TOO HIGH A PRICE

WHAT CRIMINALIZING HOMELESSNESS COSTS COLORADO:
BOULDER CITY SPOTLIGHT
Tucked into a picturesque valley below the iconic Flatirons, Boulder hosts booming tech and natural foods industries, a thriving research university, a strong entrepreneurial community, and numerous federal research labs. As the city of Boulder claims, “[n]o wonder this Rocky Mountain town of approximately 100,000 people is a world-class destination.” As a result, Boulder’s population growth is outpacing the rest of Colorado. Paradoxically, this affluent community known for its progressive ideals does not provide near enough shelter for its homeless residents, and its police officers routinely issue citations to those without shelter.

Boulder has the second largest homeless population in the Metropolitan area, second only to Denver. Roughly 850 people in Boulder County do not have permanent housing. More than 440 people in the city of Boulder alone do not have permanent housing.

The Boulder Shelter for the Homeless is the one primary homeless shelter in Boulder. It is located on the far northern edge of the city limits. A handful of other places provide shelter to those in need, but only for specific purposes such as domestic abuse. Boulder’s one homeless shelter only offers beds during the winter, and has a max occupancy of 160 people at any given time. Because this shelter does not have enough beds to meet the community’s needs, it turns people away every day. Boulder has an “overflow” bed capacity through

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**Population:** 105,112

**Self-Sufficiency Standard:** $75,906

**Persons Below Poverty Level:** 22.8%

**Homeless Population:** 441

**Shelter Beds Available:** 160-287

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Source: https://www.google.com/maps/search/homeless+shelters+near+Boulder,+CO/@40.0628647,-105.3526644,12z/data=!3m1!4b1
Churches that provide an additional 127 beds during the winter months. The city therefore provides a total of 280 beds for homeless people during the winter season. Residents who use the shelter for overnight winter sheltering can stay up to ninety days each winter season. Unfortunately the shelter is closed to residents between 8:00 a.m. and 5:00 p.m. Homeless people are required to find warmth and shelter elsewhere during the day.

Citations and Case Dispositions

<table>
<thead>
<tr>
<th>Enacted Anti-Homeless Ordinances:</th>
<th>8</th>
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</thead>
<tbody>
<tr>
<td>Number of Behaviors Banned:</td>
<td>8</td>
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</table>

There are eight anti-homeless ordinances in Boulder, prohibiting eight behaviors. In the last five years, Boulder has issued a total of 86,769 written warnings or citations under all of its ordinances. Of those citations, 7,675 were issued to people who self-identified as homeless. Over this period, Boulder issued 3,099 citations under the identified anti-homeless ordinances. Over half of these citations were issued to people who self-identified as homeless.

Boulder’s criminalization of homelessness has been particularly evident in its prohibition of “camping” in the city. From 2010 through 2014, the city issued 1,767 citations under the camping ban. Over those five years, this single ordinance accounted for over two percent of all citations in Boulder, and fifty-seven percent of all citations under anti-homeless ordinances in the city.

Eight-seven percent of these citations went to homeless individuals. In 2014, this percentage was even higher, with ninety-three percent of the nearly 300 tickets going to homeless individuals. Over this five-year period, Boulder averaged four camping ban citations for every homeless individual in the city.

Boulder’s enforcement is extreme not only in total numbers, but also in comparison to other Colorado cities.
While several cities had camping bans, the overwhelming majority of cities that provided us with data had much more minimal ticketing under these bans. Boulder had more camping ban citations than all the other cities combined, and double the amount in the city with the second highest number of citations (Fort Collins). Boulder issues exponentially more camping ban citations than Denver and Colorado Springs, both of which have significantly higher total populations and numbers of homeless individuals.

**Boulder Issues an Extremely High Number of Citations Relative to Other Cities**

<table>
<thead>
<tr>
<th>City</th>
<th>Camping Ban Citations</th>
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<tbody>
<tr>
<td>Boulder</td>
<td>1767</td>
</tr>
<tr>
<td>Fort Collins</td>
<td>861</td>
</tr>
<tr>
<td>Colorado Springs</td>
<td>92</td>
</tr>
<tr>
<td>Edgewater</td>
<td>31</td>
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<td>Lakewood</td>
<td>27</td>
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<tr>
<td>Wheat Ridge</td>
<td>22</td>
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<tr>
<td>Denver</td>
<td>15</td>
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<tr>
<td>Littleton</td>
<td>6</td>
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<tr>
<td>Salida</td>
<td>4</td>
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<tr>
<td>Grand Junction</td>
<td>3</td>
</tr>
<tr>
<td>Broomfield</td>
<td>0</td>
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<tr>
<td>Commerce City</td>
<td>0</td>
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<tr>
<td>Craig</td>
<td>0</td>
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<tr>
<td>Durango</td>
<td>0</td>
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<tr>
<td>Fort Lupton</td>
<td>0</td>
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</tbody>
</table>

**Boulder’s Camping Ban – Small Tweaks, But No Change**

Boulder’s camping ban ordinance makes it unlawful for a homeless person to sleep on public property if using any protection from the elements besides their clothing.

**Boulder 5-6-10 Camping or Lodging on Property Without Consent.**

(a) No person shall camp within any park, parkway, recreation area, open space, or other city property.

... 

(d) For purposes of this section, camp means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. But the term does not include napping during the day or picnicking. The term shelter includes, without limitation, any cover or protection from the elements other than clothing…...
Boulder originally enacted the camping ban ordinance in the 1980’s. In 2010, the City Council unanimously agreed to strengthen the law by removing the option for the city manager to grant permits to camp on public land. One councilman noted the change preserved the status quo because such permits had not been issued in the past. City staff supported the changes because of concerns about the possible “appearance of discrimination, with homeless people being denied permits while others received them.” The City Council made this change despite calls from homeless individuals and advocates to make the permit application process easier, or even to consider suspending enforcement of the camping ban.

Several months after the removal of the ordinance’s permit language, the ACLU of Colorado announced a legal challenge to Boulder’s camping ban. The ACLU appealed the conviction of a homeless man for sleeping outside in a sleeping bag after being turned away from a shelter on a night with below freezing temperatures. The ACLU contended that “[w]hen the homeless shelters are closed or full, it is terribly unfair, and unconstitutional, to impose fines and jail sentences on persons who have no choice but to sleep outdoors.” The Boulder District Court rejected the appeal, and the Colorado Supreme Court declined to hear the case.

In 2012, the Boulder City Council reduced fines and eliminated jail time for sixty municipal offenses, including camping. The city hoped to decrease the high number of minor cases filling up local court dockets. By eliminating possible jail time on first or second offense, the city council intended to prevent defendants from entitlement to jury trials. Courts ultimately found camping ban defendants still had a right to a jury trial, prompting the City Council to restore jail time as a possibility penalty in 2014.

Although constitutionality of camping ban has not been authoritatively decided, the U.S. Department of Justice recently endorsed the same position as the ACLU in a case challenging a camping ban in Boise, Idaho. The Idaho case helped reignite the debate surrounding Boulder’s camping ban in the latter half of 2015. Even Boulder Mayor Matt Appelbaum, while critical of the federal government’s position, noted that “the city needs to have another ‘conversation’ on its camping ban.” At their annual retreat in January of 2016, many City Council members also said they want to “reconsider” the city’s camping ban.

 Shortly before publication of this Report, the Boulder City Council unanimously agreed to ask city staff to provide data on the enforcement of the camping ban. Councilman Sam Weaver argued that the goal of the questions was to assess a claim made in this Report and by other advocates: “that a necessary act of survival lands people in jail.” Specifically, the City Council wanted to know:

- how often tickets are written just for camping,
- how often warrants for failure to appear are issued,
- how often a person ends up serving jail time for a citation that was only for camping,
- how many unique individuals have been ticketed for violating the camping ban,
- what the police department’s policy is on how officers should deal with people they encounter camping,
- and what the municipal court’s practice is on sentencing for camping violations.

Although these questions fall outside the scope of this Report, the research from this Report can offer a partial response. First, a brief and non-exhaustive review of the raw citation data provided by Boulder makes clear that a vast majority of the 1532 camping ban citations issued to homeless individuals are issued solely for violating the camping ban. Second, a detailed analysis of the disposition of citations in Denver found that the average time an individual spent in jail for a camping ban citation was one day. The analysis of Denver citations suggests that from 2010 to 2014, Boulder spent approximately $946,000 on policing, adjudication, and incarceration under its camping ban.

Finally, the framing of the question, whether “a necessary act of survival lands people in jail,” is fundamentally misguided. From a practical stand point, this ignores the heavy and indirect costs of criminalizing
homelessness. Even a conviction that results in no jail time can have significant and compounding effects on the convicted individual’s housing, employment, education, and public benefits, particularly when this individual is homeless. More importantly, it is unconscionable for a local government to force homeless individuals to violate ordinances for their very survival, regardless of whether they face jail time or not.

Conclusion: Being Homeless in Boulder Often Means Nowhere to Sleep

Homeless individuals, without a place to rest, are being criminalized for a basic human need—sleep. Clearly there are not enough beds to assist Boulder’s homeless population. Boulder simply cannot sufficiently address the needs of its homeless residents. Meanwhile, zealous enforcement of a “camping” ban criminalizes homeless people with no “legal” place to sleep.

Because the one homeless shelter in Boulder cannot meet the needs of its homeless population, homeless people are denied shelter every day. Meanwhile homeless people must do the best they can to survive in public and private places. In Boulder, homeless people must risk a criminal record for life sustaining activities like sleeping.
ENDNOTES


3 QuickFacts, supra note 1.


5 Tony Robinson and Allison Sickels, No Right To Rest: Criminalizing Homelessness in Colorado, Denver Homeless Out Loud 36, Apr. 2015, https://denverhomelessoutloud.files.wordpress.com/2015/04/report-final.pdf [hereinafter No Right To Rest]. This number depends on the season during the year. Boulder tries to provide more emergency shelter beds during the winter months. Id.


7 QuickFacts, supra note 1. In 2014, the United States Census Bureau estimated the population of Boulder to be 105,112, which is approximately 2% of Colorado’s population, 5,355,866. Id. In 2010, the population of Boulder was 97,468, which was 2% of Colorado’s population in 2010, 5,029,324. Id. From April 1, 2010, to July 1, 2014, the population of Boulder has increased by 7.8%. Id. As stated above, the population of Colorado has increased by 6.5%. The city of Boulder is growing 1.3% faster than Colorado.


9 2014 State of Homelessness Report: Seven County-Denver Metropolitan Region, Metro Denver Homeless Initiative 17 tbl. 16, (2015), http://mdhi.org/wp-content/uploads/2015/06/FINAL-DRAFT-06.05.15.hf_.pdf. Boulder County is home to 14.6% of the Denver metro area’s homeless population. Id. In Boulder 36.7% of respondents reported having serious mental illness, 25.1% reported a serious medical or physical condition, and 22.1% reported a problem with alcohol or drug abuse. 2014 State of Homelessness Annual Assessment, supra note 4. Economic factors remain one of the primary reasons people in Boulder have become homeless. 39.7% of respondents reported they lost their job or could not find work, while another 28.1% said they worked in the last month but remain homeless, and 34% said their housing and were too high. Id.


12 Id.

13 See Robinson & Sickels, supra note 5, at 36.


15 For a list of anti-homeless ordinances in Durango and across the state, see http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html.

16 See http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html (last visited Feb. 14, 2016). These nine Boulder Municipal Ordinances are: (1) Section 5-6-10. Camping or Lodg-
ing on Property without Consent; (2) Section 5-6-3. Unlawful Use of Vehicles as Residence; (3) Section
5-3-5. Obstructing Public Streets, Places, or Buildings; (4) Section 5-4-6. Trespass on Public Property; (5)
Section 5-6-7. Public Urination;; (6) Section 5-3-7. Aggressive Begging Prohibited; (7) Section 5-6-Staying
on Medians Prohibited; and (8) Smoking Prohibited in Public Areas.

See http://www.law.du.edu/index.php/homeless-advocacy-policy-project/enforcement-of-anti-homeless-
ordinances (last visited Feb. 14, 2016). More specifically there were: (1) 1,767 written warnings or citations
issued for “camping or lodging on property without consent”; (2) 22 written warnings or citations issued for
“unlawful use of vehicles as residence”; (3) 15 written warnings or citations issued for “obstructing public
streets, places, or buildings”; (4) 21 written warnings or citations issued for “trespass on public property”; (5)
1,253 written warnings or citations issued for “public urination”; (6) 19 written warnings or citations issued
for “aggressive begging prohibited”; (7) no citations were issued for “staying on Medians Prohibited”; and
(8) no citations were issued for “smoking prohibited in public areas.”

Of the seventy-six most populous cities in Colorado, this report found that fort-four had some version of a
camping ban. See, e.g., id.

Of the twenty-three cities we sent Colorado Open Records Requests to, seventeen had camping bans. We were
able to collect data from fifteen of them.

Erica Meltzer, Boulder Homeless Advocates Get Boost from Feds’ Stance Against Camping Bans, DAILY CAM-
get-boost-from-feds-stance.

Heath Urie, Boulder Council Strengthens No-Camping Law, Despite Push from Homeless Advocates, DAILY

Press Release, ACLU, On Behalf of Homeless Man, ACLU Takes Boulder’s “No Camping” Law to Court
(June 28, 2010), https://www.aclu.org/news/behalf-homeless-man-aclu-takes-boulders-no-camping-law-
court.

Kyle Horner, Boulder Approves Penalty Reduction for Sixty Municipal Offenses, ACLU wants Forty More,
municipal-offenses-aclu-wants-forty-more-5872431.

Press Release, ACLU, ACLU Asks Colorado’s Highest Court to Find Client’s Conviction Under Boulder’s
No-Camping Ordinance Unconstitutional (May 6, 2011), https://www.aclu.org/news/aclu-asks-colorados-
highest-court-find-clients-conviction-under-boulders-no-camping-ordinance; Kieran Nicholson, Anti-Camp-
denverpost.com/nationworld/ci_28637855/anti-camping-ban-suit-boise-draws-feds-colorado.

Id. Later reporting suggested that the actual impetus was “homeless camping defendants insisting on jury tri-
overlap between the two groups is unclear. Regardless, the combination of Occupy Boulder protestors and
the attempt to eliminate the expense of jury trials may help explain the sharp spike in camping citations in
2012. The disproportionate impact on homeless individuals still persisted, whatever the ultimate explanation.

See Horner, supra note 29; see also Meltzer, supra note 30.

See Metzler, supra note 28; Bell v. City of Boise, Case 1:09-cv-00540-REB, Statement of Interest of the
See Meltzer, supra note 20.

See id.


Id.

Id.


Id.

Id. at V.B.

The ALCU and Department of Justice make compelling cases that it is also unconstitutional. See supra notes 28 – 29, 34 and accompanying text.