traffic.
- 62-36.5. - Pedestrian use of roadway center medians.
- 62-37. - Solicitation.
- 62-40. - Criminal trespass on private or public property.
- 62-40.5. - No trespass orders for city-owned property.

Colorado Revised Statutes:

- 18-9-102. Inciting riot
- 18-9-107. Obstructing highway or other passageway
- 18-9-110. Public buildings - trespass, interference
- 18-9-108. Disrupting lawful assembly
- 18-9-117. Unlawful conduct on public property

Questions?