

2017 CML Annual Seminar on Municipal Law
Panhandlemonium
 October 7, 2017

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The contents of this presentation reflect the view of the presenter, not of CML.

AGENDA

- Standards of Behavior
- Disposition of Abandoned Property
- Safety-Based Traffic Medians
- Smoking
- Sit-Lie
- Long Term Vehicle Parking



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STANDARDS OF BEHAVIOR

- Issue: threatening, inappropriate or vandalizing behavior by some patrons of these facilities; inconsistent enforcement and process among facilities.
- Staff wants to:
 - have the facilities safe/welcoming for all, and used for their intended purpose.
 - have less cumbersome and faster enforcement process than summonses.
- Legal concerns: inconsistent enforcement and procedures across facilities; due process notice and opportunity to be heard.



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STANDARDS OF BEHAVIOR - LEGAL ISSUES


- Inconsistent enforcement and procedures across facilities give rise to procedural due process concerns.
- Restricting access at a library implicates 1st Amendment rights to receive information and ideas from that facility
- Can a city exclude someone from a facility based on nuisance criteria such as appearance or odor?
- Kreimer v. Bureau of Police for Town of Morristown, 958 F. 2d 1242 (3rd Cir. 1992); Lu v. Hulme, 2015 WL 5610810; Brinkmeier v City of Freeport, 1993 WL 248201



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STANDARDS OF BEHAVIOR - OUTCOME

- Administratively adopted Citywide Standards of Behavior for public facilities.
 - Ordinance authorizing City Manager to adopt such standards.
 - Development of Tier 1 and Tier 2 offenses.
- Establish consistent enforcement process and penalties for Tier 1 and Tier 2 behaviors.
 - Tier 1: more severe infractions, 60 day suspension from the facility; additional infractions incur 1 year suspension enforced by trespass.
 - Broad staff training on proper trespass process including notice and serving as witness.
 - Tier 2: nuisance behaviors, verbal warning followed by 7 day suspension; additional infractions incur 180 day suspension; escalation triggers Tier 1 process.
- Written rules posted with opportunity to appeals within 10 days of suspension.
- Hiring of 2 Campus Supervisor's and installation of more surveillance cameras.



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STANDARDS OF BEHAVIOR

STANDARDS OF BEHAVIOR
City of Long Beach Facilities

Division Statement: The City of Long Beach facilities are accessible to everyone and therefore require the same level of respect and behavior. The standards of behavior, conduct, relations, and behavior are established and will be maintained on the property.

These Standards of Behavior are intended to provide a guide for all visitors. They apply to all visitors, please read them for the information on prohibited actions. They are intended to ensure that all visitors are treated with respect and dignity. They are intended to ensure that all visitors are treated with respect and dignity. They are intended to ensure that all visitors are treated with respect and dignity.

TIER 1

Behavior, language, and dress are intended to be:

1. Respectful
2. Appropriate
3. Clean
4. Neat
5. Professional
6. Courteous
7. Polite
8. Respectful of others
9. Respectful of property
10. Respectful of the environment

TIER 2

Other related behaviors include:

1. Excessive use of profanity
2. Excessive use of profanity
3. Excessive use of profanity
4. Excessive use of profanity
5. Excessive use of profanity
6. Excessive use of profanity
7. Excessive use of profanity
8. Excessive use of profanity
9. Excessive use of profanity
10. Excessive use of profanity

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DISPOSITION OF ABANDONED PROPERTY

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DISPOSITION OF ABANDONED PROPERTY

- Issue: increasing number of incidents of the public leaving belongings at City facilities
- Staff wants to: immediately throw everything away
- Outcome: approach balancing...
 - customer service needs
 - administrative burden of managing the abandoned property
 - respecting the legal rights of the property owner

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DISPOSITION OF ABANDONED PROPERTY - LEGAL ISSUES

- 4th Amendment Seizure:
 - Some meaningful interference with an individual's possessory interest in that property.
 - Is it reasonable? Government's interest in seizure vs. individual's possessory interest.
- 14th Amendment Due Process: Reasonable steps to give notice and opportunity to be heard.
- Lavan v. City of Los Angeles, 693 F.3d 1022 (9th Cir. 2012): upheld injunction halting LA's summary seizure and destruction of unattended, but temporarily unattended, homeless individuals' personal property from camps along Skid Row.
- Walters v Otter, 955 F.Supp.2d 1178 (USDC ID, 2013): Occupy Boise erects symbolic tent on Statehouse annex grounds; court upholds law authorizing removal of property with posting notice if owner absent and 90 day storage requirement.

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DISPOSITION OF ABANDONED PROPERTY - PROCESSES

- Turn over to Public Safety: valuable property (written notice or publication).
- Throw away immediately: health or safety hazard.
- Disposition process: everything else.

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DISPOSITION OF ABANDONED PROPERTY - DISPOSITION PROCESS

- Publication in newspaper of notice is ineffective and administratively infeasible.
- Post a Sign in the Facility for Lost and Found.
- For greater than de minimis property: maintain a list of abandoned property near lost and found, and post that list on the department's website for greater than de minimis property.
- Unclaimed property can be disposed of on a 30 day rolling basis.

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DISPOSITION OF ABANDONED PROPERTY

429 4th Avenue
 Longmont, CO 80501
 (303) 651-8470
www.longmontpubliclibrary.org/library

Lost and Found – September 2017

Only items thought to be \$50 or more are listed.
 Items will be kept for 30 days and then discarded.
 Items may be claimed at the Lobby Security Desk during open hours.
 Proof of ownership is required and you will be asked to sign for your item.
 If Security Desk is unattended ask at the Checkout Desk.

| Date | Item | Date | Item |
|---------|-------------|---------|---------------------------------------|
| 9/6/17 | Child's hat | 9/6/17 | Child's sunglasses |
| 9/9/17 | Stuffed Cat | 9/11/17 | Child's watch |
| 9/11/17 | Cap | 9/11/17 | Lampard w/ plastic animals on it |
| 9/12/17 | T-shirt | 9/12/17 | Woman's Long sleeve button down shirt |

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TRAFFIC MEDIANS

➤ *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.”

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TRAFFIC MEDIANS

➤ *Browne v. City of Grand Junction*, Case No. 14-cv-00809, (D. Colo. Sept 20, 2015)

- Panhandling is protected 1st amendment speech; restriction of panhandling on public streets is content-based regulation.
- “The Court engages in this extended discussion of *Reed* because it confirms the correctness of this Court’s prior conclusion that Ordinance No. 4627 is a content-based speech restriction.”

➤ Longmont and other municipalities suspend enforcement of panhandling ordinances.

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TRAFFIC MEDIANS

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TRAFFIC MEDIANS

➤ Issue: dangerous median occupancy following repeal of Longmont highway solicitation ordinance in light of Grand Junction case and other case law.

➤ Staff wants to: keep our roadways safe.

➤ Solution: ~~Ban panhandling on medians.~~

➤ Solution: ~~Ban dogs on medians.~~

➤ Solution: ~~Ban dogs on medians.~~

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TRAFFIC MEDIANS

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TRAFFIC MEDIANS - LEGAL CONCERNS

- Cutting v City of Portland, 802 F.3d 79 (1st Cir. 2015): Struck down outright ban on all medians.
 - Ordinance enforced only 5 times, all against panhandlers.
 - One grassy median ran for several blocks and was 50' wide; another was so large as to have a park bench; police chief at trial did not know measurements for any medians and could only "guesstimate."
 - In dicta, court stated that a targeted safety-based median ordinance might be upheld.

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TRAFFIC MEDIANS - LEGAL CONCERNS

- Cutting v City of Portland, 802 F.3d 79 (1st Cir. 2015): Struck down outright ban on all pedestrian access to medians
 - Median = street = traditional public forum.
 - "The ordinance prohibits virtually all activity on median strips and thus all speech on median strips. . . . In fact, it is hard to imagine a median strip ordinance that could ban more speech."
 - The ordinance "does not purport to consider other important factors, such as pedestrian and vehicle traffic patterns."

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CENTER MEDIAN SAFETY REPORT

Center Median Safety Evaluation and Recommendations Report

Prepared by City of Longmont Department of Public Safety and Department of Public Works and Natural Resources

April 20, 2017

63 pages

Criteria and Background Information

Criteria #1 - High Crash Locations

Crash records compiled from City of Longmont Police Department are used to calculate a Composite Crash Index at intersections throughout Longmont based on the following:

- Total Number of Crashes
- Crash Rates (Crashes/traffic volume)
- Weighted Crash Rates (Crashes/traffic volume, weighted by crash severity)

Intersections are identified as High Crash Locations when the Composite Crash Index at an intersection is more than one standard deviation higher than the average intersection.

Almost all pedestrians at signalized intersections utilize crosswalks, sidewalks, right turn islands, and median facilities designed for pedestrians. Raised center islands are not designed for pedestrians, and are not where drivers expect people to be standing or walking.

Appendix A further details how the Longmont Composite Crash Index is calculated.

Pedestrians on raised center islands may be restricted at intersection approaches where the intersection is a High Crash Location, with a Composite Crash Index > 2.0 as calculated in the most recent Longmont Crash Report, included with Appendix A.

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CENTER MEDIAN SAFETY REPORT

Lots of graphics...

Figure 2 - Crash Rates by Severity, 1990 - 2015

Table 1. Probability of pedestrian death resulting from various vehicle impact speeds.

| Vehicle speed (mph) | Probability of pedestrian fatality (%)* | Probability of pedestrian fatality age = 14 (%)** | Probability of pedestrian fatality age 15 to 59 (%)** | Probability of pedestrian fatality age = 60 (%)** |
|---------------------|---|---|---|---|
| 20 | 5 | 1 | 1 | 3 |
| 30 | 45 | 5 | 7 | 62 |
| 40 | 85 | 16 | 22 | 92 |

* US Absolute Minimum Lateral Offset in Conventional Low-Speed Urban Environments.

** Injury or Worse Crash Rate by %

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CENTER MEDIAN SAFETY REPORT

- Criterion #1 – Composite Crash Index: total number of crashes, crash rates, and severity.
- Criterion #2 – High Speed Locations: higher speeds, more dangerous.
- Criterion #3 – Center Median Width: raised center islands < 6' in width.


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CENTER MEDIAN SAFETY REPORT

| Arterial Intersection Approaches With Raised Center Islands | Inter. Composite Crash Index | Approach Speed Limit (mph) | Raised Median Width (ft) | 2015 Daily Int'l Volume |
|---|------------------------------|----------------------------|--------------------------|-------------------------|
| Minimum Criteria = | | | | |
| | ≥ 1.0 | ≥ 35mph | < 6 feet | |
| Approaches that MEET All Criteria | | | | |
| Ken Pratt Blvd & Martin St | East (NWS) | 1.41 | 55 | 4,315 |
| | West (EBS) | 55 | 3,500 | 37,900 |
| Ken Pratt Blvd & Emery St | East (NWS) | 1.54 | 45 | 3,500 |
| | West (EBS) | 45 | 3,500 | 38,700 |
| Ken Pratt Blvd & Main St | East (NWS) | 1.47 | 45 | 3,500 |
| | West (EBS) | 45 | 3,000 | 66,100 |
| Ken Pratt Blvd & So. Pratt Pkwy | East (NWS) | 1.75 | 35 | 2,500 |
| | West (EBS) | 2.09 | 35 | 2,500 |
| | North (NS) | 35 | 4,250 | 47,300 |
| | West (EBS) | 45 | 4,000 | |
| Ken Pratt Blvd & Hoover St | East (NWS) | 2.88 | 45 | 2,500 |
| | West (EBS) | 45 | 2,500 | 64,300 |
| | North (NS) | 40 | 3,500 | |
| SH66 & Main St | South (SWS) | 1.71 | 35 | 3,375 |
| | North (NS) | 45 | 3,500 | 48,400 |
| Hoover St & Nelson Rd | West (EBS) | 2.15 | 35 | 4,500 |
| Hoover St & Lower Emery Dr | South (SWS) | 1.15 | 40 | 4,000 |
| Hoover St & Reed Way | North (NS) | 1.07 | 40 | 5,000 |
| | South (SWS) | 1.15 | 35 | 10,000 |
| Hoover St & Reed Way | East (NWS) | 1.07 | 25 | 6,000 |
| | West (EBS) | 25 | 6,000 | 34,700 |
| Ken Pratt Blvd & Nelson Rd | East (NWS) | 0.67 | | |
| Ken Pratt Blvd & Sunset St | East (NWS) | 0.80 | | |
| | West (EBS) | | | |

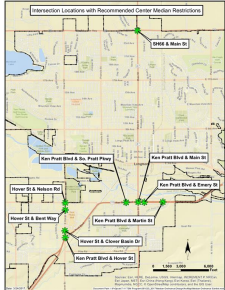
The contents of this presentation reflect the view of the presenter, not of CML.

SAFETY-BASED TRAFFIC MEDIANS




ON ISLAND
Longmont Ord. Ch. 11.39

Obtained CDOT consent for posting signs on state highways




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TRAFFIC MEDIANS - OUTCOME


- Ordinance prohibits any occupation of center median meeting all three criteria, within 200 feet of the intersection, except:
 - Pedestrian refuge for one traffic signal cycle.
 - On-duty public safety for official duties.
 - Authorized contractors performing maintenance.
- Restriction applies only to *center* medians, not other islands or corners.

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SMOKING

- Issue: congregations of individuals immediately outside public facilities, engaging in behavior that deters users of the facilities.
- Staff wants to: make people go away...




- Legal concerns: 1st and 8th Amendments. Restrict the behavior rather than the individuals.

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SMOKING - LEGAL BACKGROUND


- No fundamental right to smoke.
- Smokers are not a suspect class.
- Public health, safety, welfare.
- Broad authority to restrict smoking outdoors in public places: Calabasas, CA, 2006.




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SOLUTION - PROHIBIT SMOKING IN LIMITED AREAS

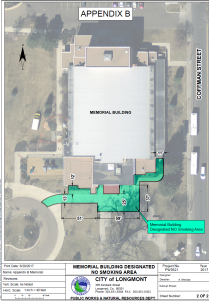





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SOLUTION - PROHIBIT SMOKING IN LIMITED AREAS



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SOLUTION - PROHIBIT SMOKING IN LIMITED AREAS

Side effect: push smokers into adjacent areas?

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SIT/LIE

- Issue: congregations of individuals immediately outside public facilities, engaging in behavior that deters users of the facilities. (gauntlet effect). Not covered by obstruction ordinance.
- Staff wants to: make people go away.
- Legal concerns: 1st and 8th Amendments. Restrict the behavior rather than the individuals based on their status.

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SIT/LIE - LEGAL BACKGROUND

- First Amendment facial challenges
 - *Roulette v. City of Seattle*, 97 F.3d 300, 302 (9th Cir. 1996) (Kozinski, J., maj. op.):
 - “The first step to wisdom is calling a thing by its right name. Whoever named ‘parkways’ and ‘driveways’ never got to step two; whoever named ‘sidewalks’ did.”
 - “The fact that sitting can possibly be expressive, however, isn’t enough to sustain plaintiffs’ facial challenge to the Seattle ordinance.”
 - Pregerson, J., dissenting: “Seattle seeks economic preservation by ridding itself of social undesirables—homeless or otherwise—who sit or lie on the sidewalks, and this is done to protect the sensibilities of shoppers.”

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SIT/LIE - LEGAL BACKGROUND

- First Amendment facial challenges, cont’d
 - *Amster v. City of Tempe*, 248 F.3d 1198 (9th Cir. 2001): Similar Tempe ordinance “facially regulates only sitting and lying in certain places at certain times; it does not regulate speech or patently expressive conduct.”
 - “We leave the question whether the [ordinance] may be subject to a valid as-applied challenge for another day.”
 - Upshot of 9th Circuit cases: No facial First Amendment violation; left open as-applied challenge for demonstration.

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SIT/LIE - LEGAL BACKGROUND

- Eighth Amendment Challenges
 - *Robinson v. California*, 370 U.S. 660 (1962):
 - Drug addiction (as opposed to possession or use) cannot be criminalized.
 - Addiction is an illness. “We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never **1421 touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment. . . . Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”

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SIT/LIE - LEGAL BACKGROUND

- Eighth Amendment Challenges, cont’d
 - *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006),
 - Prohibition on sitting or lying on streets and sidewalks citywide.
 - “Whether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.”
 - City officials admit L.A. has fewer shelter beds than people who need them, leaving people with no choice but to sleep on sidewalks.
 - Sit/lie ordinance therefore criminalizes a status – homelessness.

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SIT/LIE - LEGAL BACKGROUND

- Eighth Amendment Challenges, cont'd
 - Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006)
 - The court distinguishes other cities' sit/lie ordinances that limit the hours or zones of enforcement, such as Seattle's.
 - Result: Enjoined enforcement as applied to specific plaintiffs.
 - Result adopted by Obama Justice Department in 2015 in *Bell v. Boise*.



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SIT/LIE - LEGAL BACKGROUND


- Eighth Amendment Challenges, cont'd
 - *C.f. Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000) (shelter always had beds available);
 - *Bell v. City of Boise*, 834 F. Supp. 2d 1103, 1112 (D. Idaho 2011), rev'd, 709 F.3d 890 (9th Cir. 2013).
 - "During the day, the homeless find safe harbor in the city parks and at night, they can find safe harbor in the city's shelters and, when shelter space is unavailable, the City allows the homeless to sleep in the city parks. The Court finds the City's approach reasonable and constitutionally sufficient."



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SIT/LIE - MORE THAN A CAMPING BAN


- *People of City of Boulder v. Madison*, Case No. 10CV716 (Boulder Cnty. Dist. Ct. Apr. 20, 2011):
 - Ordinance: "No person shall camp within any park, parkway, recreation area, open space, or other city property. . . . For purposes of this section, camp means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. But the term does not include napping during the day or picnicking. The term shelter includes, without limitation, any cover or protection from the elements other than clothing."
 - Facts:
 - Insufficient bed space at shelter.
 - Defendant is involuntarily homeless.
 - Shelter? A sleeping bag on an 11-degree night (according to the defendant).
 - Holding: ordinance targets the conduct of camping, not the status of homelessness. See *Powell v. Texas*, 392 U.S. 514 (1968) (upholding public intoxication prohibition but with split in reasoning).



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LONGMONT'S SIT/LIE: A PROPOSAL RIDDLED WITH EXCEPTIONS

- No shelter in the city.
- Only applied to very limited zones. Much smaller than Seattle's.



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LONGMONT'S SIT/LIE: SMALL ZONES




EXHIBIT A

CIVIC CENTER LIBRARY CAMPUS
10 HENRIE STREET AREA
CITY OF LONGMONT





EXHIBIT B

HARBOR SQUARE'S BILLINGSLEY APARTMENTS
1011 1/2 LEE AVENUE
CITY OF LONGMONT



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SIT/LIE - LEGAL BACKGROUND





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SIT/LIE - LEGAL BACKGROUND




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LONGMONT'S SIT/LIE: A PROPOSAL RIDDLED WITH EXCEPTIONS

- Would not apply to benches and planters already obstructing pedestrian passage.




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LONGMONT'S SIT/LIE: A PROPOSAL RIDDLED WITH EXCEPTIONS

- Only applied during hours the adjacent facility was open.
 - Gauntlet effect.
 - Park and facility presence prohibited at night already.
- Peace officer must give a warning and opportunity to comply. *Tempe*.
- First offence is a civil infraction only, carrying a \$25 penalty. *Seattle*.
- Exception for disability and medical emergency.


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LONGMONT'S SIT/LIE: A PROPOSAL RIDDLED WITH EXCEPTIONS

- Exception for permitted demonstrations.
- Automatic and free demonstration permit, retrievable from adjacent facility. *Seattle* and *Tempe*.
 - Exception for spontaneous reaction to events of past 48 hours. *Long Beach Area Peace Network v. City of Long Beach, 574 F.3d 1011 (9th Cir. 2009)*.


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SIT/LIE: A PROPOSAL RIDDLED WITH EXCEPTIONS

- Purpose statement: This section is intended to preserve for pedestrian travel the congested public concrete-paved areas immediately adjacent to highly frequented downtown city buildings including the library, civic center, downtown recreation center, and senior center. Due to the current congestion in such entrance areas from people sitting or lying down, the council finds and determines that this section is the least intrusive means to achieve the safe and efficient movement of pedestrians in these areas. It is not intended to regulate sitting or lying down in any other location in the city. The council does not intend this section to criminalize homelessness, target the homeless community, or otherwise criminalize an individual's status rather than conduct. The council directs that this section be applied equally to all people.

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SIT/LIE HEADLINE

POLITICS > COLORADO LEGISLATURE

Longmont may ban sitting, lying on sidewalks leading to municipal buildings

Measure not intended to criminalize homelessness



Gary "Jingles" Enfield has a smoke as he waits for a bus outside Longmont's St. Vrain Memorial Building on Saturday.

Paul Allen, Longmont Times Call

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SIT/LIE HEADLINE



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SIT/LIE HEADLINE

- Veronique Bellamy, who is a mayoral candidate, said during the public hearing on Tuesday night that the ordinance amounted to a **"war on the homeless**, because homeless people are the only people who sit down outside the buildings."
- **"I never see yuppies sitting down outside the memorial rec center," she said. "I never see yuppies sitting down outside the library."**



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SIT/LIE

- May not have been a bad thing...



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RV PARKING

- Issue: People living in RVs, trailers, etc. in residential areas.



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RV PARKING

- Staff wants to: make people and their trailers go away.
- Political concerns: When you make RV owners angry, people get fired.
- Code issue #1: Even broken-down trailers need only move an inch.
- Code issue #2: These aren't *unattended* vehicles, so we can't tow them. No other remedy.



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RV PARKING - DISCARDED SOLUTIONS

- Plan A: ~~Ban RVs from residential streets.~~
- Plan B: ~~Inhibit non-residents from "living" or sleeping in RVs on streets.~~
- Plan C: ~~Enforce stricter rules for residential than nonresidential areas.~~



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RV PARKING

Ultimate Plan:

- Smaller vehicles need only move “off the chalk” every 48 hours.
 - “Sleeper vehicles” need to move “off the block” – 600 feet – every 48 hours.
 - 7-day automatic permit available online to anyone. \$40 fee.
- Modest goal: Just keep people moving around.



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RV PARKING

Oops!

- Enforcement issue: How will we know they didn't move 600 feet and then come back to *the exact same spot* within the 48 hours?
- Make them stay away for a length of time. (Despite code enforcement not wanting to have to verify by driving around in concentric circles.)



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RV PARKING

Ultimate Plan, cont'd:

- Code now applies to unattended or “publicly kept” vehicles.
- Can ticket the vehicle rather than tow. Just \$50.



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RV PARKING - RESULT

Ultimate Plan, cont'd:

- Code now applies to unattended or “publicly kept” vehicles.
- Can ticket the vehicle rather than tow. Just \$50.



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THINGS NOT TO DO...



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THINGS NOT TO DO...



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QUESTIONS?



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