

“Right to Survive” Potential Impacts

This memo outlines potential impacts to City operations should the “Right to Survive” ballot measure become law. The ordinance would grant broad rights for people to shelter themselves from the elements in public spaces, including parks, sidewalks in front of private businesses and homes, and the 16th Street Mall. The following ordinances are intended to be superseded if the measure is adopted:

- Unauthorized Camping Ordinance
- Sit/Lie Ordinance
- Trespassing on public property
- Park curfew laws
- Health regulations
- Park permits
- Refusing to show identification

The measure also would potentially create new civil and criminal liability and legal causes of action against private individuals, homeowners, businesses, city employees and city government. This likely would create a chilling effect for police officers, park rangers, health inspectors and other city officials to enforce laws and may make them reluctant to assist those in need.

If the measure passes, it will be the first of its kind. While jurisdictions such as Rhode Island, Puerto Rico, Illinois and Connecticut have passed Homeless Bills of Rights, this measure differs. It explicitly overrides existing laws and makes it a crime for law enforcement agencies or other entities to violate the rights established by the measure.

Parks & Recreation Impacts

- Park curfews, which have been in existence in Denver for over a century, would no longer be enforceable. Nor would ordinances that prohibit overnight camping or setting up of tents and structures in parks.
- Permitted events in parks often require a park to be cleared for set-up activities and to establish limited access points for safety and crowd management. This ordinance could render it impossible for a permitted event operator to manage the space for their event.
- Closing areas of parks for turf, trees and landscaping to rest, restore and regenerate would be prohibited.
- There would be additional costs for maintaining and repairing parks, trails and open spaces impacted by uncontrolled use.

Human Services Impacts

- The “Right to Survive” ordinance would make it unlawful to “harass” anyone exercising a right to shelter themselves in public. The ordinance does not provide a clear definition of harassment, which may lead social workers, co-responders, outreach staff, peer navigators and others to limit their interactions with those needing services.

Police Department Impacts

- Similarly, the Police Department's Homeless Outreach Team may curtail interactions with individuals in need of services to avoid accusations of harassment.
- The ordinance would grant significant privacy rights to personal belongings. DPD may not be able to investigate the contents of potentially dangerous items left in the public right of way without a warrant, such as an unattended tent or a backpack at the airport or a bus stop.

Public Health & Environment

- Charitable food service operations – while well-intentioned – have the potential to impact the public health and environment. The initiative could tie the city's hands in addressing unsafe food, litter, rat infestations and other risks.
- The ordinance may limit actions that can be taken to abate public and environmental health nuisances in encampments on public or private property. This could include efforts to address public health threats such as Hepatitis A, rodent infestations, feces, urine, trash and discarded needles.

Public Works Impacts

- The ordinance would enable individuals to set up tents in a non-obstructive manner on sidewalks, alleys and streets, so long as the right-of-way is not completely "impassable." This may impede access for people with disabilities, with no means for the city to clear obstructions.
- The ordinance would make it more difficult for city officials to remove individuals sheltering themselves within public infrastructure assets such as bridges and storm-water drains, which are not safe for habitation.
- The ordinance would make it difficult for Public Works staff and contractors to remove abandoned or discarded trash from the right-of-way because of the initiative's language regarding rights to privacy of belongings.
- Existing permit regulations that allow permitted encroachment and use of rights of way (e.g. permits to allow for outside dining patio space at a restaurant) may be impacted and prevent those with permits from managing that permitted space as they desire.
- As with Parks, there will be new cost implications for maintaining and protecting city assets that would be impacted by use other than as intended.

General Services Impacts

- City staff would be limited in ability to close and protect outdoor public assets like the grounds of the City and County Building under this ordinance. There are likely cost implications for additional maintenance and repairs if assets are improperly used or overused.

Legal Conflicts

- Attempts to create civil rights outside of the US Constitution
- Attempts to trump any conflicting state laws (which can't be preempted by city law)
- Creates a confusing enforcement system in which the city could be both the plaintiff and the defendant in civil suits.