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## OTTEN JOHNSON ALERT

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### A Deeper Look at Initiative 300

April 2019 • [Cory Rutz](#)

One of the most publicized, controversial, and emotional ballot issues in this May's election is the proposed Initiative 300 in the City and County of Denver. Initiative 300 proposes to repeal Denver's "camping ban" by implementing a series of new rights, among those, the right to "rest" in public spaces.

The Camping Ban, which became law in 2012, addressed concerns with the existing "[Sit/Lie Ordinance](#)" that prohibits individuals to sit or lie down in the downtown area upon any "bedding, chair, stool or any other object placed upon the surface of the public right-of-way" between the hours of 7:00 a.m. and 9:00 p.m. The Sit/Lie Ordinance did not provide police with authority to ask homeless individuals to move out of downtown between the hours of 9 p.m. and 7 a.m.

The [Camping Ban](#) went farther by removing the hour restrictions that appear in the Sit/Lie Ordinance, but limiting only efforts to "camp" on public or private property except where expressly permitted—the term "camp" is defined to require some form of shelter, but includes tents, sleeping bags, blankets and any other forms of cover or protection from the elements (other than clothing). The Sit/Lie Ordinance and the Camping Ban, which would be repealed by Initiative 300, both require law enforcement officers to take two actions prior to taking any enforcement action:

1. Issue an oral request for compliance (i.e., an order to move on), and following a failure to comply, a written request; and
2. Attempt to determine whether the person is in need of medical or human services

assistance and, if so, make a reasonable effort to contact and obtain the assistance of an outreach worker in lieu of taking any enforcement action.

According to a recent [Denver Post article](#), enforcement action with respect to violations of the Camping Ban is rare—police have issued only 29 citations and made three arrests since 2011. However, during almost the same period, police have recorded nearly 13,000 “street checks” for unauthorized camping, which generally include one or both of the steps noted above—these street checks also referred to as “sweeps” in news coverage. Those numbers don’t include the approximately 1,300 curfew violations in public parks or 2,900 trespassing violations, which are other charges that commonly affect homeless individuals and would, in many instances, be repealed by Initiative 300.

[Initiative 300](#) would establish broad rights for homeless and other individuals, specifically:

1. The right to rest (including sitting, standing, leaning, kneeling, squatting, sleeping and lying down) in a non-obstructive manner in public spaces.
2. The right to shelter oneself from the elements in a non-obstructive manner in outdoor public spaces.
3. The right to eat, share, accept, or give free food in any public space where food is not prohibited.
4. The right to occupy one’s own legally parked motor vehicle or occupy a legally parked motor vehicle belonging to another, with the owner’s permission.
5. The right and expectation of safety and privacy of or in one’s person and belongings while occupying public spaces.
6. The right to have the City and County government of Denver enforce and defend this law on the basis that a constitutional right of initiative, which is an expression of local community self-government, exists.

As used in the draft ordinance, public spaces include any outdoor property that is owned or leased by the City and County of Denver that is accessible to the public, and would generally include places like public streets and sidewalks and City parks. Those areas are limited only by the “non-obtrusive manner” requirement, which is defined fairly narrowly to allow any use that “does not render passageways impassable or hazardous.”

In addition to repealing any existing federal, state or local laws that conflict with the rights established by the ordinance, Initiative 300 makes it a civil rights violation—but not clearly defining what this means—for any agent of Denver (including police officers) to detain, cause to move, or otherwise violate the rights set forth above. In addition, non-governmental agencies, including individuals and service providers, may not violate the foregoing rights or in any way “harass, terrorize, threaten, or intimidate” any person exercising those rights.

Initiative 300, which would be the [first in the country to codify a person's right to live in public spaces](#), has attracted fierce support and even fiercer opposition. Indeed, [as of April 5, 2019](#), the Denver Right to Survive Initiative Committee (in support of Initiative 300) had reported \$81,514.68 in contributions, and Together Denver (opposed to Initiative 300) had reported \$1,523,834.00 in total contributions.

Those in support of Initiative 300, which most recently added the [American Civil Liberties Union \(ACLU\)](#) of Colorado to its [list of endorsers](#), stress that decriminalizing homelessness is the “first step toward a real solution, instead of the status quo—which we all know is not working,” referencing the Camping Ban’s purported effect of forcing those experiencing homelessness to move from safe, well-lit areas to unsafe places to avoid contact with law enforcement. Proponents note that Initiative 300 will not stop homeless people from having to follow the law, and address concerns regarding the broad definition of public spaces by noting that “most people without homes, like any people, do not want be somewhere they’re not wanted, or somewhere they will run into conflict.”

The “Together Denver” opposition group, which also published an [extensive list of its endorsers](#), cites public health and safety concerns related to the limited enforcement actions that may be taken by City officials as a [primary reason to vote against the measure](#), as well as the possible negative impacts on the public spaces in which occupancy would be protected. The opposition group also points out a number of [flaws in the draft language](#) of the ordinance—including concern that making it unlawful for individuals and entities to “harass, terrorize, threaten, or intimidate” may curtail outreach workers and first responders from approaching those in need of assistance, for fear of being sued under the ordinance.

Other opponents to Initiative 300 include services providers such as the [Denver Rescue Mission](#), although many other service providers have declined to take a position at all on the measure. In a [statement issued by the Homeless Leadership Council](#), which consists of executives of nine homeless service providers, the council noted that both the impact of the campaign and the possible impact of the ordinance (if approved) are detrimental to the community, and expressed disappointment that the money raised for the campaign means “that financial resources are being diverted from services, and further stigmatizing people experiencing homelessness, instead of investing in the multitude of real solutions that our organizations are providing daily.”

For more information on this and other measures on the ballot for May 7, refer to the Denver Elections Division Voter and Election Information page:  
<https://www.denvergov.org/content/denvergov/en/denver-elections-divison/voter-election-information.html>

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