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Too High a Price 2: Move on to Where?

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with Michael Bishop, Bridget DuPey, Nicole Jones, Ashley Kline, Joshua Mitson, Darren O'Connor

University of Denver Sturm College of Law

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# TOO HIGH A PRICE 2: MOVE ON TO WHERE?



UNIVERSITY *of*  
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STURM COLLEGE OF LAW  
Homeless Advocacy Policy Project

# **TOO HIGH A PRICE 2: MOVE ON TO WHERE?**

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# EXECUTIVE SUMMARY



Photo Source: Denver Homeless Out Loud

Over two years have passed since the University of Denver Sturm College of Law’s Homeless Advocacy Policy Project released its report, *Too High a Price*, detailing the tremendous expenditures Colorado cities make in an effort to criminalize homelessness. As Colorado housing costs continue to skyrocket, its homeless epidemic has grown as well. Unfortunately, state actors continue to write, pass, and enforce ordinances that criminalize some of our most basic, life-sustaining activities. **Laws such as camping, sitting or lying in public, begging, and loitering disproportionately target behaviors associated with homelessness, leaving one of the state’s most vulnerable populations living in fear.**

As a follow-up to *Too High a Price*, this Report details the increased efforts to criminalize homelessness in the state of Colorado. Through an examination of three of Colorado’s most prominent cities, Denver, Boulder, and Colorado Springs, this Report highlights the stark rise in enforcement of anti-homeless laws, and the disproportionate and inhumane impact they have on the day-to-day lives of people experiencing homelessness.

In the process of examining Colorado’s ever-increasing criminalization of homelessness, we found that law enforcement frequently issues “**move-on**” orders to remove visible poverty from its city streets. A move-on order, also referred to as a police “street check,” is a law enforcement technique used to further enforce certain ordinances, including camping bans. In lieu of issuing a citation or making an arrest, officers are directed to instruct homeless individuals, upon contact, to pack up their belongings and “move on” to somewhere else.

At first glance, these move-on orders may seem like a viable alternative to outright issuing citations. However, with the extreme decline in affordable housing and the lack of emergency shelter space to accommodate Colorado’s growing homeless population, these move-on orders leave homeless people with nowhere to go. Instead, they are merely pushed from one place to the next.

To analyze the trends of criminalization of homelessness, we utilized Open Records Requests to obtain data detailing the enforcement of anti-homeless laws in Colorado Springs, Denver, and Boulder. This data revealed that Colorado cities have increased enforcement more than we anticipated. Furthermore, we researched the adverse effects move-on orders have on homeless populations. Based on this research and data, we came to the following conclusions:

- **The overall number of anti-homelessness ordinances has increased.** Between Denver, Colorado Springs, and Boulder, there are at least thirty-seven ordinances that criminalize behaviors associated with people experiencing homelessness. Since *Too High a Price* was first released, Colorado Springs has added one new anti-homeless ordinance and Denver Law students found four additional ordinances in Denver.
- **Colorado Springs and Boulder have increased the number of citations issued under camping bans.** In 2017, Boulder issued 376 citations under its camping ban ordinance. Of those 376 citations, an incredible 81.9% were issued to homeless individuals. Additionally, Colorado Springs increased its enforcement of its two camping bans by a staggering 545% over the span of three years.
- **Denver’s use of move-on orders has skyrocketed at an alarming rate.** In 2016 alone, Denver law enforcement made contact with over 5,000 people in move-on encounters. Denver police increased its contact with homeless individuals through the use of street checks by 475% in the span of three years.
- **The number of emergency shelter beds cannot accommodate Colorado’s homeless population.** In all three cities we surveyed, none provide enough beds to meet the needs of its homeless populations. In Colorado Springs, the number of year-round shelter space can only accommodate 38% of El Paso County’s homeless population. Boulder has even fewer resources, with only enough beds for roughly 25% of its homeless population. Denver doesn’t fare better, with the 2017 Point-in-Time count indicating that on a given night, nearly 1,000 homeless people sleep on the streets.
- **Move-on orders have overwhelming collateral consequences on homeless populations.** The use of move-on orders has grave consequences on people experiencing homeless, including: pushing people to dangerous areas, pushing people farther away from vital resources, and causing adverse health effects. As homeless people are forced into the shadows, extremely harmful consequences usually follow.

Beyond the lack of shelter space and affordable housing, and how criminalization makes homelessness harder to escape, the larger issue is this: *why are we so uncomfortable with facing homelessness?* Our parks are for everyone. Our streets are for public use. Our free speech rights allow for *all citizens* to ask for what they may need. We should not view visible poverty as something to be avoided at all costs—especially if that cost results in further degradation and ostracism.

Despite some city officials acknowledging that issuing citations does nothing to solve the homeless crisis, our research reveals that city actors continue to criminalize homelessness. This Report concludes by offering suggested changes for Colorado cities moving forward. First, only through stopping the criminalization efforts will we begin to alleviate the vicious cycle of homelessness in Colorado. Colorado cities should repeal camping bans that merely criminalize the human necessity to sleep and rest, provide new resources to homeless populations such as twenty-four-hour restrooms, and invest in education efforts that promote the dignity of people in poverty. Trying to make homelessness invisible does nothing more than make homelessness inevitable.

# INTRODUCTION

Colorado cities continue to grapple with addressing the needs of people experiencing homelessness. However, the unfortunate reality of too many homeless individuals is that they are criminalized for simple life-sustaining activities and “moved on” for being visibly poor.

Colorado continues to be an attractive destination for new residents seeking to enjoy the state’s natural beauty, its growing economy and urban centers, and abundance of recreational opportunities. As a result of this surge, housing costs have risen substantially, exacerbating the affordable housing shortage.

Approximately 10,940 people were homeless in Colorado in 2017, which is an increase of nearly 4% in the span of one year. Service organizations, nonprofits, and religious communities provide critical services, shelter, and housing assistance to these individuals. These groups would greatly benefit from additional funding as they are simply unable to meet the immense need. Despite this clear opportunity to bolster essential services, local governments instead squander millions of dollars each year on discriminatory enforcement of ordinances targeting unhoused members of our communities.

In an effort to reduce visible poverty and to promote tourism, many Colorado cities try to make their homeless populations invisible through “move-on” orders, and ticketing and ultimately jailing them for violating ordinances that criminalize behaviors that are necessary for survival. This criminalization of homelessness impacts our communities in significant ways.



Image Source: Denver Homeless Out Loud

This Report researched and analyzed the effects of anti-homeless ordinances in three of the state’s major metropolitan areas: Denver, Boulder, and Colorado Springs. While advocacy organizations offer key services to raise homeless individuals’ standard of living, the cities simultaneously push them out of their communities and criminalize them. These cities continue enforcing their ordinances that criminalize an array of behaviors that are incidental to living and surviving without permanent housing. Citizens of Colorado continue to be legally persecuted for their housing status, treated as criminals, and told that their presence is unwelcome. As local and state governments refuse to remove these ordinances, and instead, increase the number of anti-homeless ordinances, they

force their homeless populations, wherever they are located, to “move on” to somewhere else. And the message these cities convey is clear: move on to anywhere but here.



# DENVER

## Move On! . . . To Nowhere

If you are homeless in Denver, you run the risk of being ticketed under fifteen different ordinances. These ordinances are jailable offenses, making living without a permanent home criminal. With a criminal record, finding housing and stable employment becomes much more difficult. These ordinances, especially Denver's camping ban that prohibits sleeping outside with "any form of cover or protection from the elements other than clothing,"<sup>1</sup> give police officers the authority to "move" you along so that Denver's housed citizens and visitors do not have to see you.

As a follow up to *Too High a Price*, this Section analyzes Denver's increasing enforcement of its camping ban through its move-on orders, including the effects such efforts have on Denver's homeless population. This Section also addresses current initiatives that the City and County of Denver funds with the intent of reducing chronic homelessness in Denver. This Section suggests that the important efforts put forth by homeless service providers are diminished by its increased criminalization and lack of adequate funding. Finally, this Section suggests action steps that the city could take for Denver to improve the quality of life for homeless residents.

### A. DENVER'S AFFORDABILITY AND HOMELESSNESS CRISIS

As the economic, cultural, and political center of Colorado, the Mile High City boasts brisk mountain air, scores of sunshine, and a healthy economy. In fact, Denver remains one of the fastest growing cities in the United States, both in terms of population and economic growth.<sup>2</sup>

In Denver, the price of homes continues to outstrip wage and job growth in the area.<sup>3</sup> Throughout 2017, **the price of houses grew at the 5th highest rate in the nation.**<sup>4</sup> In Denver, a typical home now requires a salary of more than \$81,000 a year.<sup>5</sup> Correspondingly, Denver rental prices are also increasing.<sup>6</sup> In 2017, rental prices rose over 15%.<sup>7</sup> The price of renting a one-bedroom apartment climbed to \$1,410 per month, which is roughly 80% of a minimum wage worker's monthly income.<sup>8</sup> Simultaneously, homelessness did, and continues to, dramatically increase.<sup>9</sup>

Yet, we live in a society where people are largely uncomfortable with witnessing homelessness in plain sight. The downtown atmosphere is regularly cited as a primary concern for businesses that are opposed to their consumers seeing homelessness, such as out-of-state convention attendees visiting Denver.<sup>10</sup>

But in reality, **homeless individuals remain on the streets because they simply have nowhere else to go.** On an average night, the Denver metropolitan homeless population comprises approximately 5,116 people.<sup>11</sup> Included in this total, 924 are unsheltered on any given night,<sup>12</sup> and nearly 2,000 individuals may be housed in emergency shelters, with the remaining individuals sheltered in transitional housing.<sup>13</sup> As striking as these statistics are, the true numbers are likely even greater.<sup>14</sup>

**The price of renting a one-bedroom apartment climbed to \$1,410 per month, which is roughly 80% of a minimum wage worker's monthly income.**

Further, the reported number of available shelter beds is not representative of the resources actually available to individual homeless citizens. Many shelters require that individuals meet certain prerequisites, such as job status, before participating in their programs.<sup>15</sup> In addition, many homeless individuals do not qualify for a shelter because of a disability, criminal record, or pets.<sup>16</sup> There are also no known facilities that allow couples

to stay together. These and other restrictions create obstacles for homeless individuals seeking shelter, and often results in Denver forcing its homeless citizens to sleep on the streets.

The Denver service community offers various forms of assistance to people experiencing homelessness—including many that are specialized. For example, Capitol Hill United Ministries’ Women’s Homelessness Initiative works to serve, educate, and advocate on behalf of women experiencing homelessness in Denver.<sup>17</sup> Additionally, there are several day services including the St. Francis Center and the Gathering Place, the latter of which assists women, children, and transgender people that are experiencing homelessness.

Despite valiant efforts from the continuum of service providers in Denver, there are essential pieces missing. For example, **there are no twenty-four-hour bathrooms available in Denver.**<sup>18</sup> Opportunity for overnight relief is unfortunately limited to only those who are staying at one of Denver’s shelters. Many service providers have made strides to assist people experiencing homelessness into stable housing. Those strides have been underscored by a constant dampening from the continued criminalization of homelessness in the city.

## B. DENVER CONTINUES TO INCREASE THE NUMBER OF ANTI-HOMELESS ORDINANCES

Denver municipal ordinances that prohibit basic life sustaining activities exacerbate the difficulties of being homeless. Although some ordinances do not appear discriminatory on their face, they are, and have been, disproportionately enforced against those who are unhoused.<sup>19</sup> For example, Denver’s smoking ordinance, while not discriminatory on its face, is cited as a de facto extension of Denver’s camping ban.<sup>20</sup> Not only does the smoking ordinance further criminalize activities that a homeless individual must do in public, but it forces individuals off of highly public areas, such as the 16th Street Mall.<sup>21</sup>



Photo Source: Denver Homeless Out Loud

In 2016, *Too High a Price* analyzed eleven Denver municipal ordinances that criminalize basic life-sustaining activities.<sup>22</sup> Since then, we have identified four additional ordinances that the city aggressively enforces against homeless individuals.<sup>23</sup> Denver currently has fifteen municipal ordinances that criminalize twelve different categories of behaviors associated with people experiencing homelessness.

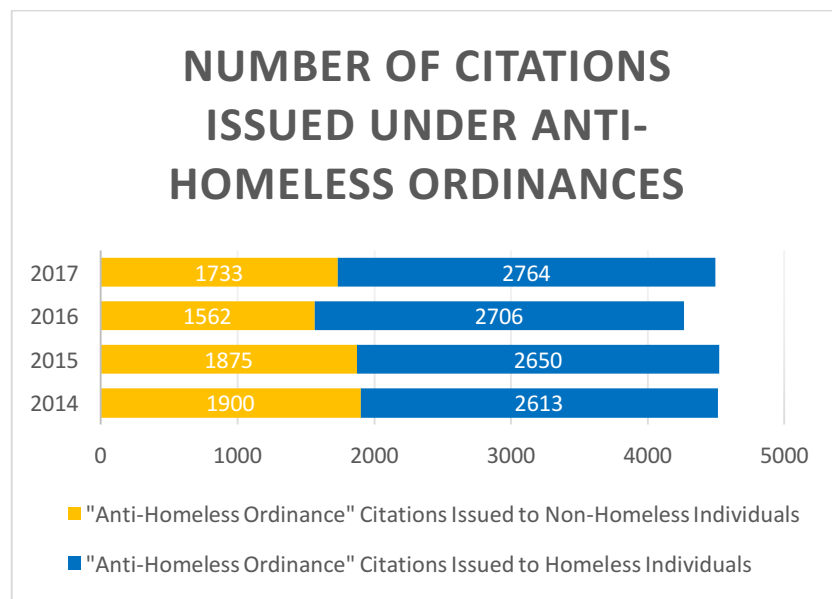
These ordinances include prohibitions against:

- camping on public property
- panhandling
- solicitation on streets and highways
- swimming or bathing in streams
- urination or defecation
- restriction on park hours
- sitting in a public right of way
- storing items in a public right of way
- failure to remove belongings from public areas
- trespass
- overnight residing
- congregating in large groups
- smoking in public places

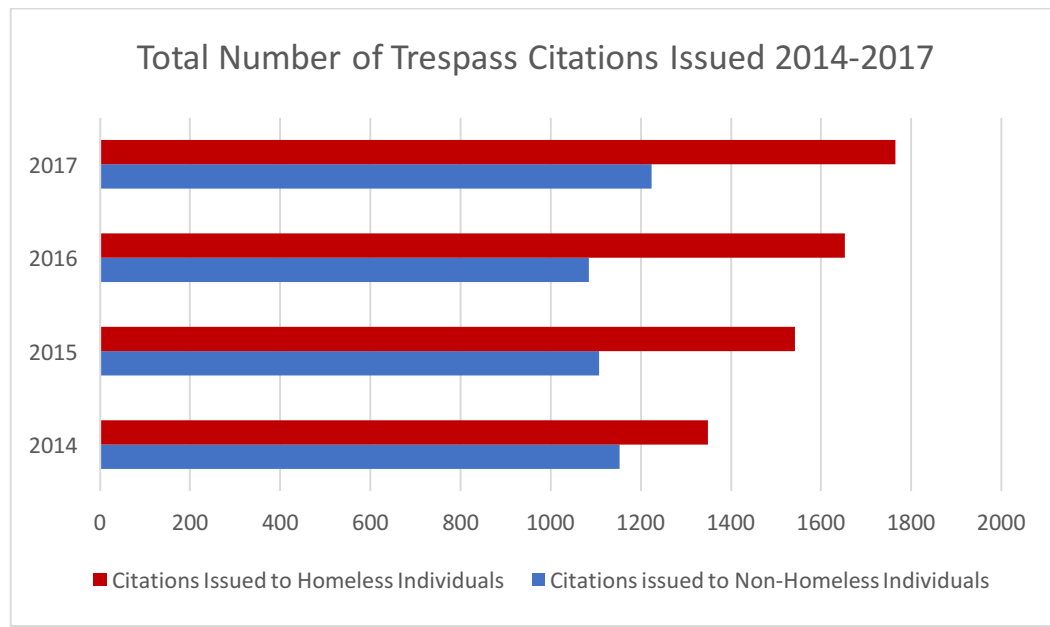
## C. DENVER'S INCREASED ENFORCEMENT OF ORDINANCES TARGETS HOMELESSNESS

Since the 2016 *Too High a Price* report, Denver has provided data in response to open records requests identifying the specific number of citations and move-on orders issued to those who are homeless.<sup>24</sup> From that data, it is clear that Denver enforces these ordinances at far greater rates than originally reported.

From 2014 to 2017, Denver issued 17,803 citations for violations under the identified fifteen ordinances.<sup>25</sup> Of these, almost 11,000 citations were issued to homeless individuals.<sup>26</sup>



Not only are the number of citations given to homeless individuals increasing on a yearly basis, the proportion of citations issued to homeless individuals is rising as well. For example, Denver police cited homeless individuals for 53.9% of all Trespass citations given in 2014—a percentage that has risen to 59% in 2017 and was as high as 60.3% in 2016. Citations under the Curfews and Closures ordinance are similarly telling. In 2014, homeless individuals received 60.2% of all citations under the Section 39.3 ordinance. This percentage grew to 76.5% in 2017.



Simply put, **Denver makes being homeless a crime.**<sup>27</sup> Through its increasing enforcement, Denver is effectively making it illegal for homeless individuals to merely exist in the city.<sup>28</sup> Thus, the reality of being homeless in Denver is clear—if you live on the streets, you run the grave risk of being cited, ticketed, arrested, and jailed, even if there are no available bed shelters and you have nowhere else to go.

## D. DENVER’S ENFORCEMENT THROUGH MOVE-ON ORDERS

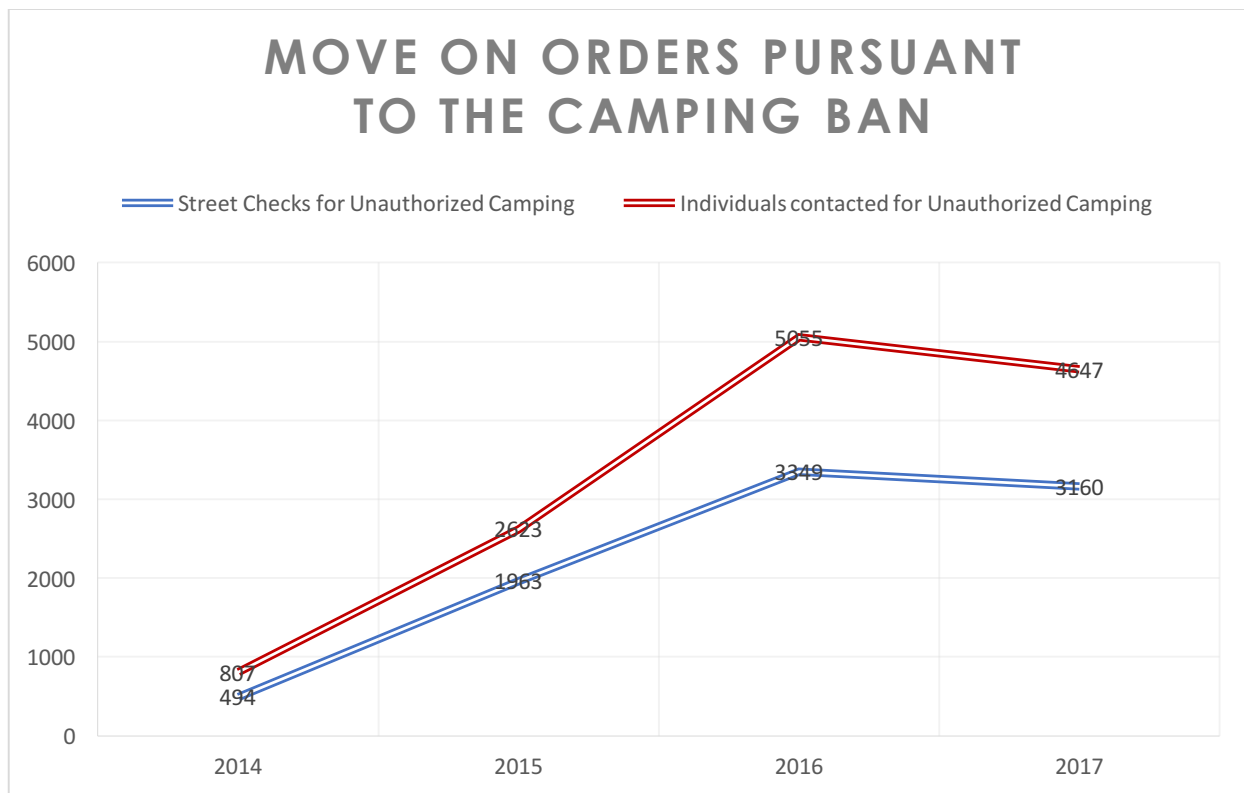
Although there have been relatively few camping ban tickets issued,<sup>29</sup> the total number of citations is not evidence of a decline in the number of people living outside, nor is it a sign of decreased policing. Instead, the city has merely refocused its enforcement methods through move-on orders, otherwise known as police “street checks.”<sup>30</sup> In lieu of citing individuals for camping or using cover to shield themselves from the elements in violation of Denver’s camping ban, officers give verbal warnings to move on from their current location.<sup>31</sup>

Denver police protocol for enforcing the camping ban requires that officers first determine if the individual should be arrested for an outstanding warrant or criminal activity. Then, police are directed to issue a verbal or a written warning, to cease camping, pack up their belongings, and move on. If the individual refuses to move on, the officer evaluates the need for human services involvement and if there is such a need, the officer is supposed to contact an outreach worker. If the targeted individual refuses to comply with an outreach worker, or a worker is unavailable, the officer is directed to issue a citation or arrest the individual.<sup>32</sup>

When confronted by a police officer, homeless individuals often obey the warning to leave the area in order to avoid being arrested. Human services are not often involved in this contact. Although the stated goal of the camping ban was to connect homeless individuals with services,<sup>33</sup> the goal of street checks as a way to connect homeless individuals with resources has failed. Nine months after the camping ban went into effect, an advocacy group interviewed 512 homeless individuals about the effects of the ban.<sup>34</sup> Of those interviewed, a mere 12% reported that when a move-on order was issued, they were also advised of available social services.<sup>35</sup> Furthermore, only 4% of police contacts resulted in an outreach worker assisting the homeless individual.<sup>36</sup> Over the last few years, move-on orders have dramatically increased in both the number of individuals

contacted and the number of street-checks performed.<sup>37</sup> For example, in 2016 alone, over 5,000 individuals were contacted in a move-on encounter with the Denver police.<sup>38</sup>

The number of move-on orders have also increased dramatically from the start of the camping ban's enforcement. From 2014 to 2017 there was a 475% increase<sup>39</sup> in the number of individuals contacted through street checks pursuant to the camping ban, and a 539% increase<sup>40</sup> in the number of overall street checks performed.<sup>41</sup> In any given street check, more than one individual can be affected.



While the rationale behind these orders is to control public spaces, such directives disproportionality affect homeless individuals who have no other choice but to be on the streets. Given the inability of Denver to shelter every homeless individual within the city, move-on orders often leave homeless individuals with few options.

They must either comply with an officer's request to move themselves and their belongings to another public area, face a citation, or attempt to secure a space in Denver's overcrowded shelters. Thus, no matter if it is a ticket issued or police contact made, both enforcement methods support the same idea—being visibly homeless in Denver is unwelcome, and at times, criminal.

Accordingly, move-on orders are no more effective in addressing Denver's homelessness than the arguably unconstitutional camping ban itself.<sup>42</sup> Move-on orders increasingly make basic human tasks a continual battle. With no accessible resources, a homeless individual can move on, but the problem is: to where?

## E. THE COLLATERAL CONSEQUENCES OF MOVE-ON ORDERS

While some may argue that a move-on order is a better alternative to a citation, pushing people who are homeless into the shadows of the city carries potentially harmful consequences. In evaluating the impact move-on orders have on homeless individuals, the vulnerability of this population is important to recognize: 232 homeless individuals died in 2017, a record high for the city and an increase of sixty since 2016.<sup>43</sup> The move-

on orders result in further isolation and ostracism, driving homeless individuals into locations that have higher potential for violence, are detrimental to their health, and force them away from centrally-located resources and outreach workers.

### i. Move-On Orders Push People to Unsafe Places

When Denver police force homeless individuals to move from well-lit areas, they must move to locations that are unsafe and away from the rest of their community. As advocate Terese Howard with Denver Homeless Out Loud explains, “Police enforcement of Denver’s camping ban has resulted in constant movement and greater danger for those who live on the streets.”<sup>44</sup>

In a 2013 survey conducted by Denver Homeless Out Loud, of 512 homeless respondents in central Denver:

- 53% say they feel less safe with their new sleeping situation after the camping ban
- 52% of respondents who used to sleep downtown say they did so because that area was safe and well-lit.
- 66% of respondents who used to sleep downtown say they now usually sleep in more hidden and unsafe locations.
- 20% say they more often sleep in outlying neighborhoods or in surrounding cities and travel long distances to get there.

When officers make contact and issue move-on orders, homeless individuals often leave the area with the goal of avoiding further police interaction.<sup>45</sup> But in order to stay hidden, they frequently find themselves in unfamiliar locations, such as outlying parks and neighborhoods, that are isolated and unlit.<sup>46</sup> The result of seeking more secluded areas to sleep is that homeless individuals are at a higher risk from their unsafe surrounding. Denver has seen an alarming rise in violence against homeless individuals. In 2017, the number of reported crimes against those who are homeless climbed nearly 42% over a four-year period.<sup>47</sup>

While homeless individuals are never truly shielded from the inherent dangers of living on the streets, move-on orders further increase the likelihood of perpetrated violence. The camping ban’s effect, therefore, is not that fewer homeless individuals are sleeping on the streets, it is that they are pushed to areas of the city that are further away from Denver’s limited services, less likely to be patrolled by police officers, and therefore are more likely to be victimized.

### ii. Move-On Orders Lead to Adverse Health Effects

**“And I stand here right now, and I look at everybody and everybody else that is homeless, I’m sure you’re tired too. I have to get up every time a cop comes by and take my blanket from underneath me and make sure I’m not covered up. I’m not out here because I choose to be. It’s really cold, and it was really cold last night. And I don’t want to be here. And if I could get a job I would, but I am so tired. I just want to sleep. That’s all I want to do, you know. And I can’t sleep no matter where I go. . . it’s torture. I can’t even think straight because I haven’t slept.”**

-An unnamed homeless resident of Denver<sup>48</sup>

Move-on orders prohibit homeless individuals from laying down and resting for any significant period of time. Just being homeless increases an individual’s risk of illness, injury, and death—with physical illness, such as heart problems and cancer, being more prevalent causes of death than substance abuse or mental illness.<sup>49</sup> Sleep deprivation forced on homeless individuals through move-on orders compounds these health risks.

Homeless individuals face the incessant challenge of sleep deprivation on a daily basis; without sufficient sleep, human bodies cannot fully function.<sup>50</sup> Chronic sleeplessness increases the severity of age-related ailments, such as diabetes, hypertension, obesity, and memory loss, and decreases general wellness.<sup>51</sup> Though the increase in the severity of illness is better solved with suitable housing, the lack of sleep homeless individuals experience due to move-on orders unnecessarily heightens the likelihood of illness.

### iii. Move-On Orders Push Homeless Individuals Away from Resources

**“Obviously our first task is to provide some of these services. If they refuse these services and they are going to move along, to be candid with you, we will be done with it . . . if we say “move along,” and they move along, for all practical purposes, we have completed the task. . .”**

-Denver Police Chief Robert C. White<sup>52</sup>

When Denver passed the City’s camping ban in 2012, proponents of the ordinance insisted that the ban would connect homeless individuals to social services.<sup>53</sup> Proponents argued that enforcing the camping ban would improve homeless people’s quality of life because they would have more opportunities to engage with advocates to provide them with resources.<sup>54</sup> Nearly six years later, the falsity of those claims is evident.<sup>55</sup>

While Denver’s own policy requires its police to direct homeless individuals to social resources upon contact,<sup>56</sup> police policy shows that these directives are not a top priority, as was once indicated. As discussed above, police protocol first directs officers to investigate other violations of the law,<sup>57</sup> often leading to warrant checks.<sup>58</sup> Only after an officer gives a verbal warning, gives a written warning, and receives a refusal to move on, the officer then *attempts* to contact outreach workers.<sup>59</sup>

Many times this attempt never occurs. Although the stated goals of the camping ban may have been to connect homeless individuals with services,<sup>60</sup> the goal of street checks as a way to connect homeless individuals with resources has failed.<sup>61</sup>

## F. MOVING FORWARD: SUGGESTED CHANGES

If Denver wants to take more meaningful steps to address homelessness, it should first repeal the camping ban. First and foremost, its enforcement is inhumane and leads to further ostracism of those in the homeless community. In addition, it is wasting taxpayer money by pushing those without shelter from one illegal area to another.<sup>62</sup> The camping ban, and criminalization more broadly, does nothing to address the root causes of homelessness. Those in Denver’s homeless community need more opportunities to participate in Denver’s workforce and obtain long-term housing.

Moreover, Denver does not have enough shelter space for those experiencing homelessness. Denver should focus resources to provide additional emergency shelter. Existing day programs, such as the St. Francis Center, have made significant efforts aiding homeless individuals. Denver should be aiming to bolster these day programs and create new social service opportunities. For example, new shelters should not discriminate against couples, and should provide short-term storage for those who have belongings.

Further, Denver must critically analyze and rework the government programs it already has in place. For example, Denver, like many cities has an ordinance prohibiting public urination. Yet, it has no public restrooms that are open twenty-four hours.<sup>63</sup> To address the lack of public bathrooms in Denver, it created the Public Restroom Pilot Program to determine which locations would best serve the needs of the community—yet all of these pilot program restrooms close at some point in the evening, leaving no opportunity for overnight relief. How can Denver criminalize outdoor relief when it fails to take into account the biological needs of those experiencing homelessness?<sup>64</sup> Denver should build multiple new twenty-four-hour bathrooms to address this issue.

Denver's safety-net programs aimed at addressing homelessness are woefully under resourced. The city is not spending the appropriate amount of money on targeted resources that can adequately address homelessness. There are promising programs in place that would greatly benefit from bolstered funding from the city. The first program, Denver Day Works, provides temporary employment for homeless individuals.<sup>65</sup> This innovative program marks a great opportunity for transition into longer term stable income and potential for housing. The program, unlike most traditional employers, overlooks an applicant's criminal record. The second program, Denver Supportive Housing Social Impact Bond (SIB), is a housing initiative developed to place homeless individuals with criminal records into stable housing environments with available services.<sup>66</sup> The SIB has seen successful in reaching its goal of placing 250 chronically homeless citizens into stable housing.

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## How can Denver criminalize outdoor relief when it **fails to take into account the biological needs** of those experiencing homelessness?

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Both programs are commendable efforts towards assisting Denver's homeless population. In light of these early successes, the city should work to apportion more funding into these and similar programs geared towards assistance.

Similarly, Denver needs to continue tailoring existing housing services for those experiencing homelessness. City officials have criticized the city for spending millions from the housing budget without a new housing plan, and such short-sightedness is problematic when it comes to providing for those without permanent shelter.<sup>67</sup> The SIB, while commendable in housing 250 chronically homeless individuals, does not acknowledge or accommodate for the fact that there was an increase of 224 chronically homeless individuals last year alone.<sup>68</sup>

Above all, efforts the city is making in terms of assistance have been overshadowed by its continued criminalization of homeless individuals. Denver has increased its ineffective criminalization, both with the number of municipal ordinances that target people experiencing homelessness, and increased enforcement of anti-homeless ordinances already in effect. To make greater strides, bolstering programs, in terms of substance and funding, will undoubtedly help ensure better assistance. More so, the city should repeal the anti-ordinances, and ensure that inevitable behaviors do not result in criminal punishments.



# BOULDER

## Making Homelessness Inevitable by Trying to Make It Invisible

The City of Boulder's continued enforcement against its homeless residents reflects a willingness to spend whatever is necessary to criminalize people experiencing homelessness.

Boulder continues to criminalize homelessness by enforcing discriminatory laws that prohibit basic, life-sustaining activities. For example, Boulder disproportionately issues a high number of camping and smoking tickets specifically to homeless individuals.<sup>69</sup> Boulder does this despite warnings from local law enforcement leaders that this criminalization is expensive and solves nothing.<sup>70</sup> The first *Too High a Price* report conservatively estimated that Boulder's enforcement of the anti-homeless ordinances alone cost Boulder just shy of \$1 million over five years.<sup>71</sup> Boulder has since reported its own spending; Boulder spent \$1.8 million *per year*.<sup>72</sup>

The Section first looks at who is experiencing homelessness in Boulder and the city's changing demographics. Then it addresses the continuing criminalization of people experiencing homelessness at high rates despite broad recognition that criminalization does not help resolve homelessness. After discussing barriers homeless people face to accessing services, the Section ends with suggested actions city officials can take to improve the lives of people experiencing homelessness and, consequently, actions that could improve the entire community.

With one hand, Boulder gives generously to its homeless services; with the other, Boulder uses law enforcement to tighten its grip on those who are not able to access those services.<sup>73</sup>

### A. BOULDER'S COMMUNITY OF PEOPLE EXPERIENCING HOMELESSNESS

People experiencing homelessness in Boulder are members of the Boulder community. In 2017, the Boulder County Point-In-Time survey identified 600 individuals who identified as homeless.<sup>74</sup> Roughly 60% of people experiencing homelessness in Boulder were last housed either in Boulder or surrounding communities. The one-night count of Boulder's homeless population in 2017, revealed that 51% of respondents who self-identified as homeless reported their last permanent residence was in Boulder County.<sup>75</sup> Another 9% were from nearby counties, with only 28% of those surveyed from out of state.<sup>76</sup>

**"Boulder is home to many homeless individuals because home is not just an address."**

-Boulder Municipal Court employee<sup>77</sup>

Whether people in Boulder are experiencing homelessness for the first time or have been there without housing for years, they have as much right to call the Boulder home as any renter or homebuyer residing in in the city.<sup>78</sup> By definition, by law, and by relationship to the community, these people deserve to be called "neighbors" and treated as such.

Whether it is people experiencing homelessness or housed residents, the changing demographics and increased population in Boulder has challenged the city. Boulder's population boom is exacerbating an

already expensive and competitive housing market for even those above moderate means.<sup>79</sup> The monthly rent for a two-bedroom apartment increased over \$200 between 2014 and 2017.

Increased housing costs increases homelessness. Research shows “a \$100 increase in rent is associated with an increase in homelessness of between 6 and 32 percent.”<sup>80</sup> Not surprisingly, Boulder residents have listed affordable housing as one of their top concerns.<sup>81</sup>

## B. CRIMINALIZATION OF HOMELESS INDIVIDUALS IS NOT THE SOLUTION.

City leaders rely on law enforcement to address homelessness by criminalizing basic, life-sustaining activities such as laying and sleeping. Boulder continues to enforce ordinances against homeless individuals at a disproportionate and alarming rate. For example, Boulder issues camping ordinance citations to people experiencing homelessness at a rate nearly 500 times greater than it does to housed individuals.<sup>82</sup>

“I don’t believe any community can enforce their way out of homelessness. The police are often called to address illegal behavior and giving a warning or writing a summons modifies behavior, but it doesn’t solve homelessness.”

Boulder Chief of Police Greg Testa

Top law enforcement officials agree that the camping ban, and similar anti-homeless ordinances, do nothing to address the root problems and causes of homelessness, wasting the taxpayers’ money in the process. Greg Testa, Boulder City Chief of Police, explained that he does not believe “any community can enforce their way out of homelessness. The police are often called to address illegal behavior, and giving a warning or writing a summons modifies behavior, but it doesn’t solve homelessness.”<sup>83</sup> Boulder County Sheriff Joe Pelle has similarly stated “Jail is an expensive solution. I can’t even call it a solution. It’s an expensive option. . . . I’m not sure this is a problem we’re going to enforce our way out of.”<sup>84</sup>

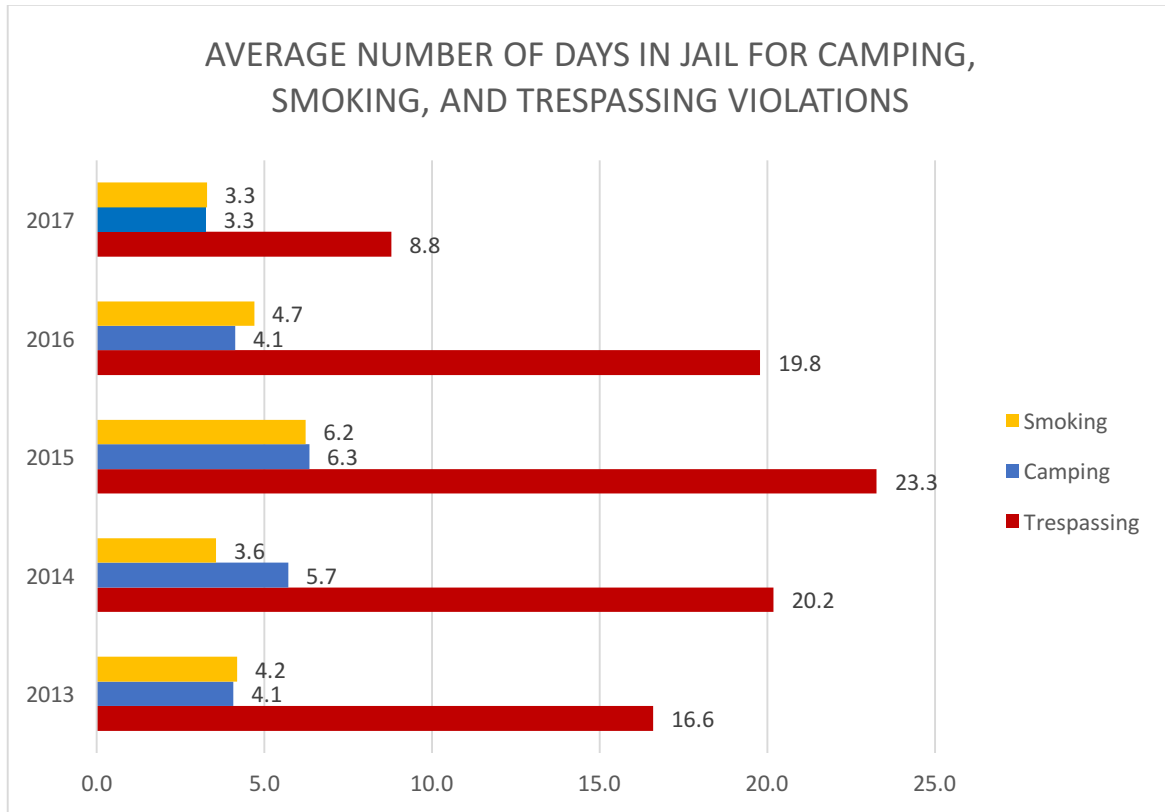
Further frustrating this issue, Boulder does not have enough shelter beds to house its homeless population. Boulder’s homeless shelter can accommodate only 160 persons and the Path to Home program provides only fifty more.<sup>85</sup> 210 year-round beds meet less than a quarter of the need for the roughly 1,000 people who have sought help.<sup>86</sup> City officials defend the number of shelter spaces as adequate, stating no-one has been turned away.<sup>87</sup> The numbers show otherwise.

The end result is that the majority of homeless individuals in Boulder risk a criminal record simply for sleeping on the streets when there is no shelter space available for them. Boulder’s limited shelter space and the difficulty accessing those spaces, discussed in the next section, unsuccessfully attempts to make homelessness invisible, but only succeeds at making homelessness inevitable.

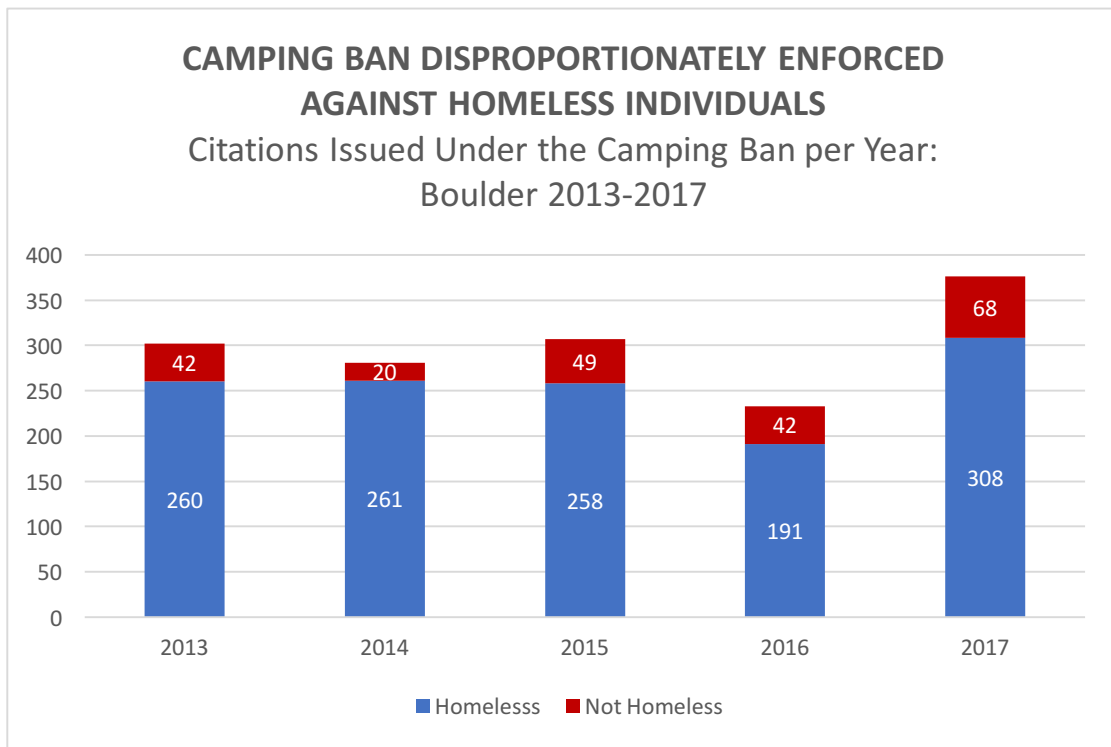
Anti-homeless ordinances are not just exacerbating problems for homeless individuals, it’s causing jail overcrowding as well.<sup>88</sup> Simply put, “cycling people through jail is not changing their behavior and is not helping public safety.”<sup>89</sup> Moreover, cycling homeless individuals through jail and targeting homeless people

with minor citations costs Boulder taxpayers. On average, there are thirty to forty individuals in the Boulder County jail for only municipal violations.<sup>90</sup> Of these individuals, about 70% are homeless.<sup>91</sup>

At the cost of \$130 each day, Boulder spends \$2,900 to \$3,900 every day on jailing homeless individuals solely for municipal court violations. This amounts to a cost of \$1,000,000 to \$1,400,000 each year.<sup>92</sup> Reallocating these funds would double the city's investment in community programs addressing homelessness,<sup>93</sup> improving those programs rather than perpetuating the unsuccessful practice of criminalization.



Citation trends show that city officials are content, however, to invest in a law enforcement solution that is no solution at all. The police in Boulder continue, as directed, to issue camping citations at a consistently high rate.<sup>94</sup> The only rational conclusion is that Boulder is working to make homeless individuals invisible from the public eye. Because unhoused residents must sleep somewhere, the city spends whatever is necessary to jail those who are present in public spaces.<sup>95</sup>



Additionally, having a criminal record perpetuates the cycle of homelessness because such records significantly impede access to jobs or housing.<sup>96</sup> With the computerization of court records, criminal background checks for employment have been steadily increasing. Approximately 92% of employers conduct criminal background checks for applicants.<sup>97</sup> Particularly troubling for individuals experiencing homelessness, is a recent study finding that only 8.2% of employers were open to hiring an applicant with a criminal record and that such discrimination was most likely to happen at the first point of application, meaning that it is a continual struggle for those with a record to even get their foot in the door.<sup>98</sup>

Thus, for those few people experiencing homelessness that can navigate the negative stigma of living on the streets, as well as the severely harsh conditions of doing so, they are likely to face significant resistance from employers who are unwilling to look past prior criminal convictions. Finally, criminal records trace arrests, not just convictions, and, as such, a mere arrest resulting from citations under the camping ban, trespass, or curfews and closures for infractions, such as covering oneself with blankets, jeopardizes a person experiencing homelessness’s ability to gain meaningful employment.<sup>99</sup>

## C. BOULDER’S RESOURCES

There is no denying that Boulder is focusing on programs addressing homelessness, spending nearly six million additional dollars between 2016 and 2017.<sup>100</sup> While this may lead to “up to 50 units of affordable housing,”<sup>101</sup> Boulder’s significant spending has not created a single extra shelter space, and if the temperature is not cold enough, has 100 fewer beds available throughout the winter.<sup>102</sup> Pouring money into services that become increasingly inaccessible as a result of policy changes, while simultaneously providing the same or significantly fewer places to sleep, does little to create a positive impact on people experiencing homelessness. A homeless person who complies only moves on to a new location, until the police make contact again and repeat the order. *There is nowhere to go.*

For those seeking shelter, a homeless individual must complete an admission process called coordinated entry.<sup>103</sup> The coordinated entry service office is located on 30th Street in Boulder, several miles from other services or the downtown area frequented by people experiencing homelessness.<sup>104</sup> The office hours are also limited.<sup>105</sup> Once this process is complete, the individual can then seek other resources, such as the Boulder Shelter for the Homeless.

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## The Shelter's barriers negatively impact the ability of homeless people because they are unable to comply with all the rules and conditions.

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The Boulder Shelter for the Homeless (the Shelter) is a nonprofit organization located in downtown Boulder.<sup>106</sup> It is the only permanent shelter located between Fort Collins and Denver.<sup>107</sup> It has beds for 160 individuals on an average night, with three to four onsite staff members.<sup>108</sup> Only if an individual is compliant with Shelter rules can they have a reserved bed.<sup>109</sup>

Each individual that uses the Shelter resources must read, agree to and sign a page long list of rules that they must abide by.<sup>110</sup> Shelter officials defend these rules stating that they are in place to provide a safe environment;<sup>111</sup> however, such rules create unnecessary boundaries. For instance, individuals must be at the Shelter at the time it opens. If they are late, they are not let in, but if they are early, they are not allowed to wait on the property because it is considered loitering.<sup>112</sup> Arriving on time presents a Goldilocks paradox, individuals must get the arrival time just right, despite lack of access to a vehicle or public transportation.<sup>113</sup> The Shelter's barriers negatively impact the ability of homeless people because they are unable to comply with all the rules and conditions.<sup>114</sup>

In addition to the Shelter, Boulder provides the aptly named Severe Weather Services, which is indeed severe when considering the conditions required to open it.<sup>115</sup> Homeless individuals need to have access to the internet or phones<sup>116</sup> to know if the services are open on specific days or where they are located on that specific night. The service has a hotline and a website; however, those are useless if an individual cannot access them regularly.

For those transitioning out of brief periods, homelessness and for those seeking more permanent housing solutions, Boulder has two programs: Path to Home and Housing Focused Shelter, respectively.<sup>117</sup> In order to use this service, one must go through coordinated entry and screening in order to determine the person's qualifications.<sup>118</sup> However, this program limits service to a mere fifty people.<sup>119</sup> One of the Path to Home's programs is a "reunification" service that provides transportation to a different city. This process has been shown as having an "overall effect of moving homeless people from rich places to poorer places."<sup>120</sup> The second program, Housing Focused Shelter, offers longer term placement to achieve a "successful exit" through case management.<sup>121</sup>

These resources are not working for the majority of homeless individuals.<sup>122</sup> They might work for individuals who have the education, knowledge, and mental and physical capability to jump the hurdles Boulder has put in place. However, the majority of individuals who are homeless struggle to navigate Boulder's convoluted system.<sup>123</sup> The individuals that truly cannot get out of homelessness without help and resources are being turned away and left, literally, in the cold. Boulder needs to change how it allocates resources. As Mike Homner, a homeless advocate observe, Boulder should not "put politics above human lives. No one should die over a bottom line."<sup>124</sup> Limits and labels have created a division between those whom Boulder is willing to support and guide out of homelessness, and those whom Boulder pushes into invisibility through over-enforcement and criminalization—the haves and the have nots.

## D. MOVING FORWARD: SUGGESTED CHANGES

If the city of Boulder wants to take meaningful steps to address homelessness, it must combine short-term remedial action with programs focused at addressing the root causes of homelessness. One of the first steps it should take is to address the ineffective and discriminatory criminalization of homelessness. First and foremost, city leadership should repeal the camping ban. Similarly, city officials should direct police to stop discriminatorily citing homeless people for ordinances such as trespass and the smoking ban.<sup>125</sup>

To address the lack of shelter space available, and the restrictive entry requirements, city officials should consider creating a sanctioned camping area, such as those regulated in the cities of San Diego, Eugene, and Seattle.<sup>126</sup> This will allow people experiencing homelessness to begin achieving a sense of civic value, independence, and dignity. However, for camps and tiny home villages to become successful, as they are in other cities, they must be equipped with trash services and bathrooms.<sup>127</sup>

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Moreover, temporary residents of the Boulder Shelter for the Homeless need an alternative place to go if removed because it creates a danger to their safety and well-being. Removal from the Shelter often requires a person to subsequently violate the city's camping ordinance, which does not even allow using a blanket.<sup>128</sup> Banning or sending people away can have lethal consequences, and is administered too subjectively.<sup>129</sup> The city or the Shelter should consider providing neutral mediation and binding rulings for people appealing temporary removals or bans.

Additionally, the city should provide more access to social services. For example, the city should make social workers and case managers available at the city's public libraries, or other easily accessible locations, to provide a means of building trusting relationships with those who cannot or will not access services through the coordinated entry system.<sup>130</sup> One example of the City providing this type of assistance is the Boulder Municipal Court Navigator, who "work[s] with people on their own terms to try to improve their situation and decrease their involvement with the criminal justice system."<sup>131</sup> However, one should not have to go through the criminal justice system in order to receive such assistance.

In conclusion, Boulder has the resources and ability to react quickly when faced with a crisis of discrimination. When Boulder was reported to be arresting African Americans at near a five times rate as the rest of its community, city leadership responded appropriately and rapidly, hiring outside independent firm Hillard Heintze to assess racial bias in Boulder's police department at a cost of nearly one-hundred-thousand dollars.<sup>132</sup> Hillard Heintze produced a seventy-four-page report that was publicly discussed at the request of Boulder City Council.<sup>133</sup> The report provided twelve recommendations, from which the city and the police department have taken public action on.<sup>134</sup> This Report demands a similar response: a public forum, an outside investigation, and a commitment to concrete steps of correction. Boulder has the resources, but does it have the commitment to end the cycle of poverty and the criminalization of its homeless neighbor.

# COLORADO SPRINGS

## A Tale of Two Cities

On February 28, 2018, in a gated events venue on a scenic hill, Colorado Springs city officials held a panel to discuss the future of its homeless population. At this exclusive setting, Colorado Springs officials and community members gathered to make decisions about how to best address the issue of homelessness in their city. Notably, the tenor of the conversation turned towards how best to remove the visible signs of homelessness—a sign of the community’s primary concern for the city’s overall aesthetic over the needs of those most vulnerable.

This lack of attention to the challenges faced by people experiencing homelessness reflects a climate in Colorado Springs where city officials continue to criminalize homelessness. Instead of trying to find the most realistic and humane solutions to aid its homeless population, the city continues to merely tell these people to move on—but where they can move on to remains a mystery.

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A survey conducted in 2016 found that the cost of rent in Colorado Springs rose 11.4% within the span of a year, which “was the fastest clip of any city in the nation.”

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This Section explores Colorado Springs’ marginalization and punishment of people experiencing homelessness. First, this Section will discuss the Colorado Springs’ ordinances that criminalize behaviors frequently associated with people experiencing homelessness and the Colorado Springs Police Department’s (CSPD) enforcement of these ordinances. It highlights the work of the CSPD Homeless Outreach Team (HOT), and illustrates the inadequacies of these efforts. This Section then explains Colorado Springs’ recent efforts to criminalize homelessness through an exploration of enactment of a new median ban. Finally, this Section explores the lack of housing options for people experiencing homelessness and suggest changes for the city moving forward.

### A. COLORADO SPRINGS’S EFFORTS TO CRIMINALIZE HOMELESSNESS

With a population of 465,101, Colorado Springs is the second most populous city in Colorado.<sup>135</sup> Its economy is heavily influenced by tourism and its strong military presence, which converge to make the city a unique blend of picturesque natural beauty and family-oriented focus. Colorado Springs is also home to a significant population of unhoused citizens; in its most recent Point-in-Time count, the Colorado Springs/El Paso County Continuum of Care estimated that 1,415 homeless residents live in El Paso County.<sup>136</sup>

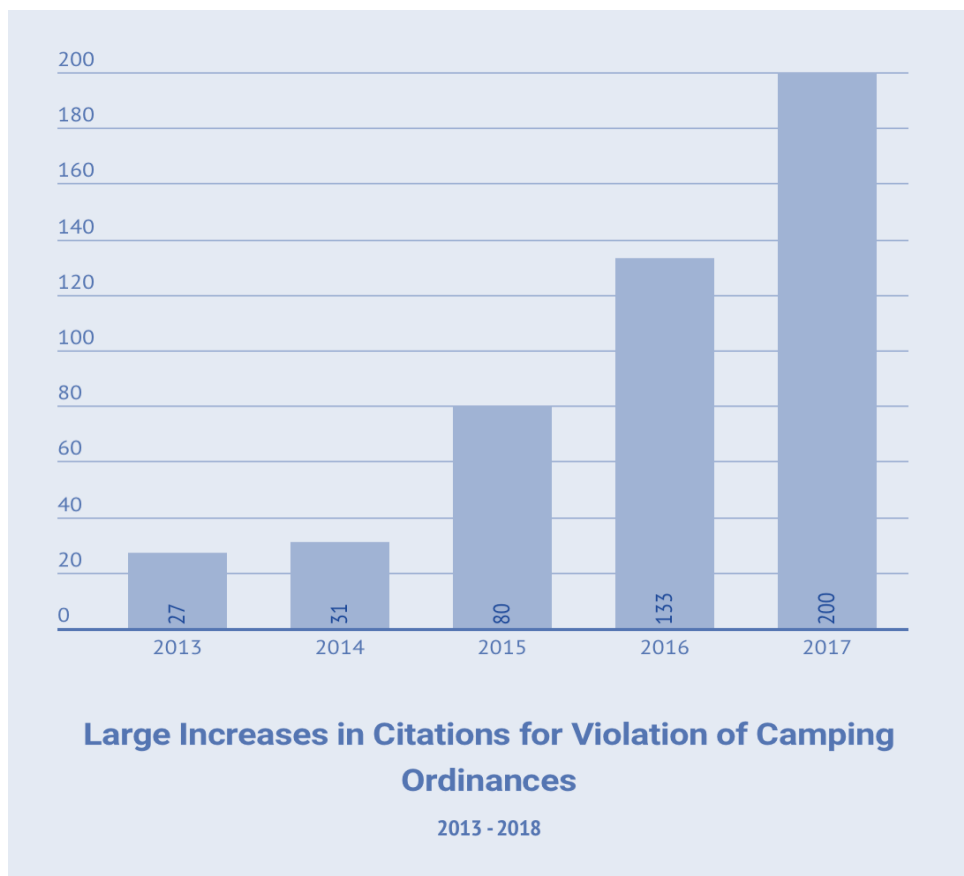
Colorado Springs currently has twelve municipal ordinances that criminalize sixteen different categories of behaviors associated with people experiencing homelessness. These ordinances include prohibitions against: (1) camping on public property;<sup>137</sup> (2) camping in parks;<sup>138</sup> (3) loitering;<sup>139</sup> (4) sitting or lying in commercial districts;<sup>140</sup> (5) accumulating or storing “junk”;<sup>141</sup> (6) obstructing passage or assembly;<sup>142</sup> (7) restriction on park hours;<sup>143</sup> (8) polluting;<sup>144</sup> (9) urination or defecation;<sup>145</sup> (10) “aggressive” solicitation;<sup>146</sup> (11) prohibition of pedestrians on medians;<sup>147</sup> and (12) smoking in public places.<sup>148</sup>

Data received from the Colorado Springs Police Department (CSPD) revealed that a total of 1,887 citations were issued under ten<sup>149</sup> ordinances from 2013 to 2018.<sup>150</sup> Most of these citations were issued under two specific ordinances: Section 9.9.404, which prohibits camping in public parks, and Section 4.2.102, which prohibits entering or remaining in public parks after hours. The number of citations issued under the restriction on park hours' ordinance decreased from 277 citations to sixty-nine citations over a two-year period. Yet, this decrease was replaced by a large increase in enforcement under the restriction on camping in public parks, which increased from seventy-four citations to 174 citations in the same period.

Even more significant is the overwhelming increase in the number of citations issued under the two camping ordinances since *Too High a Price* was published in early 2016. The data provided by the CSPD indicated that the enforcement under these two ordinances has increased from thirty-one citations in 2014, to 200 citations in 2017, which amounts to a staggering 545% overall increase. Additionally, an overwhelming 84% of the 200 citations in 2017 were to people experiencing homelessness.

This increase in criminalization of homelessness is in stark contrast to the picture that the media paints of the city's continuous attempt to help its homeless population. For instance, a recent article in the Colorado Springs Independent, titled "Being neighborly in the Springs increasingly means forming bonds with those suffering homelessness," discussed the addition of "150 extra mats at an emergency shelter" for when winter temperature dip below thirty-nine degrees.<sup>151</sup> Other articles discuss the CSPD's Homeless Outreach Team (HOT), the department's dedicated team comprised of five officers. These articles frequently detail the HOT team's methods, explaining that the it "tr[ies] to connect people with services upon initial contact."<sup>152</sup>

The HOT team continuously reports that it does not issue citations under the camping in public spaces ban if no emergency shelter beds are available. However, the number of beds in Colorado Springs is substantially lower than its homeless population as calculated by the current Point-In-Time count. The city currently has 540 beds available year-round to individuals experiencing homeless.<sup>153</sup> This number only accounts for 38% of El Paso County's homeless population. Not only is the number of beds available to unhoused people extraordinarily deficient, the restrictions placed on qualifying for these beds can be great.



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## B. LACK OF HOUSING OPTIONS FOR PEOPLE EXPERIENCING HOMELESSNESS

A lack of access to temporary shelter and long-term housing, coupled with the higher rate of citations issued under camping ordinances, creates a Catch-22 for people experiencing homelessness in Colorado Springs. The Springs currently has three homeless shelters that operate year-round: Salvation Army R.J. Montgomery Center, Urban Peak Colorado Springs, and Springs Rescue Mission. The city’s largest shelter, Springs Rescue Mission, is a self-described “low-barrier shelter” with three hundred beds.<sup>154</sup> Of these three hundred beds, two hundred thirty are reserved for men and the remaining seventy beds are available to women. Those who require personal assistance, such as help using the restroom, are not eligible as the shelter does not have medical personnel on staff. Additionally, children under the age of eighteen are not eligible for entry.

In contrast, the city’s smallest shelter, Urban Peak, provides only twenty beds, which are only available to people between the ages of fifteen- and twenty-years-old. In addition to Urban Peak’s age requirement, an individual seeking to utilize its shelter services must have valid identification, must pass a urinary analysis free of recreational drugs besides marijuana, and must have the ability to function independently without medical care or assistance. Additionally, if a person under the age of eighteen seeks entry, he or she must be accompanied by a parent or guardian during the initial intake process to be eligible for a bed.

Services	TEMPORARY SHELTERS			
		R.J. Montgomery Center	Springs Rescue Mission	Urban Peak
	Beds	220	300	20
	Assistance	N/A	No	No
	Sobriety	Yes	No	Yes
	Ages	Any Age*	18 and up	15 to 20**

The second largest shelter in the city, Salvation Army R.J. Montgomery Center, has two hundred twenty beds available to the homeless population. This particular shelter is unique in that it is characterized as a solely sober environment. This means that individuals must abstain from using both drugs and alcohol for twenty-four hours prior to entry and must remain sober to remain eligible for a bed. In addition to these requirements, a person seeking the services of the R.J. Montgomery Center must have valid identification to qualify for entry and cannot enter if he or she is a registered sex offender. Finally, people experiencing homeless under the age of eighteen are only permitted to stay if they are accompanied by a parent or guardian.

\* 18< must be accompanied by parent or guardian  
 \*\* 15 to 17 must have parent or guardian present to gain admission

While the city of Colorado Springs only has 540 beds available year-round to individuals experiencing homeless, the Salvation Army recently opened an emergency shelter with a capacity of one hundred fifty available during colder temperatures. However, this shelter is only available to unhoused people from 6:00 p.m. to 9:00 a.m. when the temperature dips below thirty-nine degrees.

Not only does Colorado Springs lack emergency beds for people experiencing homelessness, the increased and rising cost of housing makes it difficult for people to find long-term solutions. A survey conducted in 2016 found that the cost of rent in Colorado Springs rose 11.4% within the span of a year, which “was the fastest clip of any city in the nation.”<sup>155</sup> Even Colorado Springs’ Mayor John Suthers has acknowledged that its efforts to find solutions to the affordable housing shortage “won’t make a dent in the predicted shortage of 26,000 units by 2019.”<sup>156</sup> Without affordable long-term housing options and emergency shelter beds, coupled with the ever-increasing number of camping citations issued by the CSPD, the homeless population of Colorado Springs has nowhere to go.

## C. COLORADO SPRINGS HOMELESS OUTREACH TEAM

In 2009, the CSPD formulated the HOT team as a four-officer specialized unit within the department.<sup>157</sup> The department created the HOT team in an effort to connect and interact more closely with the community of people experiencing homelessness in Colorado Springs. The HOT team was modeled after a program in Pinellas Park, Florida, which is comprised of one police officer paired with a social worker to serve the people experiencing homelessness in its population of nearly 50,000 citizens.<sup>158</sup> However, nearly ten times larger than Pinellas Park, Colorado Springs's HOT team consists of four police officers who were assigned to the team on a voluntary basis. Instead of a formal training program, the officers on the HOT team receive "on the job" training where they learn the best ways to interact with people experiencing homeless.<sup>159</sup>

The HOT team is often referred to as the city government's foremost authority on issues concerning the homeless population. In 2010, the team was recognized for its methods by winning the International Herman Goldstein Award for Excellence in Problem-Oriented Policing. In its application for that award, the HOT team submitted a brief in which they stated that it has put forth a strategic effort to develop a "multi-agency partnership to increase 'street-level' collaboration of service providers."<sup>160</sup> The brief went on to explain that the HOT team is an "incredibly successful project," noting its clean-ups of homeless camps and the arrests it has made.<sup>161</sup> It is unclear how the HOT team measures success: the homeless population has remained fairly constant since the inception of the HOT team.<sup>162</sup>

The HOT team stresses an alternative enforcement approach to its interactions with people experiencing homelessness in Colorado Springs. Officer Kippel, a senior member of the HOT team, stated: "You can't arrest your way out of homelessness."<sup>163</sup> In addition, Officer Kippel stated that the HOT Team has protocols before issuing citations to homeless individuals under the ordinance prohibiting camping on public property, and that HOT team officers have exclusive authority to issue citations under that ordinance. Furthering this service minded approach, the HOT team abides by a policy that requires it to refer people experiencing homelessness to services before issuing citations. HOT team members are aware of the stringent requirements exist in Colorado Springs's homeless shelters, and make great efforts to ensure that it is not referring people to shelters that cannot provide them with services.

"You can't arrest your way out of homelessness."  
-Officer Kippel

Despite the HOT team's admirable efforts to serve the homeless community, their hands remain tied by its duty as a law enforcement team to enforce Colorado Springs' city ordinances. Pursuant to those ordinances, the HOT team performs sweeps to enforce the city's prohibition on camping on public property. In those sweeps, the HOT team refers a person experiencing homelessness to services or orders them to move on to a different location. Following the initial sweep, the HOT team utilizes local nonprofits, such as Keep Colorado Springs Beautiful, to clean the camp and dispose of any remaining belongings.

As noted above, on February 28, 2018, Mayor John Suthers hosted a "Conversation on Homelessness" as part of a panel series held by his office in partnership with the Gazette to discuss the various issues the community faces regarding its growing homeless population. The panel at this presentation was comprised of various actors within the community,<sup>164</sup> including Mayor Suthers, Lt. Michael Lux from the CSPD, and leaders of various service organizations oriented towards assisting people experiencing homelessness. There, Lt. Lux

and Mayor Suthers spoke at great length about the perceived public health risk posed by camps set up by homeless individuals. Both the Mayor and Lt. Lux expressed concern regarding the perceived cleanliness of camps. They stated that they had researched homeless camps in San Diego, California, where Hepatitis A became a problem in camps that routinely exceeded 1,000 people.

In contrast to the Mayor's assertions, the city of San Diego has formulated a different approach to addressing the problems posed by health hazards in homeless camps.<sup>165</sup> Rather than force the people at the camps—who have nowhere else to go—out of their only shelter, they have used temporary, state-sanctioned bridge shelters to help ensure the safety of the homeless and the community at large.<sup>166</sup> Bridge shelters mark a notable diversion from the “housing first” policies employed by many cities, including Colorado Springs. These vast tent stadium shelters are privately funded from business owners in the city. In San Diego, the shelters served to decrease infection rates for Hepatitis A among the homeless population that was staying in a camp approved by the state.<sup>167</sup>

Colorado Springs displaces people experiencing homelessness rather than provide them with assistance and remedy the health risks they incur. Currently, the city does not maintain waste-disposal services at homeless camps because it is steadfast in its belief that the camps run contrary to its ordinance prohibiting camping in public. Recently, Mayor John Suthers spoke about the city's efforts to criminalize camping near waterways,<sup>168</sup> a concern that is directly aimed at people experiencing homelessness in the Springs. Mayor Suthers went on to explain that the new ordinance is motivated by reducing E. Coli levels in the city's waterways. However, the Mayor did not comment on the obvious less expensive alternative to reduce E. Coli levels, which is to provide the homeless with bathrooms to use so that they may keep the waterways clean. The city's most recent efforts to criminalize even more behaviors associated with homelessness coincides with the ineffectiveness of the existing ordinances prohibiting camping on public property. When services are not available to homeless individuals, the HOT team issues move-on orders instructing them to go to a different place from where they are currently camping. This practice of issuing move-on orders is problematic because it leaves homeless individuals with nowhere to go. Mayor Suthers has addressed this problem, noting that after being cited, the homeless citizens may simply “move a half a mile,” and the police will “[have] to post them again and say ‘you can't camp here.’”<sup>169</sup> The city's awareness of the futility of move-on orders marks yet another strong-armed approach to homelessness.

“This is not just a government problem. The city is not going to solve this problem.”  
– Mayor Suthers

In many respects, the city's efforts to target the homeless population appear to be motivated by the view that homelessness is a blight on the community. Rather than take an inclusive, service-minded approach to solving its concerns, it has chosen to ostracize those that experience homelessness and force them somewhere else—as long as “somewhere else” is not in Colorado Springs. The city's tactics are also at odds with the HOT team's service-oriented mindset and reflects the duality that pervades the city with respect to the way it treats people experiencing homelessness.

## D. CITY COUNCIL'S RECENT EFFORTS TO FURTHER CRIMINALIZE HOMELESSNESS

Over the past year, the Colorado Springs City Council enacted a new ordinance that makes it unlawful for a pedestrian to “access, use, congregate or assemble” certain roadway medians throughout the city. Several homeless advocates voiced their concerns at city council meetings, arguing that the new ordinance will have a disproportionate impact on people experiencing homelessness.<sup>170</sup> The new ordinance, which was passed unanimously by Colorado Springs City Council, bans pedestrians from standing on medians with posted signage to that effect.

Mayor John Suthers' office initially proposed this median ban in October 2016, citing safety concerns as the purpose behind the ordinance. The Mayor's office voiced particular concerns that “peaked medians jeopardize [pedestrians] lives and distract drivers.”<sup>171</sup> As one reporter noted, several other members of city council had observed similar situations, “and enthusiasm for the proposed law blossomed,”<sup>172</sup> as evidenced by its unanimous passage in January 2017.

Colorado Springs' Homeless Prevention and Response Coordinator, Andrew Phelps, provided the presentation prepared by the city's Senior Attorney and its Transportation Manager, which was given to City Council when the ban was first proposed.<sup>173</sup> This presentation highlighted the safety concerns, focusing primarily on the number of pedestrian fatalities in the Springs, as well as throughout the United States. However, it failed to delineate between those pedestrian fatalities that occurred from standing on medians versus those that occurred when the pedestrian was standing in different areas of a roadway. Consequently, the city's safety concerns did not look at the particular “problem” the median ban was meant to counteract.

What is more, the U.S. Department of Transportation (DOT) Federal Highway Administration reached an opposite conclusion with regard to safety of pedestrians on medians. In a study in conducted entitled “Safety Benefits of Raised Medians and Pedestrian Refuge Areas,” the DOT concluded that providing raised medians—what it calls “pedestrian refuge areas”—has demonstrated a significant reduction in pedestrian related accidents.<sup>174</sup> Although the study focused on utilizing medians for pedestrian roadway crossings, the new Colorado Springs' ordinance not only prohibits congregating or assembling on medians, but also “access” and “use.” Thus, this new ordinance explicitly ignores the safety recommendations of the DOT, which “strong encourages the use of raised medians (or refuge areas) in curbed sections of multi-lane roadways in urban and suburban areas.”<sup>175</sup>

The ban on accessing the median on a roadway in Colorado Springs, like many other ordinances that disparately effect its homeless citizens, could be subject to a Constitutional challenge for infringing upon the First Amendment right to free speech. The text of the median ordinance is not explicitly aimed at speech, but rather incidentally prevents speech due to its restriction on a person's right to occupy a traditional forum in which speech usually occurs. The ordinance applies evenly and does not appear to single out certain types of speech, and is therefore “content neutral” on its face. However, it remains possible that the motivation for the law was to prevent homeless citizens from panhandling, making it potentially a content-based restriction on speech. Colorado Springs has stated that the purpose for this ban on median access is to promote public safety. However, in support of its assertion concerning public safety, the city has only provided broad data concerning pedestrian deaths on roadways, without any specificity to pedestrian occupation of medians. Moreover, as referenced above, medians have been demonstrated to promote safe harbor for pedestrians on otherwise dangerous roadways.

## E. MOVING FORWARD: SUGGESTED CHANGES

Despite awareness that criminalizing behaviors associated with homelessness has been a demonstrably ineffective attempt to alleviate issues surrounding homelessness, Colorado Springs continues impose criminal penalties on its homeless citizens. The city has added another ordinance that disparately affect people experiencing homelessness—the ban on accessing medians on public roadways. Though the city has claimed that safety for pedestrians is the primary motivation for preventing its citizens from occupying medians,<sup>176</sup> the only data it uses to support its assertion is data pertaining to general pedestrian deaths on roadways.<sup>177</sup> In order to more accurately assess the effectiveness of this ordinance, the city should place a moratorium on its enforcement while it accrues distinct data pertaining to traffic injuries and deaths caused specifically by pedestrians occupying medians.

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**These evident, service-oriented remedies are not only more effective to address community concerns but also more cost effective for taxpayers**

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In addition to the most recent ban on median access, the city plans to institute a ban on camping near waterways.<sup>178</sup> As with the rationale for sweeps on homeless camps, the city points to public health as the motivation for this proposed new ordinance.<sup>179</sup> Rather than add new ordinances further criminalizing the Springs' homeless citizens, the city could easily provide restrooms and sanitation services to people experiencing homelessness, which in turn would quell concerns about water contamination and infectious disease. These evident, service-oriented remedies are not only more effective to address community concerns but also more cost effective for taxpayers. As the city continues to view its homeless citizens as criminals, it merely moves forward with efforts to punish them for their state of living. Colorado Springs appears to view its citizens who are experiencing homelessness as a burden and an eyesore, and continues to tell them to move on, so that they may no longer be a problem for the city.

Finally, Colorado Springs' homeless population shows no signs of waning. The current Point-in-Time count estimating that 1,415 unhoused individuals live in El Paso County.<sup>180</sup> However, the HOT team remains small, operating as only a four-officer unit.<sup>181</sup> In order to fully implement its envisioned strategy of alternative enforcement, the HOT Team should add more members to service the needs of the Springs growing homeless population. Additionally, the HOT team should consider creating a training program to allow for new officers to learn the intricacies of the job quickly and efficiently.

# ANALYSIS

## A. REPEAL CITY CAMPING BANS

Cities across Colorado continue to criminalize behaviors associated with homelessness, and particularly the human necessity to sleep and rest. The reality is that people experiencing homelessness generally have no place to sleep, but in public. Whether it is on the streets, in parks, alleyways, or the deepest depths of the city, people need to find a place where they can lay their heads and rest. When that place is not a traditional dwelling, sleeping—a necessity to survive—is characterized as criminal behavior by camping bans. As it stands, law enforcement officials continue to dutifully enforce the existing ordinances and prevent people experiencing homelessness from “camping” outside. Law enforcement officials sometimes issue warnings rather than citations and instruct these individuals who are sleeping outside to move on to a different location. However, the ordinances that criminalize sleeping outdoors make any move-on order simply a move from one illegal place to another. Several laws, including bans on camping, have been subjected to constitutional challenges,<sup>182</sup> raising grave concerns about civil liberties.

Colorado cities continue to employ move-on orders as a tactic to push people experiencing homelessness out of their communities. However, the effect of telling these individuals to move on to another location merely forces them to find cover in out-of-sight locations. As a result, more and more people experiencing homelessness are being driven away from city centers where services are most readily available and accessible. What is more, these out-of-sight locations can be more dangerous. These ordinances prohibiting camping in public only threaten to exacerbate the issues that homeless individuals face. For example, 232 people experiencing homelessness in Denver died in 2017, a record high for the city and an increase of sixty since 2016.<sup>183</sup>

Cities must repeal these camping bans and instead dutifully reinvest the funds used to police anti-homeless ordinances into programs that support people experiencing homelessness. Instead of wasting police time and money, and forcing unhoused individuals to move on to nowhere, Colorado cities should invest their resources into providing safe spaces to sleep for those who need it: sanctioned camps, tiny home villages, and subsidized housing.

## B. PROVIDE BETTER ACCESS TO PUBLIC RESTROOMS

In addition to the camping bans that criminalize sleeping outdoors, other ordinances that disproportionately affect people experiencing homelessness can burden these individuals by forcing them into the justice system for behaviors necessary to survive. Ordinances prohibiting public urination and defecation, for example, present extremely difficult obstacles for people confined to living outdoors.<sup>184</sup> It is a biological necessity for every human being to urinate and defecate, and individuals who do not have permanent housing also have these same biological needs. However, people experiencing homelessness are subject to criminal penalties for natural, necessary actions merely because of their housing status. For example, Colorado Springs Police Department issued 313 citations for urination or defecation from 2013 to 2017.

Rather than simply repeal ordinances with a disparate effect on homeless individuals that are otherwise sensible, like urination in public, there is another way to prevent criminalizing natural, unpreventable behaviors. The solution is clear: Colorado cities need to increase the number of public restrooms with an eye towards increasing access for people experiencing homelessness.

Not only must Colorado cities increase the number of public restrooms available to homeless individuals, they must also make sure that these facilities are open in the evenings and on the weekends. This will help to allow for optimal access at times when unhoused individuals cannot find alternate facilities. Indeed, in Denver, people experiencing homelessness are faced with significant challenges to relieve themselves without violating city ordinances.<sup>185</sup> Many existing public restrooms, such as those in Denver’s Public Restroom Pilot Program, are only accessible during business hours.<sup>186</sup> When they close, homeless individuals in Denver may access twenty-four hour porta-potties in Civic Center Park, but only at the risk of violating park curfew ordinances.<sup>187</sup> Individuals experiencing homelessness generally have few options apart from being forced to violate city ordinances. To prevent criminalization of people experiencing homelessness, cities must provide better restroom access.

## C. MAKE ORDINANCES THAT CRIMINALIZE HOMELESSNESS UNLAWFUL

### i. The Proposed Right to Rest Act

In March 2018, the Local Government Committee of the Colorado State House of Representatives again declined to vote to move the Right to Rest Act out of the committee stage.<sup>188</sup> The Act sought to protect the right to sleep, sit, cover oneself, share food, or sleep in one’s own vehicle.<sup>189</sup> Despite the woeful outcome, the community support for the Act was striking and impactful. People voiced great concerns about the “unconstitutional, dehumanizing and moral impacts of criminalizing existence.”<sup>190</sup>

Although the Right to Rest Act has been unsuccessful for an unfortunate fourth year in a row,<sup>191</sup> the work towards preventing the criminalization of Colorado’s homeless citizens has not ceased. The community support for affirmative rights for people experiencing homelessness in Colorado will not yield, and advocates will promote the Right to Rest Act for passage next year.



Image Source: Unicorn Riot (<https://www.unicornriot.ninja/2017/class-action-lawsuit-denver-motions-filed-summary-judgement/>)

### ii. The Right to Survive Ballot Initiative

In the meantime, voters of the city and county of Denver will have an opportunity to promote basic rights for its homeless citizens. The Denver Right to Survive Initiative is a ballot measure that seeks to:

Secure[] and enforce basic rights for all people within the jurisdiction of the City and County of Denver, including the right to rest and shelter oneself from the elements in a non-obstructive manner in outdoor public spaces, to eat, share, accept, or give free food in any public space where food is not prohibited; to occupy one’s own legally parked motor vehicle, or occupy a legally parked motor vehicle belonging to another with the owners [sic] permission; and to have a right and expectation of privacy and safety of or in one’s person and property.<sup>192</sup>

This ballot initiative will give Denver residents the opportunity to prevent criminalization of its homeless citizens, and instead provide a means for them to survive within the shelter of the law. Although the initiative is limited to Denver, it could serve as an example for cities across Colorado to acknowledge the benefit of affirmative rights for people experiencing homelessness. In particular, cities throughout the state with large homeless populations should seek to introduce similar ballot initiatives.

## D. INVEST IN EDUCATIONAL EFFORTS THAT ALLOW FOR THE DIGNITY OF PEOPLE IN POVERTY

**“This is not a Homeless Crisis, this is a Community Crisis.”**

-Rex Hohlbein<sup>193</sup>

In Colorado and across the United States, the harsh reality of homelessness is that citizens are largely uncomfortable with witnessing unhoused people sleeping and resting in plain sight. Business districts wish to maintain a “suitable” downtown atmosphere free of visible poverty, especially for visitors and out-of-state convention attendees, and in doing so, lobby for anti-homeless ordinances.<sup>194</sup> However, the reality is that people experiencing homelessness sleep on the streets because they simply have nowhere else to go.

Beyond the lack of shelter space and affordable housing, and how criminalization makes homelessness harder to escape, the larger issue is this: why are we so uncomfortable with facing homelessness? Our parks are for everyone. Our streets are for public use. Our free speech rights to ask for what we need should not be restricted. We should not view visible poverty as something to be avoided at all costs—especially if that costs results in further degradation and ostracism.

Colorado should invest in a messaging campaign that supports the dignity of those experiencing homelessness. Residents of our communities that are unhoused remain *members* of our community; they are valuable citizens who have voices. Public service announcements aimed at inclusivity and dignity could go a long way towards combatting the shunning and discrimination that homeless citizens experience on a daily basis. It would teach our children that every person deserves respect and has value regardless of personal wealth or lack thereof. And it would make our communities better . . . for everyone.



# APPENDIX A.

## CITY OF BOULDER SPENDING ON HOMELESSNESS

Citywide Investments in Addressing Homelessness					
2016-2017 CITYWIDE BUDGETED EXPENDITURES ON HOMELESS SERVICES OR PROGRAMS					
Department	2016 Estimated Expenditure	2016 Estimated Hours for Homeless	2017 Estimated Expenditure	2017 Estimated Hours for Homeless	Method of Estimate
<b>Programs Addressing Homelessness</b>					
Human Services - Community Funding	\$ 660,000		\$ 1,307,180		Funding to agencies whose purpose is to directly serve the homeless population. This includes one-time and ongoing funding for services, case management, sheltering, Coordinated Entry, Navigation Services and family homelessness services and sheltering (BSH, BOHO, BH, Mother House, SPAN, EFAA, Attention Homes). Does not include other funding to community agencies that may also serve the homeless, but are not specifically focused on the homeless, including medical and mental health services.
Human Services - Human Services Planning	\$ 196,156	3,328	\$ 231,092	3,640	Approximately 1.5 FTE devoted to homelessness across four positions in 2016; 1.75 FTE across three positions in 2017.
Municipal Court - Homeless Navigator	\$ 93,629	2,680	\$ 95,892	2,680	Homeless Navigator position to assist homeless individuals with finding the necessary services in the community
Community Vitality - Ready to Work Labor Services	\$ 44,659		\$ 34,247		2016 and 2017 actual expenditures for Bridge House Ready-To-Work labor services for Downtown Garages and University Hill Residential Service District
Open Space and Mountain Parks (OSMP) - Ready to Work Labor Services	\$ 50,000		\$ 72,291		Contractual agreement with Bridge House to provide labor services to OSMP. The Ready to Work individuals perform weed removal, irrigation ditch maintenance, trash pickup, trail repair and maintenance, and other duties consistent with the needs of OSMP
Parks & Recreation - Ready to Work Labor Services	\$ 97,400	400	\$ 129,044	656	Bridge House's Ready-To-Work labor services - Amount estimated using 2015 actual costs multiplied by two (added second contracted crew for 2016). Additional \$20,000 for 400 program management staff hours at \$50/hr. (Rate includes avg. staff wage, benefits, and equipment costs.) This program provides the department with additional labor hours performing ground maintenance work
Parks & Recreation <sup>2</sup> - Bridge House Community Table Kitchen Program <sup>1</sup>	\$ 3,246		\$ 11,609		Bridge House's Community Table Kitchen Program - Invoices from 2016 for catering Volunteer Appreciation Dinner and Knight Foundation Grant Award Kickoff
Planning, Housing and Sustainability (PH&S) - acquisition of Boulder Housing Partners Cedar property			\$ 800,000		PH&S grants to the community awarded in 2017. Grant awards can vary every year based on community needs and annual RFP responses
Planning, Housing and Sustainability (PH&S) - acquisition of Ringmaker Property (Robb's Music) for Navigation Center and Future Housing			\$ 2,200,000		PH&S grants to the community awarded in 2017. Grant awards can vary every year based on community needs and annual RFP responses. This funding will support the Navigation Center and affordable housing, with some or all of the housing units dedicated for Permanent Supportive Housing (PSH)
Planning, Housing and Sustainability (PH&S) - acquisition of Attention Homes residences			\$ 2,200,000		PH&S grants to the community awarded in 2017. Grant awards can vary every year based on community needs and annual RFP responses
Planning, Housing and Sustainability - EFAA North Boulder Transitional Housing - 5-unit transitional housing development- in process			\$ 218,591		PH&S grants to the community awarded in 2016. Grant awards vary every year based on community needs and annual RFP responses
Planning, Housing and Sustainability (PH&S) - Attention Homes Chase Court - rehabilitation of transitional housing group home	\$ 50,173		\$ 74,243		PH&S grants to the community awarded in 2016. Grant awards can vary every year based on community needs and annual RFP responses
Planning, Housing and Sustainability - Boulder Shelter Transitional Housing - rehabilitation of units	\$ 70,000				PH&S grants to the community awarded in 2016. Grant awards vary every year based on community needs and annual RFP responses
Planning, Housing and Sustainability - EFAA North Boulder Transitional Housing - 5-unit transitional housing development	\$ 150,000				PH&S grants to the community awarded in 2016. Grant awards vary every year based on community needs and annual RFP responses
<b>Programs Addressing Homelessness - Subtotal</b>	<b>\$ 1,415,353</b>	<b>6,608</b>	<b>\$ 7,374,189</b>	<b>6,376</b>	
<b>Services Mitigating Impacts from Homeless Individuals</b>					
Fire	\$ 17,000	115	\$ 95,700	170	EMS calls to Bandshell, Shelter, and Eben Fine Park multiplied by a per call estimate of staff and equipment
Police	\$ 1,490,924	29,299	\$ 1,535,854	29,299	Hours assigned to homeless/transient calls, meetings by shift and staff activity multiplied by a per hour staff cost
Library - Access Services	\$ 12,741	319	\$ 15,385	319	
Library - Facility and Asset Maintenance	\$ 1,076	18	\$ 918	18	Portion of active library card holders with a homeless facility address applied to Access Services Budget, eServices Budget and Facilities and Asset Management Budget.
Library - eServices and Public Computing	\$ 5,466	97	\$ 9,055	97	
Municipal Court - Adjudication	\$ 114,212	3,120	\$ 114,612	3,328	Estimate of judges' time spent on cases where defendant is homeless
Municipal Court - Case Management	\$ 34,374	781	\$ 38,795	728	Percentage of general cases where defendant is homeless
Municipal Court - Probation Services	\$ 140,444	3,120	\$ 115,071	2,496	Estimation of PD caseload that is homeless
Public Works - Homeless Camp Cleanup	\$ 80,000		\$ 128,000	600	Clean up work is contracted out due to the hazardous nature of the camps; thus, staff time is negligible
Public Works - Campus Security (Brenton Building and BCH garage)	\$ 4,464				Contracted out
Public Works - Fencing enclosures for Trash and HVAC units at the FAM Building, Atrium Building and Main Library	\$ 34,560				One-time expenditure that not projected to continue in the future
Public Works - Emergency cleaning to public areas (i.e. restroom, entry ways, etc.) at Muni Building and Main Library	\$ 3,420				Contracted out
Public Works - Electrical outlet repair work (Main Library, BMOCA, Teahouse)	\$ 7,438	48	\$ 7,438	48	Estimate of staff time plus direct cost of repair
Parks & Recreation - Park Operations and Maintenance	\$ 45,000		\$ 54,485		Projected costs to contract the removal and clean up of hazardous waste/transient camps
Parks & Recreation - Park Operations and Maintenance	\$ 18,000		\$ 8,000		Projected costs to contract vegetation removal to deter camping and put up signage along Boulder Creek
Parks & Recreation <sup>3</sup> - Park Operations and Maintenance	\$ 145,750	2,915	\$ 172,000	3,440	Projected labor hours spent cleaning, repairing areas, removing camps, and managing impacts multiplied by a rate of \$50/hr. (Rate includes avg. staff wage, benefits, and equipment costs.) Estimates include 140 hours by Natural Lands staff
Open Space and Mountain Parks - Ranger Services	\$ 61,196	1,456	\$ 67,248	1,600	Estimate of ranger hours addressing homelessness issues multiplied by the average ranger salary and benefits
<b>Services Mitigating Impacts from Homeless Individuals - Subtotal</b>	<b>\$ 2,216,054</b>	<b>41,287</b>	<b>\$ 2,362,561</b>	<b>42,143</b>	
<b>Grand Total, City Investments in Addressing Homelessness</b>	<b>\$ 3,631,407</b>	<b>47,895</b>	<b>\$ 9,736,750</b>	<b>48,519</b>	

<sup>1</sup>Ready to Work expenditures are for city services which would be provided by other vendors if not performed by Ready to Work crews.

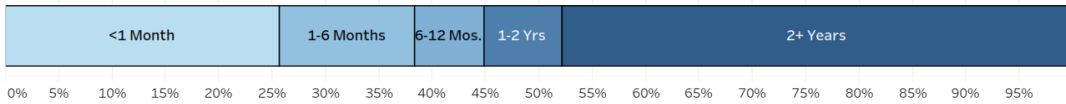
<sup>2</sup>The department is also supporting a new project with the Bridge House called "Tree Debris to Opportunities" in which members of the Ready to Work Crew will have an opportunity to learn new skills relating to woodworking and like trades. The department received a \$200,000 grant for this program.

<sup>3</sup> Does not include volunteer hours for the Adopt a Creek and other programs. Adopt a Creek program volunteers clean up along creeks, at times encountering impacts of camps. To date these groups have reported over 800 hours.

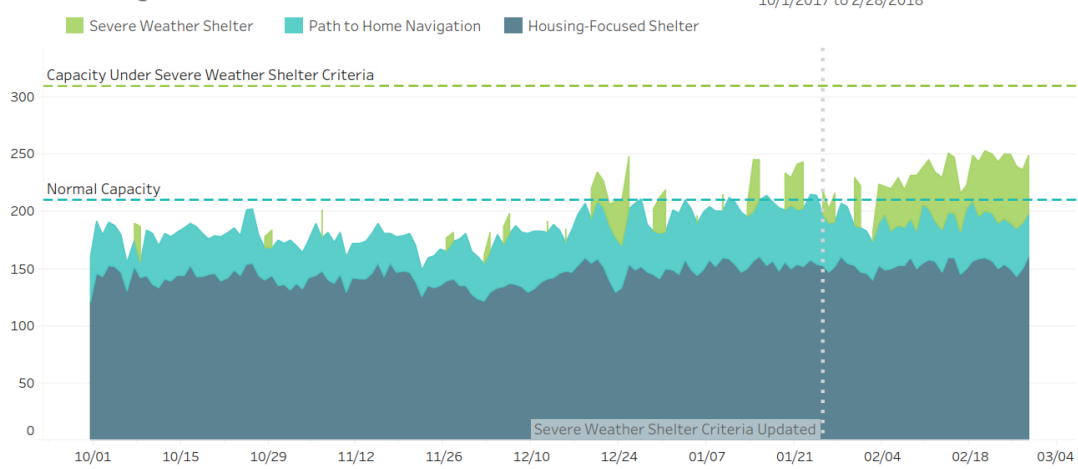
# APPENDIX B.

## CITY OF BOULDER HOMELESS DASHBOARD (VIEWED APR. 13, 2018)

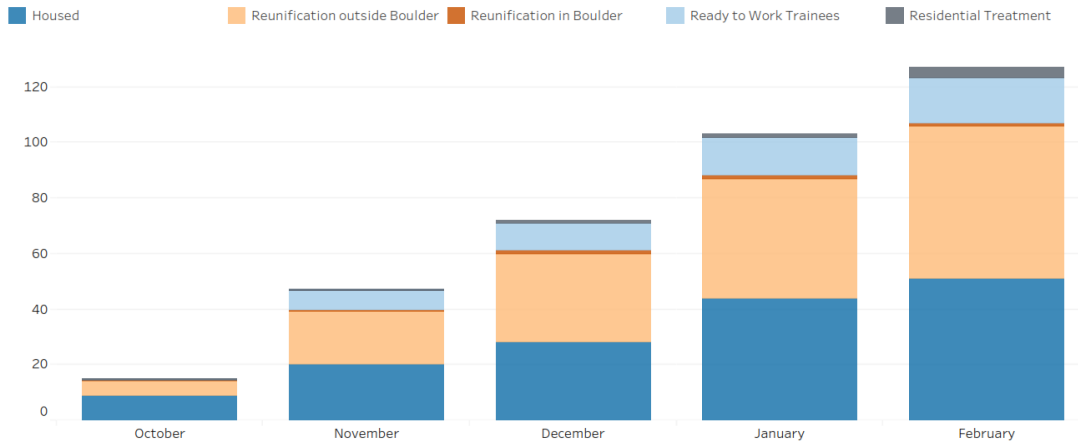
Time in Boulder County (hover here for more information)



Boulder Program Attendance (hover here for more information)

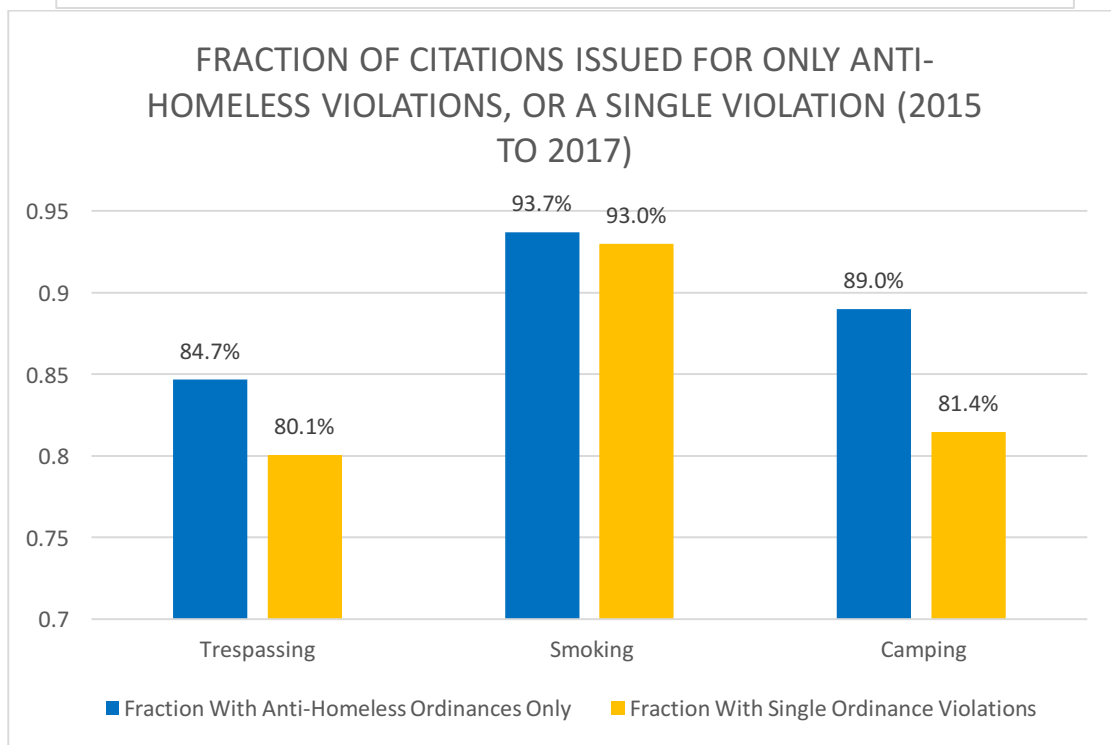
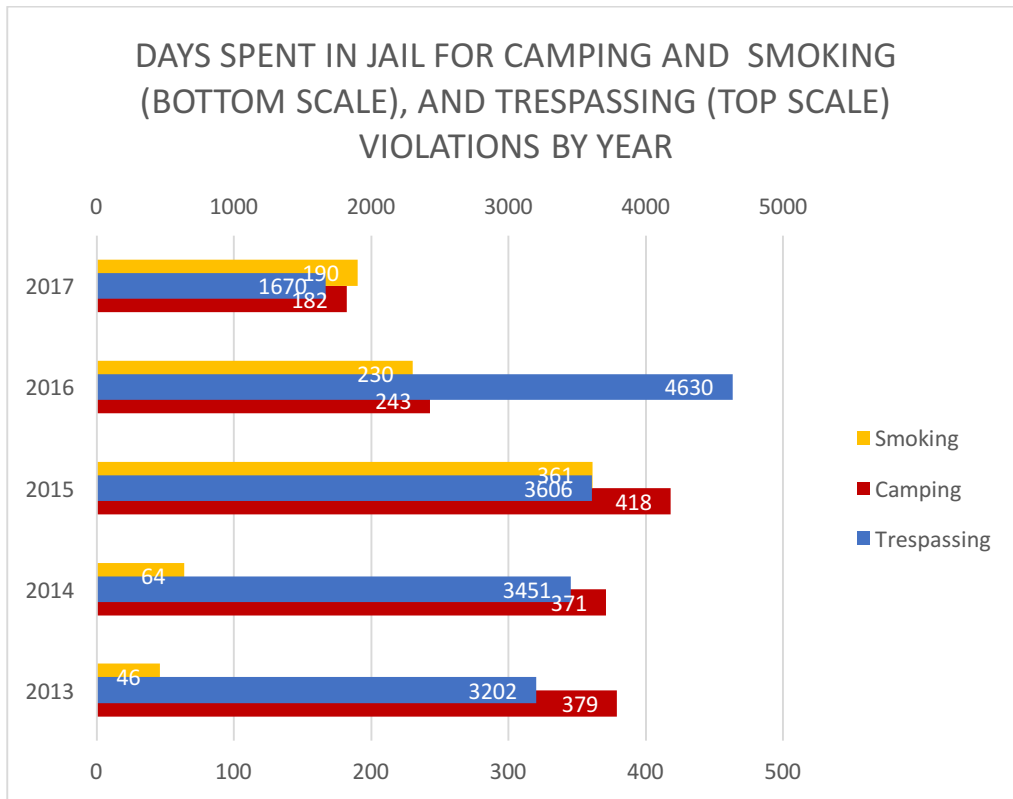


Planned Exits from Homelessness - Running Total (hover here for more information)



# APPENDIX C.

## BOULDER JAIL AND CITATION STATISTICS (DATA FROM RECORDS REQUEST TO BOULDER COUNTY SHERIFF'S OFFICE AND BOULDER MUNICIPAL COURT)



# APPENDIX D.

## DATA RECEIVED FROM COLORADO SPRINGS POLICE DEPARTMENT IN RESPONSE TO COLORADO OPEN RECORDS REQUEST

City Code	2013	2014	2015	2016	2017
<b>10.18.112</b>	2	20	17	0	1
<b>4.2.102</b>	138	177	277	101	69
<b>9.2.102</b>	18	31	26	14	5
<b>9.2.104</b>	11	10	19	9	11
<b>9.2.111</b>	18	19	35	2	1
<b>9.2.112</b>	0	0	0	21	4
<b>9.6.105</b>	41	75	84	60	53
<b>9.6.110</b>	3	10	6	0	26
<b>9.6.503</b>	2	7	13	10	16
<b>9.9.404</b>	24	20	74	133	174
<b>Grand Total</b>	<b>257</b>	<b>369</b>	<b>551</b>	<b>350</b>	<b>360</b>

# APPENDIX E.

## DATA RECEIVED FROM DENVER POLICE DEPARTMENT IN RESPONSE TO COLORADO OPEN RECORDS REQUEST

Citations to Homeless Individuals					
Type of Arrest	2013	2014	2015	2016	2017
Panhandling	292	316	191	22	11
Solicitation on or near street or highway	25	19	19	20	37
Unauthorized camping	0	14	2	9	5
Unlawful to Swim or Befoul Streams	0	0	0	1	0
Urinating in Public	210	269	239	315	194
Curfews and Closures	730	630	639	738	812
Sitting or Lying Down in Public Right of Way	0	0	1	0	1
Overnight Residing, Camping, Climbing,	N/A	16	5	1	2
Order of Removal	N/A	0	0	1	0
Smoking in Public Places	N/A	0	1	0	1
Trespass	1080	1349	1542	1652	1765
<b>Total</b>	<b>2337</b>	<b>2613</b>	<b>2639</b>	<b>2759</b>	<b>2828</b>

# ENDNOTES

1. DENVER, COLO., ORDINANCE § 38-86.2 (2012).
2. Over 1,000 people move to Denver each month. Samantha Sharf, *Full List: America's Fastest-Growing Cities 2017*, FORBES (Feb. 10, 2017), <https://www.forbes.com/sites/samanthasharf/2017/02/10/full-list-americas-fastest-growing-cities-2017/5/#69af8be93479>.
3. *Id.* (providing the following statistics on Denver-Aurora-Lakewood growth: Pop. Growth 2016: 1.69% (16th in the nation); Job Growth 2016: 3.13% (11th in the nation); GMP Growth 2016: 2.82% (17th in the nation); Wage Growth 2016: 3.95% (24th in the nation); Home Price Growth 2016: 11.50% (5th in the nation)).
4. Lucinda Shen, *House Prices Are Soaring. Here Are the 5 Cities Where They're Rising the Fastest*, FORTUNE (Feb. 27, 2018), <http://fortune.com/2018/02/27/house-prices-index-sold-average-s-and-p/>.
5. *Id.*
6. Ben Miller, *It's agreed: Denver rents are rising (but by how much?)*, DENV. BUS. J. (Aug. 31, 2017, 11:27 AM), <https://www.bizjournals.com/denver/news/2017/08/31/its-agreed-denver-rents-are-rising-but-by-how-much.html>.
7. Michael Roberts, *Denver Rent Increases Were Even Worse Than You Thought*, WESTWORD (Dec. 7, 2017, 5:43 AM), <http://www.westword.com/news/2017-rent-prices-in-denver-us-9761732>. This is the third highest of large and medium sized cities in the nation. *Id.*
8. *Id.* (based on a forty-hour work week at \$11 per hour).
9. See *2017 Point-In-Time Report*, METRO DENV. HOMELESS INITIATIVE 4 (2017), [https://d3n8a8pro7vghmx.cloudfront.net/mdhi/pages/12/attachments/original/1498599733/2017\\_Metro\\_Denver\\_PIT\\_Final.pdf?1498599733](https://d3n8a8pro7vghmx.cloudfront.net/mdhi/pages/12/attachments/original/1498599733/2017_Metro_Denver_PIT_Final.pdf?1498599733). In 2017, the amount of total homeless households exceeded 4,000 for the first time, and the amount of chronically homeless individuals is now an estimated 1,085 people—a 71% increase in the last six years. *Id.* at 3.
10. See Neil Westergaard, *16th Street Mall conditions deter convention business, says Visit Denver report*, DENV. BUS. J. (Jul. 14, 2016, 7:16 PM), <https://www.bizjournals.com/denver/news/2016/07/14/downtown-conditions-deter-convention-business-says.html>. Among the issues referenced in describing the “downtown environment” was “[The] homeless, youth, panhandling, safety, cleanliness, and drugs including public marijuana consumption.” *Id.* <https://www.bizjournals.com/denver/news/2016/07/14/downtown-conditions-deter-convention-business-says.html>
11. *2017 Point-In-Time Report*, *supra* note 9, at 4 (more than half of these citizens reported being homeless for a year or more).
12. *Id.* at 10.
13. *Id.* (twenty-four individuals were housed in domestic violence shelters, 2,172 were housed in transitional housing, and thirty-one were housed in safe haven).
14. The Point-in-Time surveys, while critical in assessing homelessness, acknowledges that it is an undercount of the homeless population. *Id.* at 3 (“It is important to remember that the survey is a snapshot and an undercount of homeless and at-risk populations.”).
15. *Denver Homeless Shelters & Services for The Needy*, HOMELESS SHELTER DIRECTORY, <https://www.homelessshelterdirectory.org/cgi-bin/id/city.cgi?city=Denver&state=CO> (last visited Apr. 22, 2018).
16. *Id.*
17. *Women's Homeless Initiative*, CAPITOL HILL UNITED MINISTRIES, <http://www.chumdenver.org/womens-homelessness-initiative> (last visited Apr. 22, 2018); see also Jennifer Oldham, *Women's Homelessness Is a Growing Problem—Denver Is Pioneering a Solution*, SLATE (Mar. 15, 2018, 10:02 AM), <https://slate.com/human-interest/2018/03/womens-homelessness-is-a-growing-problem-denver-is-pioneering-a-solution.html>.
18. *Denver Public Restrooms*, DEPARTMENT OF PUBLIC WORKS, <https://www.denvergov.org/content/denvergov/en/denver-department-of-public-works/projects/current/public-restrooms.html> (last visited Apr. 14, 2018) (Denver's mobile restrooms close at 10:00 p.m., and day services for people experiencing homelessness open at 6:00 a.m.).

19. To illustrate this point, the unauthorized camping ban, introduced in 2012, makes it a crime for any person to shelter him or herself from the elements while located on any public or private property. See DENVER, COLO., ORDINANCE § 38-86.2 (2012). Although this ordinance does not specifically target those who are homeless, it is almost exclusively enforced against the homeless population. See *infra* Section III.
20. Michael Roberts, *16<sup>th</sup> Street Mall Smoking and Vaping Ban Approved: What it Means to You*, Westword (October 31, 2017, 4:44 AM), <http://www.westword.com/news/investigation-finds-ex-manual-principal-nick-dawkins-violated-dps-policies-10228101> (explaining that smoking ordinances are “de facto extension[s]” of the camping ban, in that they are yet another way to push the homeless community out of the public view).
21. *Id.*
22. See Ariel Schreiber & Becca Butler-Dines, *Too High a Price; What Criminalizing Homelessness Costs Colorado: Denver City Spotlight*, HOMELESS ADVOCACY POLICY PROJECT I (2016), available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/Denver-Spotlight.pdf> (the years examined in the study were 2011 through 2016).
23. See DENVER, COLO., ORDINANCE §§ 24-304, 38-9 (criminalizing smoking); DENVER, COLO., ORDINANCE § 49-246 (order of removal); DENVER, COLO., ORDINANCE § 39-7 (camping in parks); DENVER, COLO., ORDINANCE § 39-84 (numerical limitations).
24. In the first *Too High a Price* report the city of Denver stated to the University of Denver that the city did not track whether or not an individual was transient when it recorded citations, move on orders, arrests, and so forth. This was incorrect. We have since received data going back to 2014 that separates transient individuals from those who are not. See Schreiber, *supra* note 22.
25. This amounts to over 4,450 citations per year.
26. This data shows that, despite constituting less than 1% of Denver’s population over the last four years, over 60% of the citations issued under these fifteen ordinances were issued to those who are unhoused. Trespass (Section 38.115) and Curfews and Closures (Section 39.3) are aggressively enforced against the homeless population in particular (data received from Denver in response to Colorado Open Records request (on file with author)).
27. Food sharing, sleeping, resting, lying down, covering oneself with a non-clothing item, smoking tobacco, washing in a public stream, and simply asking for money are all activities that are expressly outlawed in the Denver metro area.
28. For example, Curfews and closures was enforced at a 28.9% higher rate among transient individuals in 2014 than it was in 2017 (data received from Denver in response to Colorado Open Records request (on file with author)).
29. Only four citations were issued to homeless individuals for unauthorized camping in 2017 (data received from Denver in response to Colorado Open Records Request (on file with author)).
30. A total 8,966 “street checks” have been performed, and 13,132 individuals have been “moved along” pursuant to the camping ban (data received from Denver in response to Colorado Open Records Request (on file with author)).
31. DENVER HOMELESS OUT LOUD, *The Denver Camping Ban: A Report from the Street 19* (2013), available at <https://denverhomelessoutloud.files.wordpress.com/2016/03/camping-ban-report.pdf>
32. *Id.* See also Chris Walker, *Homeless Sweeps: Camping Ban Enforcement Still Up, DPD Data Shows*, Westword (Sept. 8, 2016), <http://www.westword.com/news/colorados-pera-pleads-poverty-to-retirees-while-enriching-wall-street-10276836>
33. Jeremy Meyer, *Denver Mayor Hancock supports ban on overnight camping in public places*, DENV. POST (Oct. 22, 2011, 3:37 PM), [www.denverpost.com/election08/ci\\_19168755](http://www.denverpost.com/election08/ci_19168755).
34. DENVER HOMELESS OUT LOUD, *supra* note 31, at 27.
35. *Id.* at 8.
36. *Id.*
37. Denver did not record the number of move-on orders issued during 2012 and 2013. Instead, recording of this data began in 2014.
38. Data received from Denver in response to Colorado Open Records request (on file with author).
39. Eight hundred seven people cited in 2016 to 4,647 in 2017 (data received from Denver in response to Colorado Open Records request (on file with author)).

40. Four hundred ninety-four people cited in 2016 to 3160 in 2017 (data received from Denver in response to Colorado Open Records request (on file with author)).
41. Data received from Denver in response to Colorado Open Records request (on file with author).
42. For an in-depth discussion of the constitutionality of camping bans, see Rachel A. Adcock et al., *Too High a Price: What Criminalizing Homelessness Costs Colorado*, HOMELESS ADVOCACY POLICY PROJECT 7 (2016), available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/2-16-16-Final-Report.pdf> (explaining that camping bans may violate the Eighth Amendment proscription against cruel and unusual punishment because cities lack enough beds “for all of the homeless people who, by human nature, must sleep at some point and who, by their very nature of being homeless, lack anywhere private to sleep.”).
43. Kieran Nicholson, *Homeless deaths in Denver in 2017 at record number, advocacy group says at vigil*, DENV. POST (Dec. 22, 2017, 5:44 PM), <https://www.denverpost.com/2017/12/21/denver-homeless-deaths/>.
44. Tom McGhee, *Crimes against homeless people up 42 percent in Denver and suburban cops say that’s pushing transients into their towns*, DENV. POST (Jan. 15, 2018, 7:32 AM), <https://www.denverpost.com/2018/01/14/crimes-against-homeless-people-up-42-percent-in-denver-and-suburban-cops-say-thats-pushing-transients-into-their-towns/>
45. *Id.*
46. DENVER HOMELESS OUT LOUD, *supra* note 31, at 66; see also Samir Junejo, Suzanne Skinner, & Sara Rankin, *No Rest for the Weary: Why Cities Should Embrace Homeless Encampments* 6, SEATTLE UNIV. SCHOOL OF LAW HOMELESS RIGHTS ADVOCACY PROJECT (2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2776425](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776425).
47. McGhee, *supra* note 44.
48. Get Loud Magazine, *Right to Rest Act HB 1191*, YouTube (Feb. 20, 2016), [https://www.youtube.com/watch?v=l4fhxKMndqU&index=4&list=LLmWjIgXGEEJF3NjJh\\_g8ZTA](https://www.youtube.com/watch?v=l4fhxKMndqU&index=4&list=LLmWjIgXGEEJF3NjJh_g8ZTA).
49. *The Hard, Cold Facts About the Deaths of Homeless People*, NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL (2006), available at <https://www.nhchc.org/wp-content/uploads/2011/09/HardColdFacts.pdf>. One national study found that a homeless individual is three times more likely to die from illness than someone who is housed. *Id.* Additionally, while the average U.S. citizen is expected to live to seventy-eight years of age, the average life expectancy of an individual who is homeless is merely fifty years-old, the same expectancy as average American living in the early 1900’s. *Sufficient Sleep: A Necessity, Not a Luxury*, NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL (2014)
50. *Id.*; see generally *Sufficient Sleep: A Necessity, Not a Luxury*, NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL (2014), available at <https://www.nhchc.org/wp-content/uploads/2014/03/spring2014healinghands.pdf>.
51. *Sufficient Sleep: A Necessity, Not a Luxury*, *supra* note 49, at 1.
52. DENVER HOMELESS OUT LOUD, *supra* note 31, at 53.
53. *Id.* at 7.
54. *Id.*
55. See *id.* Out of the 512 Denver homeless residents interviewed by Denver Homeless Out Loud in 2013, 62% of respondents reported that their access to shelters became more difficult. Likewise, 47% reported that their access to other resources had also become more difficult. *Id.* at 54.
56. *Id.* at 8 (there are past indications that this has been happening approximately 5 to 10% of the time).
57. *Id.* at 19.
58. *Id.*
59. *Id.*
60. Meyer, *supra* note 33.
61. See *supra* note 49–51 and accompanying text.
62. While this Report does not calculate the increase in expenditures paid by Denver to enforce its anti-homeless ordinances, given the large increase in move-on orders, the cost is significantly greater than previously reported in the 2016 *Too High a Price Report*.
63. Telephone Interview with Tom Luehrs, Executive Director, Saint Francis Center (Apr. 17, 2018); see also *Denver Public Restrooms*, *supra* note 18.
64. *Denver Public Restrooms*, *supra* note 18.



65. Participants, if accepted, receive: transportation to their place of work, tools to complete the job, a free lunch, and are paid wages of more than \$12 per hour. *Denver Day Work's Program*, DENVER HUMAN SERVICES, <http://www.denvergov.org/content/denvergov/en/denver-human-services/community-outreach/denver-day-works.html> (last visited Apr. 22, 2018).
66. Sarah Gillespie, Mary Cunningham, & Michael Pergamit, *Denver Supportive Housing Social Impact Bond Initiative: Housing Stability Outcomes I* (2017), available at [https://www.urban.org/sites/default/files/publication/94141/denver-sib-outcome-report\\_o.pdf](https://www.urban.org/sites/default/files/publication/94141/denver-sib-outcome-report_o.pdf).
67. Andrew Kenney, *Hired to work on Denver's Housing challenge, "HOPE" chief quits after a year*, DENVERITE (Feb. 13, 2018, 12:41 PM), <https://www.denverite.com/denver-housing-erik-solivan-quits-48607/>.
68. *2017 Point-In-Time Report*, *supra* note 9, at 3.
69. While smoking citations may not appear to disproportionately discriminate against Boulder's homeless population, homeless individuals have no other option but to smoke on the street.
70. *See infra* Section II.
71. The two ordinances reviewed in the first *Too High a Price* report were aggressive begging and the camping ban. *See* BOULDER, COLO., CODE §§ 5-3-7, 5-6-10. The total amount spent on enforcement by Boulder on these two ordinances was \$966,944.05 *between 2010 and 2014*. *See* Adcock et al., *supra* note 42, at 27.
72. *See* Appendix A. The estimation methods of the 2016 report were used to estimate Boulder's spending to enforce ordinances against people experiencing homelessness. Those estimates for 2016 and 2017, compared to Boulder's actual spending on policing and adjudication, showed Boulder spend 2.74 and 2.8 times more than estimated in those two years. *See* Adcock, et al., *supra* note 42, at 27.
73. Alex Burness, *Boulder adds port-a-potties, increases sweeps of Civic Area homeless camps*, DAILY CAMERA (Apr. 28, 2017, 1:01 PM), [http://www.dailycamera.com/news/boulder/ci\\_30952993/boulder-adds-port-potties-increases-sweeps-civic-area](http://www.dailycamera.com/news/boulder/ci_30952993/boulder-adds-port-potties-increases-sweeps-civic-area); Alex Burness, *Early results highlight new approach to solving homelessness in Boulder County*, DAILY CAMERA (Dec. 26, 2017, 7:29 PM), [http://www.dailycamera.com/boulder-county-news/ci\\_31552289/homelessness-boulder-county-coordinated-entry](http://www.dailycamera.com/boulder-county-news/ci_31552289/homelessness-boulder-county-coordinated-entry).
74. The survey methods may change from year to year, making annual comparisons unadvisable, and these counts must be recognized as significant undercounts, especially of people who are sleeping on the streets. *2017 Point-In-Time Report*, *supra* note 9, at 10. *2017*
75. CITY OF BOULDER HUMAN SERVICES, *Do homeless people come here for our services I* (April 2015), [https://www-static.bouldercolorado.gov/docs/Homelessness\\_Issue\\_Brief\\_2\\_NewBHData\\_26\\_May\\_2015-1-201505261445.pdf](https://www-static.bouldercolorado.gov/docs/Homelessness_Issue_Brief_2_NewBHData_26_May_2015-1-201505261445.pdf).
76. *Id.*
77. Interview with Elizabeth Robinson, Court Navigator, Boulder Municipal Court, in Boulder, Colo. (Mar. 9, 2018).
78. *Cf. Saenz v. Roe*, 526 U.S. 489, 506 (1999) (“[T]he Citizenship Clause of the Fourteenth Amendment expressly equates citizenship with residence: ‘That Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.’”)
79. Alex Burness, *Census: Boulder County adding 10 residents per day*, Daily Camera (Mar. 29, 2017, 7:43 PM), [http://www.dailycamera.com/boulder-county-news/ci\\_30888822/census-boulder-county-adding-10-residents-per-day](http://www.dailycamera.com/boulder-county-news/ci_30888822/census-boulder-county-adding-10-residents-per-day) (reporting that Boulder's population grew 10% between 2010 and 2015).
80. *Why is homelessness increasing*, WASH. ST. DEP'T OF COM. I (Jan. 2017), <http://www.commerce.wa.gov/wp-content/uploads/2017/01/hau-why-homelessness-increase-2017.pdf> (explaining that “[n]ational research shows a connection between rent increases and homelessness: a \$100 increase in rent is associated with an increase in homelessness of between 6 and 32 percent.”). The median rent for a two bedroom apartment from 2014 to 2017 in Boulder required between 51% to 56% of the median income for the Boulder area. *See Boulder Home Prices & Values*, ZILLOW, <https://www.zillow.com/boulder-co/home-values/> (last visited Mar. 25, 2018); *Databases, Tables & Calculators*, BUREAU OF LABOR STATISTICS, <https://data.bls.gov/cgi-bin/surveymost> (last visited Mar. 25, 2018).
81. Erica Meltzer, *In survey, Boulder residents give mixed signals on housing, employment policy*, DAILY CAMERA (Dec. 15, 2005, 11:12 PM), [http://www.dailycamera.com/lifestyles/ci\\_29260494/survey-boulder-residents-give-mixed-signals-housing-employment](http://www.dailycamera.com/lifestyles/ci_29260494/survey-boulder-residents-give-mixed-signals-housing-employment).

82. Normalized citation rates calculated using approximate populations of people experiencing homelessness to those not homeless in Boulder of 1,000 and 100,000, respectively.
83. E-mail from Greg Testa, Boulder Police Chief, to Nicole Jones, Student, University of Denver Sturm College of Law (Feb. 14, 2018) (on file with author).
84. Interview with Joe Pelle, Sheriff, Boulder County Sheriff, in Boulder, Colo. (March 9, 2018).
85. Boulder Shelter for the Homeless and Path to Home provide a place to sleep year round; Severe Weather Services shelter offers 100 beds seasonally and those are weather dependent. Telephone interview with Greg Harms, Executive Director, Boulder Shelter for the Homeless (Mar. 4, 2018); E-mail from Isabel McDevitt, Bridge House Chief Executive Officer to Darren O’Connor, Student, University of Denver Sturm College of Law (Feb. 23, 2018) (on file with author).
86. *Adult Homelessness Services Dashboard*, CITY OF BOULDER SINGLE, <https://bouldercolorado.gov/homelessness/homelessness-dashboard> (last visited Apr. 10, 2018) (while not all 987 people need access at one time, this number does not include the unknown count of people who do not attempt to access assistance through the coordinated entry program).
87. Darren O’Connor, *Is a 350 Times Citation Rate for Camping Against Homeless Folks*, YOUTUBE (Feb. 22, 2018), <https://www.youtube.com/watch?v=QzsBNjbexj4&t=1031s>.
88. Boulder County jail is regularly over populated, causing serious sanitary and safety issues. In fact, the daily population average is over 400 inmates in a jail that is built to hold only 287 people. Jail officials now double bunk where possible, including turning the recreation yards into extra cells—creating an unhealthy, unsafe, and unproductive environment for both the staff and the inmates. Interview with Joe Pelle, *supra* note 84.
89. *Id.*
90. *Id.* (explaining that the number is close to 72%).
91. *Id.*
92. *Id.*
93. See Appendix A; E-mail from Karen Rahn, Human Services Director, City of Boulder to Darren O’Connor, Student, University of Denver Sturm College of Law (Mar. 13, 2018) (on file with author) (stating that Boulder spent \$1,415,000 on programs addressing homelessness in 2016).
94. Michael LaGarde & Paul Warren *Too High a Price; What Criminalizing Homelessness Costs Colorado: Boulder City Spotlight*, Homeless Advocacy Policy Project 3 (2016), available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/Boulder-Spotlight.pdf> (finding Boulder issued far more camping tickets than any other municipality); see also Appendix C.
95. In an interview with the Daily Camera’s Editorial Page Editor, David Krieger, outgoing District Attorney Stan Garnett fully supported criminalizing homelessness. Dave Krieger, *A conversation with Stan Garnett: The litigator moves on*, DAILY CAMERA (Mar. 3, 2018, 5:00 PM), [http://www.dailycamera.com/opinion/conversations/ci\\_31707075/conversation-stan-garnett-litigator-moves](http://www.dailycamera.com/opinion/conversations/ci_31707075/conversation-stan-garnett-litigator-moves) (Question from Editor Dave Krieger: “Supporters of the camping ban point out that taxpayers fund these public spaces and if they’re going to be usable by families and children, you have to be able to move homeless people off of them.” Answer from outgoing District Attorney Stan Garnett: “Yes. Totally agree.”).
96. *Bell v. City of Boise*, Case 1:09-cv-00540-REB, Statement of Interest of the United States, Doc. 276 (D. Idaho Aug 6, 2016) (“Issuing citations for public sleeping forces individuals into the criminal justice system and creates additional obstacles to overcoming homelessness. Criminal records can create barriers to employment and participation in permanent, supportive housing programs.”); OFFICE OF THE AUDITOR AUDIT SERVICES DIVISION CITY AND COUNTY OF DENVER, *Denver’s Road Home Performance Audit 30* (Apr. 2015), available at [https://www.denvergov.org/content/dam/denvergov/Portals/741/documents/Audits\\_2015/Denver%27s\\_Road\\_Home\\_%20Audit\\_%20Report\\_04-16-15.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/741/documents/Audits_2015/Denver%27s_Road_Home_%20Audit_%20Report_04-16-15.pdf) (“[P]unishment [of those on the street] often translates into a criminal record, which only compounds the difficulty of finding employment and housing.”).
97. *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm#sdendnote49sym](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#sdendnote49sym) (last visited Apr. 22, 2018).

98. A study of help-wanted advertisements in Virginia found that of more than 192,000 total positions listed, just under 16,000 (or 8.23%) were open to hiring an applicant with a record. NATIONAL EMPLOYMENT LAW PROJECT, *Research Supports Fair Chance Policies* 3 (2016), available at <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.
99. Simone Ispa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 54 *Criminology* 387, 388 (2016).
100. See Appendix A. E-mail from Karen Rahn, *supra* note 93.
101. Alex Burness, *Homeless center planned for former Robb's Boulder Music site, followed by affordable housing*, DAILY CAMERA (Oct. 5, 2017, 6:39 PM), [http://www.dailycamera.com/news/boulder/ci\\_31356285/homeless-center-planned-former-robbs-boulder-music-site](http://www.dailycamera.com/news/boulder/ci_31356285/homeless-center-planned-former-robbs-boulder-music-site).
102. Before the city convened its Homeless Working Group that led to the city's "Homeless Strategy," the total number of beds of then-existing services included a design capacity of 160 places to sleep each night at participating houses of worship, but able to serve more (190 was the maximum in the winter of 2016-2017), managed by nonprofit BOHO, plus 160 beds at the Boulder Shelter for the Homeless. Now Severe Weather Services provides 100 beds and Path to Home provides fifty, and the Shelter still offers up to 160 beds. E-mail from Isabel McDevitt, *supra* note 85; Telephone Interview with Greg Harms, *supra* note 85.
103. Those seeking Shelter services must first go through the countywide Coordinated Entry System, BOULDER SHELTER FOR THE HOMELESS, [https://bouldershelter.org/wp-content/uploads/2018/03/CE-Change-2017\\_v7.pdf](https://bouldershelter.org/wp-content/uploads/2018/03/CE-Change-2017_v7.pdf) (last visited Apr. 22, 2018).
104. *Id.*
105. The office is only open from 10:00 a.m. to 4:00 p.m. on Monday through Sunday, with an exception on Tuesday from noon to 4:00 p.m.; however, individuals cannot arrive later than 3:30 p.m. *Id.*
106. Boulder Shelter for the Homeless, <https://bouldershelter.org> (last visited Apr. 22, 2018).
107. *Id.* (the Shelter reports their mission is to "provide safe shelter, food, support services, and an avenue to self-sufficiency for homeless adults in our community").
108. Telephone Interview with Greg Harms, *supra* note 85.
109. *Id.* The shelter has a standby list for beds as well as reserved beds. If an individual has a reserved bed, that person must be there every night except three excused nights a month in order to keep that bed. *Id.*
110. E-mail from Greg Harms, Executive Director, Boulder Shelter for the Homeless to Darren O'Connor, Student, University of Denver Sturm College of Law (Mar. 23, 2018) (on file with author). The Shelter currently has no data on the average length of an individual's stay in a reserved bed. Telephone Interview with Greg Harms, *supra* note 85.
111. Telephone Interview with Greg Harms, *supra* note 85.
112. See BOULDER, COLO., CODE § 9-6-6(b)(2)(B) ("No person shall allow or permit clients of a facility to queue or otherwise wait for the facility to open or to otherwise be admitted into the facility in the public right of way").
113. Any staff member can issue a violation to an individual for breaking this contract. When "exited," that individual is told to leave the property for a period of time and can even be permanently banned. The Shelter provides its staff no guidelines with regard to punishment length or type when there is a rule violation. Telephone Interview with Greg Harms, *supra* note 85.
114. Darren O'Connor, *Kelly's Story*, YOUTUBE (Apr. 5, 2018), <https://youtu.be/nrPCEoqb9ks?t=3m11s>.
115. At times when the National Weather Service predicts a temperature of thirty-two degrees or below or predicts a temperature of thirty-eight degrees or below with precipitation, an overnight shelter is provided for individuals at one of several churches and synagogues, with the location changing by the day of the week. *Severe Weather Shelter*, BRIDGE HOUSE, <https://boulderbridgehouse.org/severe-weather-shelter/> (last visited Apr. 22, 2018).
116. Studies have reported between approximately forty and sixty percent of homeless people possess cell phones, with a lower percentage of phones working at the time. See Eric Rice, Alex Lee, & Sean Taitt, *Cell Phone Use Among Homeless Youth: Potential for New Health Interventions and Research*, 88 *J. URB. HEALTH* 1175, 1175 (2011).
117. A nonprofit, Bridge House, runs Path to Home. *Path to Home*, BRIDGE HOUSE, <https://boulderbridgehouse.org/path-to-home/> (last visited Apr. 22, 2018). Path to Home's services include: a

place to sleep on the floor at faith community locations; employment search; life skills; housing search; help with shelters, meals, and transportation, and a reunification program. *Id.*

118. *Id.*

119. *Id.*

120. E-mail from Wendy Schwartz, Manager, City of Boulder Homeless Initiatives to Darren O'Connor, University of Denver Sturm College of Law (Apr. 3, 2018) (on file with author):

To be provided with transportation assistance out of Boulder, Bridge House Path to Home staff verify (usually via phone call) that the person has a stable housing option at the destination. Often this means reunification with family and friends. However, sometimes it is another solution, such as a program in their home community that includes stable housing. For example, one individual from Portland had an opportunity to be in a transitional housing program in Portland similar to Bridge House's Ready to Work program. People in this situation would be included in the "Reunification Outside Boulder" section. Reunification is referencing the opportunity to return to a support system in another community – but that support system is not always family/friends.

See also Carla Green et al., *Bussed Out: How America moves its homeless*, GUARDIAN (Dec. 20, 2017), <https://www.theguardian.com/us-news/ng-interactive/2017/dec/20/bussed-out-america-moves-homeless-people-country-study>.

121. E-mail from Karen Rahn, *supra* note 93 (there is no detailed description of a successful exit, but examples of what are counted as such have included reunification, entry in the Ready To Work program at Bridge House, and permanent housing).

122. "Using data from the McKinney Vento programs, the Point in Time survey, and EFAA's internal programs, we estimate that roughly 1,800 children in Boulder County experienced homelessness last year." E-mail from Audrey Johnson, Director of Programs, Emergency Family Assistance Association to Darren O'Connor, Student, University of Denver Sturm College of Law (Apr. 2, 2018 12:29 MST) (on file with author).

123. *Id.*

124. Interview with Mike Homner, in Boulder, Colo. (Mar. 10, 2018).

125. Normalized citation rates calculated using approximate populations of homeless to those not homeless in Boulder of 1,000 and 100,000, respectively, and the ratio of smokers in the homeless population to those not homeless of four to one. *Underserved and Underlooked, Tobacco Addiction Among the Homeless Population*, PUB. HEALTH L. CTR. 8 (2017), available at

<http://www.publichealthlawcenter.org/sites/default/files/resources/Underserved-Overlooked-Tobacco-Addiction-Homeless-2017.pdf>; E-mail from James Cho, Court Administrator, City of Boulder Municipal Court to Darren O'Connor, Student, University of Denver Sturm College of Law (Feb. 16, 2018) (on file with author) (Boulder camping and smoking ordinances target homeless people at rates 478 times and seventy-seven times greater than not homeless individuals, respectively). See also City of Boulder, *A Boulder View-August, 2014* (Aug. 8, 2014), available at [https://archive.org/details/A\\_Boulder\\_View-August\\_2014](https://archive.org/details/A_Boulder_View-August_2014) (Boulder City Council Member Sam Weaver speaks about using smoking ordinance to move "travelers" out of downtown area).

126. See *Providing for the Unhoused: A Review of Transitional Housing Strategies in Eugene*, UNIV. OF OR. COMMUNITY PLAN. WORKSHOP i-v (2015), available at <https://www.eugene-or.gov/DocumentCenter/View/31978>. See also Darren O'Connor, *Oregon Take Aways*, YOUTUBE (Apr. 5, 2018), <https://www.youtube.com/watch?v=jaUl22ocuuE>.

127. *Providing for the Unhoused: A Review of Transitional Housing Strategies in Eugene*, *supra* note 126, at 19; see also O'Connor, *supra* note 114.

128. BOULDER, COLO., CODE § 5-6-10.

129. Boulder City Council Meeting (Sept. 19, 2017), available at [http://boulderco.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=747&meta\\_id=5402&entrytime=7575&stptime=7970&auto\\_start=1](http://boulderco.granicus.com/MediaPlayer.php?view_id=2&clip_id=747&meta_id=5402&entrytime=7575&stptime=7970&auto_start=1); see also Alex Burness, *Incident at homeless shelter had lasting consequences for Boulder man found dead on Christmas*, DAILY CAMERA (Jan. 3, 2018, 9:04 PM),

[http://www.dailycamera.com/news/boulder/ci\\_31568043/boulder-homeless-man-found-dead](http://www.dailycamera.com/news/boulder/ci_31568043/boulder-homeless-man-found-dead) (Benjamin Harvey's death on Christmas Even night "exposes issues in the system of homeless services in Boulder—one in which he was not welcome after an incident at the Boulder Shelter for the Homeless that effectively dropped him from the system").

130. Ana Campbell, *Library Expands Services to Accommodate Homeless, Mentally Ill*, WESTWORD (Mar. 20, 2018, 8:38 AM), <http://www.westword.com/content/printView/10104776> (explaining that "the Colorado Mental Wellness Network received grants from the U.S. Department of Justice to fund the navigator program, which works with the homeless and mentally ill visitors among the 2,300 people that the Central branch [Denver Library] sees a day").

131. Interview with Elizabeth Robinson, *supra* note 77.

132. Mitchell Byars, *Boulder police grapple with racial disparity in arrests*, DAILY CAMERA (Dec. 6, 2014, 5:00 PM), [http://www.dailycamera.com/news/boulder/ci\\_27079828/boulder-police-grapple-racial-disparity-arrests](http://www.dailycamera.com/news/boulder/ci_27079828/boulder-police-grapple-racial-disparity-arrests); Alex Burness, *Report: Blacks in Boulder more frequent targets of traffic, misdemeanor citations*, DAILY CAMERA (Feb. 20, 2016, 11:26 AM), [http://www.dailycamera.com/news/boulder/ci\\_29541225/report-boulder-police-should-strengthen-data-detecting-bias](http://www.dailycamera.com/news/boulder/ci_29541225/report-boulder-police-should-strengthen-data-detecting-bias).

133. HILLARD HEINTZE, *Boulder Police Department: Independent Analysis of Police Data and Review of Professional Police Complaint Process 6* (2016), available at <https://bouldercolorado.gov/police/hillard-heintze>.

134. *Id.*

135. *Quick Facts: Colorado Springs*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/coloradospringscitycolorado/PST045216#qf-flag-NA> (last visited Apr. 22, 2018).

136. *2017 Point-in-Time and Housing Inventory Report*, CITY OF COLORADO SPRINGS/PIKES PEAK UNITED WAY CONTINUUM OF CARE (2017), available at <http://www.ppunitedway.org/2017-PIT-HIC-CommunityReport2017FINAL.pdf>.

137. COLORADO SPRINGS, COLO., CODE § 9.6.110 (criminalizing the following behaviors on any public property: (1) sleeping/camping; (2) keeping or storing personal property; and (3) use of a campfire or other heating source or cooking device).

138. COLORADO SPRINGS, COLO., CODE § 9.9.404 (criminalizing the following behaviors on park property: sleeping/camping; keeping or storing personal property; parking any motorized vehicle after park hours, and use of a campfire or other heating source or cooking device).

139. COLORADO SPRINGS, COLO., CODE § 9.2.102 (criminalizing "loitering to warrant alarm").

140. COLORADO SPRINGS, COLO., CODE § 9.2.112(A) (criminalizing sitting, kneeling, reclining, or lying down in commercial districts).

141. COLORADO SPRINGS, COLO., CODE § 9.6.503 (criminalizing accumulating or storing "junk" on any city premise).

142. COLORADO SPRINGS, COLO., CODE § 9.2.104 (criminalizing "intentionally obstruct any street, sidewalk, parking lane or median so as to interfere with another's immediate, free and uninterrupted use and passage").

143. COLORADO SPRINGS, COLO., CODE § 4.2.102 (criminalizing being in a city park after 9:00 p.m. or 11:00 p.m., depending on the month).

144. COLORADO SPRINGS, COLO., CODE § 12.4.802 (criminalizing polluting or contaminating city waters).

145. COLORADO SPRINGS, COLO., CODE § 9.6.105 (criminalizing urinating or defecating "upon any public place or place within public view other than in a toilet facility provided for the purpose").

146. COLORADO SPRINGS, COLO., CODE § 9.2.111(C) (criminalizing "aggressive soliciting" in any public place).

147. COLORADO SPRINGS, COLO., CODE § 10.18.112 (criminalizing a person's ability to "access, use, occupy, congregate or assemble on or about any median").

148. COLORADO SPRINGS, COLO., CODE § 6.6.103 (criminalizing smoking in a "public place or workplace"). While a smoking ban may not directly appear to be an ordinance specifically criminalizing behaviors associated with people experiencing homelessness, a recent study conducted by the Public Health Law Center in December 2016 found that at least 70% of homeless individuals smoke cigarettes, which is "four

times that of the general population and 2.5 times that among impoverished Americans.” *Tobacco & Health Equity: Tobacco Use Among the Homeless Population*, PUB. HEALTH L. CTR. 2, Dec. 2016, available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-homeless-tobacco-FAQ-2016.pdf>.

149. While we requested the number of citations issued for all twelve ordinances, the CSPD failed to provide data on citations for smoking in public areas and polluting, despite the fact that these ordinances likely have a larger impact on people experiencing homelessness.

150. See Appendix D; E-mail from Lieutenant Howard Black, Public Information Officer, Colorado Springs Police Department to Michael Bishop, Student, University of Denver Sturm College of Law (Apr. 2, 2018) (on file with author).

151. Stacie Gonzales, *Being neighborly in the Springs increasingly means forming bonds with those suffering homelessness*, COLORADO SPRINGS INDEP. (Feb. 14, 2018), <https://www.csindy.com/coloradosprings/being-neighborly-in-the-springs-increasingly-means-forming-bonds-with-those-suffering-homelessness/Content?oid=10388059>.

152. Nat Stein, *New homeless outreach team joins local humanitarian effort*, COLORADO SPRINGS INDEP. (May 18, 2016), <https://www.csindy.com/coloradosprings/new-homeless-outreach-team-joins-local-humanitarian-landscape/Content?oid=3801165>.

153. *Low-barrier Homeless Shelter in Colorado Springs*, SPRINGS RESCUE MISSION, <https://www.springsrescuemission.org/winter-homeless-shelter/> (last visited Apr. 6, 2018); COLORADO SPRINGS CORPS, [https://coloradosprings.salvationarmy.org/colorado\\_springs\\_corps/provide-shelter/](https://coloradosprings.salvationarmy.org/colorado_springs_corps/provide-shelter/) (last visited Apr. 6, 2018); *Programs and Services*, URBAN PEAK, <http://www.urbanpeak.org/colorado-springs/programs-and-services/> (last visited Apr. 6, 2018).

154. *Id.*

155. Rich Laden, *Colorado Springs apartment rents rising at No. 1 rate in the U.S.*, GAZETTE (Apr. 2, 2016), <http://gazette.com/colorado-springs-apartment-rents-rising-at-no.-1-rate-in-the-u.s./article/1573300>.

156. Conrad Swanson, *Economist: No quick fix for Colorado Springs' affordable housing shortage*, GAZETTE (Feb. 23, 2018) <http://gazette.com/economist-no-quick-fix-for-colorado-springs-affordable-housing-shortage/article/1621579>.

157. *Homeless Outreach Team*, COLORADO SPRINGS POLICE DEPARTMENT, <https://cspd.coloradosprings.gov/content/homeless-outreach-team> (last visited Mar. 8, 2018).

158. Based on 2010 United States Census Data. *Quick Facts: Pinellas Park (city)*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/pinellasparkcityflorida> (last visited Apr. 22, 2018).

159. Telephone Interview with Officer Tom Kippel, Senior Officer, Colorado Springs Police Department Homeless Outreach Team (Feb. 19, 2018). Officer Kippel stated that the HOT Team gains knowledge through experience when they begin their first day on the job. However, the Department offer optional Crisis Intervention training.

160. Brief for Homeless Outreach Team (HOT) Colorado Springs Police Department, 2010 Herman Goldstein Award for Excellence in Problem-Oriented Policing, available at [http://www.popcenter.org/library/awards/goldstein/2010/10-37\(W\).pdf](http://www.popcenter.org/library/awards/goldstein/2010/10-37(W).pdf).

161. *Id.*

162. 2017 *Point-in-Time*, *supra* note 136.

163. Telephone Interview with Officer Kippel, *supra* note 159.

164. Panelists at the Conversation on Homelessness included Chris Garvin from El Paso County Department of Human Services, Terry Anderson from the Springs Rescue Mission, Aimee Cox from the Community Health Partnership, Trig Bungaard from Coalition for Compassion and Action, and Beth Roalstad from Homeward Pikes Peak.

165. Gary Warth, *City-sanctioned homeless camp to open Monday*, SAN DIEGO UNION-TRIBUNE (Oct. 4, 2017), <http://www.sandiegouniontribune.com/news/hepatitis-crisis/sd-me-homeless-camp-20171002-story.html>.

166. Debbie L. Skylar, *City Closing Temporary Homeless Camp in Golden Hill Parking Lot*, TIMES OF SAN DIEGO (Dec. 11, 2017), <https://timesofsandiego.com/life/2017/12/11/city-closing-temporary-homeless-camp-in-golden-hill-parking-lot/> (explaining that the city of San Diego “is now making the transition to what officials call “bridge shelters,” large tents where the homeless will be housed, provided with supportive services and ultimately moved on to more permanent solutions.”).

167. Soo Youn, *Battling homelessness and Hepatitis A, San Diego employs tent structures to help*, NBC NEWS (Feb. 4, 2018), <https://www.nbcnews.com/news/us-news/battling-homelessness-hepatitis-san-diego-employs-tent-structures-help-n844556>.
168. Laura Wilson, *Colorado Springs eyeing new ordinance for homeless camps*, KOAA NEWS 5 (Mar. 8, 2018), <http://www.koaa.com/story/37683777/colorado-springs-eyeing-new-ordinance-for-homeless-camps>.
169. *Id.*
170. Billie Stanton Anleu, *Law to keep people off dangerous Colorado Springs medians wins unanimous approval*, GAZETTE (Jan. 24, 2017), <http://gazette.com/law-to-keep-people-off-dangerous-colorado-springs-medians-wins-unanimous-ok/article/1595059>. The Colorado Department of Transportation Official tasked with deciding where to post signage does so for a road with “higher speed and higher volume roadway within the City that does not possess a flat area of at least four feet (4’) in diameter.” The ordinance goes on to define “higher speed roadway” as any road with a posted speed limit of at least thirty miles per hour and a “higher volume roadway” as any road “classified as a Freeway, Expressway, Parkway, Principal Arterial, or Minor Arterial on the Colorado Springs major thoroughfare plan.” In addition, it defines a “flat” area as a median “having a grade of eight percent (8%) or less throughout.” COLORADO SPRINGS, COLO., CODE § 10.18.112(C).
171. Anleu, *supra* note 170.
172. *Id.*
173. *Use of Medians: Proposed Amendment of City Code* (Jan. 9, 2017), available at <https://www.mayorsuthers.com/sites/mayorsuthers.com/files/median-access-presentation-Jan2017.pdf>.
174. [https://safety.fhwa.dot.gov/ped\\_bike/tools\\_solve/medians\\_brochure/medians\\_brochure.pdf](https://safety.fhwa.dot.gov/ped_bike/tools_solve/medians_brochure/medians_brochure.pdf)
175. *Id.*
176. *Use of medians: Proposed Amendment of City Code*, *supra* note 173.
177. *Id.*
178. Wilson, *supra* note 168.
179. *Id.*
180. *2017 Point-in-Time*, *supra* note 136.
181. *See supra* note 159 and accompanying text.
182. *See* Adcock et al., *supra* note 42, at 6–9.
183. Kieran Nicholson, *Homeless deaths in Denver in 2017 at record number, advocacy group says at vigil*, DENV. POST (Dec. 21, 2017), <https://www.denverpost.com/2017/12/21/denver-homeless-deaths/>.
184. DENVER, COLO., CODE § 38-99; COLORADO SPRINGS, COLO., CODE § 9.6.105.
185. *Downtown Denver Public Toilet Inventory*, DENVER HOMELESS OUT LOUD, <https://denverhomelessoutloud.org/2014/08/17/1022/> (last visited Apr. 14, 2018).
186. *Denver Public Restrooms*, *supra* note 18.
187. *Downtown Denver Public Toilet Inventory*, *supra* note 185.
188. Jesse Paul, *Colorado lawmaker accuses fellow Democrat of harassment, bullying in rift that reaches house floor*, DENV. POST (Mar. 16, 2018), <https://www.denverpost.com/2018/03/16/donald-valdez-jovan-melton-rift/>.
189. Alex Burness, *Committee hearing for Colorado’s homeless Right to Rest Act delayed*, DENV. POST (Feb. 19, 2018), <https://www.denverpost.com/2018/02/19/colorado-right-to-rest-act-hearing-delayed/>.
190. *State Committee Again Votes Against Right to Rest—Community Voice Loud and Clear that Our Human Rights Will Be Heard No Matter What*, DENVER HOMELESS OUT LOUD, <https://denverhomelessoutloud.org/2018/03/15/state-committee-again-votes-against-right-to-rest-community-voice-loud-and-clear-that-our-human-rights-will-be-heard-no-matter-what/> (last visited Apr. 14, 2018).
191. *Id.*
192. *The Denver Right to Survive Initiative*, DENVER HOMELESS OUT LOUD, <https://denverhomelessoutloud.org/2018/04/05/the-denver-right-to-survive-initiative/> (last visited Apr. 14, 2018).
193. Rex Hohlbein, Founder, Facing Homelessness, *Finding Space to Solve Homelessness: Addressing Homelessness Through Public, Private, and Religious Land Use*, Seattle University School of Law (Apr. 14, 2018).
194. Westergaard, *supra* note 10.