



Agenda Sheet for City Council Meeting of:
09/12/2022

Date Rec'd	8/31/2022
Clerk's File #	ORD C36272
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	CITY COUNCIL
Contact Name/Phone	CP BEGGS/CM X6254 KINNEAR
Contact E-Mail	BBEGGS@SPOKANECITY.ORG
Agenda Item Type	Final Reading Ordinance
Agenda Item Name	0320 - PROTECTION OF PUBLIC LANDS AND PROPERTIES ORDINANCE

Agenda Wording

Relating to the Protection of Public Lands and Properties; and amending sections 12.02.1002, 12.02.1010, 12.02.1012 and 12.02.1014 of Article VI of Title 12.02 of the Spokane Municipal Code.

Summary (Background)

Since Martin v. City of Boise, which was the 9th Circuit ruling in 2019 that has prohibited enforcement of the camping prohibition on City-owned property subject to the availability of shelter beds, the City of Spokane has not updated its illegal camping ordinance. This update is intended to bring City code into better alignment with the Martin v. City of Boise ruling.

Lease? NO	Grant related? NO	Public Works? NO
Fiscal Impact		Budget Account
Neutral \$		#
Select \$		#
Select \$		#
Select \$		#
Approvals		Council Notifications
Dept Head	ALLERS, HANNAHLEE	Study Session\Other 8/29 Public Safety
Division Director		Council Sponsor CP Beggs, CM Kinnear
Finance		Distribution List
Legal		mharrington@spokanecity.org
For the Mayor		mmuramatsu@spokanecity.org
Additional Approvals		gbyrd@spokanecity.org
Purchasing		

ORDINANCE NO. C36272

Relating to the Protection of Public Lands and Properties; and amending sections 12.02.1002, 12.02.1010, 12.02.1012 and 12.02.1014 of Article VI of Title 12.02 of the Spokane Municipal Code.

WHEREAS, protecting the health, safety and lives of its residents is the primary purpose of city government; and

WHEREAS, the City also has a stewardship over its public lands and properties and a responsibility to set reasonable rules that will safeguard and protect those public lands and properties; and

WHEREAS, the City of Spokane has both the broad authority and responsibility to regulate public property pursuant to Article XI, Section 11 of the Washington Constitution, RCW 35A.11.020 and RCW 35.22.280(30) and (35); and

WHEREAS, City-owned public lands and properties are generally intended for the safe and sanitary use by the broader public to gather, move freely and safely about, and engage in diverse activities, all of which are inconsistent with a campground and camping activity, the adverse impacts of which include, but are not limited to, unsanitary and/or unsafe conditions (i.e., human and food waste, drug paraphernalia, general litter, fire hazards, etc.); and

WHEREAS, many individuals have resorted to using City park property, public sidewalks under or near downtown viaducts and locations adjacent to the Spokane River and its tributary Latah Creek, for camping, storage of personal belongings and/or for intermittent living accommodation; and

WHEREAS, City Park space is preserved and maintained to help benefit the physical and mental health and enjoyment of the public with freely accessible sanitary and safe outdoor spaces, and is at the center of resilient and equitable cities like Spokane; and

WHEREAS, camping interferes with park preservation, maintenance and equitable public use of these protected public properties; and

WHEREAS, public rights of way (ROW), including sidewalks, are intended for safe and sanitary shared use by a diverse community of users including businesses, government and the general public for gathering, movement of people and goods/services, ROW maintenance, cleaning and preservation services; and that this diverse population of public sidewalk users includes, by way of example, people who use differing modes of transportation including families with children in strollers and disabled individuals who use a variety of devices to facilitate mobility, such as people who, as a result of sensory, mental, or physical disability, utilize a wheelchair, motorized cart, walker, cane, scooter or other device to move from place to place; and vision impaired individuals who rely on the use of canes in combination with nonvisual tactile cues (i.e., touching building walls and railroad/highway underpass walls adjacent to sidewalks), to scan for obstacles or orientation marks; and

WHEREAS, camping and/or storage of personal belongings on sidewalks interferes with these shared uses, particularly when the conduct occurs in viaduct locations wherein infrastructure already limits shared use in confined, dim spaces, and where camping also disrupts

the safe flow of pedestrian movement by creating dangerous street crossing on high volume streets by individuals avoiding these viaducts, and additionally presents serious risk of damage to viaduct infrastructure; and

WHEREAS, a reasonable buffer distance between the entry and exit points of nearby viaducts and pedestrian routes of travel leading to and from such viaducts, including but not limited to sidewalk pedestrian routes, should also remain continuously free and unobstructed to promote the opportunity for pedestrians, particularly sight impaired, and/or mobility impaired (including elderly who also may have compromised stamina), to anticipate and prepare for the changes in pathway elements/features presented by viaduct vertical clearance, width, abutments, compromised lighting, and any signage and other communication aids that assist pedestrians in negotiating safe movement into and out of these structures;

WHEREAS, camping and/or storage of personal belongings on pedestrian routes of travel in these buffer locations near viaducts, including but not limited to sidewalks, leading to and from viaduct structures, introduces barriers that hinder the continuous unobstructed movement toward, through and from these structures, rendering pedestrian routes of travel to these structures less accessible and inaccessible depending on the nature of a pedestrian disability and/or impairment; and

WHEREAS, camping under bridges and underpasses has led to the steady destruction of critical infrastructure, causing the Streets Department to send out bridge crews who report persons digging into the buttresses and abutments, such as on Sunset Bridge, in the development of campsites. The City's Streets Department has faced unexpected costs and labor to pour gunnite to secure the bottoms of the piers. There have also been occasions where there have been fires next to piers which compromise the integrity of bridge structures and underpasses. The crew has put fencing up in certain areas to keep people out of abutment areas only to have the fencing cut or torn down a few days later. Between the camp clean-ups, graffiti, fencing, disposal fees, labor hours, and other things associated with the destruction around bridge structures, the Streets Department has estimated spending as much as \$30,000.00 per year; and

WHEREAS, riparian areas along the Spokane River and Latah Creek have been severely damaged by camping activity, and have experienced the ongoing destruction of foliage through fires, foot traffic and the regular and ongoing discharge of large amounts of refuse, human waste and drug paraphernalia left along the river banks and introduced into the water; and

WHEREAS, it is critical that City staff be given the authority to immediately remove camps that endanger human lives, critical infrastructure and the City's natural assets without having to wait for irreparable harm to occur; and

WHEREAS, the City finds that there are camping situations that create a substantial danger or risk of harm that requires immediate removal of the camper and personal property in order to prevent substantial harm to individuals, public property, and/or to the health and/or safety of the environment and/or the public. These camping situations include but are not limited to camps located on City owned/operated park property, underneath the downtown railroad viaducts and riparian zones to consist of areas adjacent to the Spokane River and Latah Creek.; and

WHEREAS, there are significant adverse impacts caused by camping activity concentrated around congregate homeless shelters which impacts Spokane's most vulnerable, particularly individuals attempting to escape homelessness. The predatory behavior of drug

dealing directly undermines the community's efforts to provide meaningful assistance and long-term resolution to the problem of individuals living unsheltered; and

WHEREAS, it is the intent of this chapter to provide protection in areas of Spokane where homeless shelters operate, and to interrupt the negative impacts of camping in areas where individuals are receiving services; and

WHEREAS, this ordinance intends to prohibit camping within the City while encouraging persons experiencing homelessness to utilize available low barrier shelters and access community services available at Spokane Community Court; and

WHEREAS, Spokane's Community Court has been recognized by the Center for Court Innovation as a model for successful problem-solving courts; and participants are able to access services that include case management, substance abuse treatment, mental health care and housing referrals; and

WHEREAS, Spokane's Community Court does not penalize homelessness, but rather serves as a mechanism for assisting unsheltered persons to access and engage in the services and programming that assist individuals in exiting homelessness and through diversion, allows participants the opportunity to change their trajectory without a criminal conviction; and

WHEREAS, it is constitutionally permissible for cities to enforce a criminal violation established pursuant to an ordinance that sets restrictions on camping regardless of shelter availability; and

WHEREAS, the City Council finds that the regulatory requirements within this ordinance are necessary to promote public health, safety and welfare by preserving public use of public spaces for which they are intended.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That Article VI of 12.02 SMC is amended to read as follows:

Article VI. Protection of Public Lands and Properties

Section 12.02.1000 Purpose

- A. The City of Spokane is committed to protecting its public lands and all of the properties within its geographical boundaries over which it exercises stewardship, including but not limited to parks, trees, natural areas, conservation lands and the Spokane River from potential health and safety hazards which result from unregulated human activity. Damage to the natural foundation of public lands and properties threatens the safety of the community.
- B. It is the purpose of this chapter to set standards for the preservation of public lands and properties that prevent such harms from destroying these natural assets. It is also the purpose of this chapter to promote the public health, safety and general welfare of citizens by providing protection to public lands and properties from the detrimental effects of unregulated human activity which is not subject to the environmental restrictions of Chapter 17E SMC.

Section 12.02.1002 Definitions

The following definitions are applicable in this chapter unless the context otherwise requires:

- A. “Camp” means to pitch, erect or occupy camp facilities, or to use camp paraphernalia or both, for the purpose of, or in such a way as will facilitate, outdoor sheltering for living accommodation purposes or for remaining outdoors overnight, or using a camper, recreational vehicle, trailer, or other vehicle for living accommodation purposes or for the purpose of remaining overnight.

~~((“Camp” or “camping” shall mean residing on or using public property for living accommodation purposes, as exemplified by remaining for prolonged or repetitious periods of time not associated with ordinary use of such public property with one’s personal possessions (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, cots, tarpaulins, hammocks, luggage, backpacks, kitchen utensils, cookware, or similar material), sleeping or making preparations to sleep, storing personal belongings as above defined, regularly cooking or consuming meals. This ordinance will not be enforced if there is no available shelter space for the individual/s engaging in otherwise prohibited camping conduct.))~~

- B. “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, campers, recreational vehicles, or trailers.

- C. “Camp paraphernalia” includes but is not limited to tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

- D. “Park or park facility” means any real property, building, structure, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks and pools. All park property, whether developed or undeveloped, including adjacent buffer lands, conservation lands and natural areas, shall be considered to be a “park facility” for purposes of this chapter.

~~((B-))~~ E. “Public property” shall mean any City-owned property, including but not limited to, parks or park facilities, riverbanks, waterways, conservation areas, natural areas, rights of way, easements, buildings, bridges, or other land or physical structures owned or managed by the City
~~((or other governmental agency.))~~

~~((G-))~~ F. “Public Tree” is a tree on City-owned property or on the public right-of-way abutting City-owned property. A public tree may also be a street tree. “City-owned property” does not refer to the right-of-way.

G. “Right-of-way” means any street, avenue, boulevard, highway, sidewalk, alley, passageway, or other thoroughfare, whether abutting public or private property, used for vehicular or pedestrian travel.

~~((D-))~~ H. “Street tree” means any tree or shrub located within the public right-of-way.

Section 12.02.1003 Protection Against Harm to Waterways

A. No person may cause harm to the Spokane River or Latah Creek or to the banks and natural areas that buffer these waterways. No person may do any of the following:

1. Build or erect a structure of any type along the Spokane River or Latah Creek, or drive a nail or other object into any tree or other natural vegetation for the purpose of building a shelter or any other structure, or for affixing an object to any tree or other natural vegetation.
2. Dig on the banks of the Spokane River or Latah Creek.
3. Move boulders, destroy vegetation, pave roads or paths, or otherwise reconfigure the natural landscape or other City-approved development on the banks of the Spokane River or Latah Creek.
4. Drive, park or bring any vehicle onto any portion of the banks of the Spokane River or Latah Creek.
5. Discharge garbage, refuse, or human or animal waste along the banks or into the waters of the of the Spokane River or Latah Creek.

B. Any violation of this section shall be punishable as a misdemeanor.

Section 12.02.1004 Injury to Tree on Public Property - Violation

No person may destroy, injure, or deface any street tree or public tree on public property by any means, as provided in SMC 12.02.914.

Section 12.02.1006 Unlawful Burning on Public Property

- A. A person is guilty of unlawful burning on public property if he or she knowingly causes a fire on public property.
- B. A violation of this section is a misdemeanor.
- C. Unless otherwise subject to custodial arrest under RCW 10.31.100, individuals subject to enforcement under this section shall be cited and released rather than being booked into jail.
- D. With the exception of those who do not meet the criteria for acceptance into community court, individuals subject to enforcement under this chapter shall be directed to community court by officer referral.

Section 12.02.1008 Unlawful Disposal of Litter on Public Property

No person may place, throw, deposit or otherwise dispose of litter in any public place, public park or in the waters within the City limits, as provided in SMC 10.08.010.

Section 12.02.1010 Unauthorized Camping on Public Property – Violation

A. Prohibition

1. No person may camp in or upon any public property including, but not limited to, on conservation lands and natural areas abutting the Spokane River, Latah Creek and ((its)) their tributaries, unless specifically authorized by declaration of the Mayor in emergency circumstances.
2. At all times, regardless of the availability of shelter, it is unlawful to camp where such activity poses:
 - a. a substantial danger to any person,
 - b. an immediate threat and/or an unreasonable risk of harm to public health or safety, or
 - c. a disruption to vital government services.

In such circumstances, the encampment shall be subject to expedited removal pursuant to SMC 12.02.1012.

3. At all times, regardless of the availability of shelter space or beds, it is unlawful to camp or store personal property, including camp facilities and camp paraphernalia, or to have unauthorized encampments, at any time in the following locations:
 - a. Underneath or within 50 feet of any railroad viaduct located within the Spokane Police Department's Downtown Precinct boundary as shown out in Exhibit A; and
 - b. Within three blocks of any congregate shelter provided that signs are posted prohibiting camping that are clearly visible to pedestrians.

B. Penalty

A violation of this section is a misdemeanor. Unless otherwise subject to custodial arrest on a warrant or probable cause for another crime, individuals subject to enforcement under this section shall be cited and released rather than being booked into jail. With the exception of those who do not meet the criteria for acceptance into community court, individuals subject to enforcement under this chapter shall be referred to community court by officer citation.

C. Enforcement

1. Law enforcement officers shall not issue a criminal citation to enforce unauthorized camping in violation of section 12.02.1010 (A)(1) when an individual is on public property at a time when there is no available overnight shelter. Nothing in this section shall be construed to prevent the enforcement of section 12.02.1003 at all times, regardless of the availability of shelter, when a person is causing harm to the Spokane River or Latah Creek or to the banks and natural areas that buffer these waterways;

nor shall this section be construed to prevent the expedited removal of an encampment on any public property pursuant to section 12.02.1012 (C).

- a. Prior to issuing a citation to a homeless person who is sleeping, lying, sitting, or camping outdoors, the police officer must first confirm that a 24/7 low-barrier shelter had available space during the previous twenty-four hours that could have been utilized by that individual.
 - b. Confirmation of overnight shelter availability may come from data provided through a City-approved data system or through direct contact with regional low-barrier shelters, and shall consist of the following:
 - i. whether a shelter has available space for sleeping,
 - ii. the number of available spaces, and
 - iii. the guests each shelter will accept (i.e. men, women, families with children, etc.).
2. Sections 12.02.1010 (A)(2) and (A)(3) are enforceable at all times regardless of shelter availability.

Section 12.02.1012 Removal of Unauthorized Encampments and Individual Camps.

Upon a determination by law enforcement or designated City personnel that an area constitutes an unauthorized encampment pursuant to 12.02.1010, or that an individual is engaged in unlawful camping or storage of personal property pursuant to 12.02.1010, the personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste may be removed according to the following procedures:

A. Unoccupied Encampments

1. Written Notice Required Prior to Removal

For unoccupied encampments, written notice of removal will be posted on each tent and/or in any other distinct areas of the encampment. Reasonable efforts should be made to ensure that campers who are known to have difficulties understanding a written notice (whether because they are non-English speakers or impaired in some other way) receive the notice in a manner that is clear.

a. Contents of Notice

The written notice will provide the following notifications:

- i. Campers must remove all their belongings from the site within 48 hours.
- ii. Campers should not leave behind any items they want to keep.

- iii. Campers unable to remove their belongings in time due to disability or an equivalent hindrance may call 311 or visit MySpokane at Spokane City Hall (808 W. Spokane Falls Blvd), to make a request for special assistance. The request will be evaluated for reasonableness, and if reasonable, accommodated to the extent practicable. Campers should not assume that a request for assistance will be approved or that the City will be able to accommodate the request.
- iv. Campers may call 311 or visit MySpokane at Spokane City Hall (808 W. Spokane Falls Blvd) to inquire about whether items that were left at an encampment have been stored. Campers may retrieve their belongings without fear of arrest solely on the basis that they are retrieving their belongings.
- v. Campers wishing to minimize the risk of losing valued possessions in removals should always keep such items, to the extent possible, in visible, sanitary, and safely accessible bags or bins.
- vi. If the City does not clean up the site within a reasonable period of time, not to exceed five business days from expiration of the 48-hour period, the notice may be disregarded, and a new notice may then be posted.
- vii. Basic contact information for campers seeking shelters or social services.

2. Cleanup of Unoccupied Encampments

After 48 hours, the City will clean up the site within a reasonable period of time.

- a. Any campers who are present at that time will be directed to remove their belongings from the site.
 - i. Items that a camper leaves behind will be deemed abandoned.
 - ii. Requests for additional time or assistance to remove items will be evaluated for reasonableness, and if reasonable, accommodated to the extent practicable.
- b. City staff, as designated by the Director of Code Enforcement, will conduct an inspection for any remaining, unclaimed items, to the extent this can be done safely. An inspection may be narrowed or terminated for one or more of the following reasons that render further inspection unsafe:
 - i. presence of one or more hypodermic needles (especially if uncapped);
 - ii. strong odor or visual indication of unsanitary condition (e.g., biological waste) permeating a tent or space;
 - iii. a tent or space that is soaked in liquid or mud;

- iv. any other similar indication that further inspection or manipulation would be unsafe.
- c. Unclaimed items found in an inspection will be initially eligible for storage if and only if:
 - i. circumstances indicate that the item belongs to a person;
 - ii. the item has apparent utility in its current condition and circumstances; and
 - iii. the item can be safely retrieved from the site.

Examples of potentially storable items include: identification, medication stored in medication bottles with identifying information, art, art supplies, musical instruments, and items that reasonably appear to have sentimental value in their current condition. An item need not be in new or perfect condition to have apparent utility.

- d. An eligible item found in an inspection will be put into storage, unless it is determined to meet one of the following disqualifying conditions:
 - i. hazardous (e.g., items contaminated with human waste, explosives, moldy items);
 - ii. likely to become hazardous in storage (e.g., perishables, wet materials that might become moldy, items covered in mud);
 - iii. practically un-storable, due to large size, weight, or other similar characteristic;
 - iv. contraband or stolen;
 - v. is on the City's current list (as published on the City's website) of common types of items that, in the experience of City staff, campers regularly abandon during encampment removals, and there is no contrary indication as to the specific item.
- 2. Any items taken into storage will be kept in storage for up to 60 days. In addition to information already available on the notice, information about how stored items can be retrieved shall be available on the City of Spokane's website.
- 3. If the City does not clean up the site within a reasonable period of time, not to exceed five business days from expiration of the 48-hour period, the notice will be disregarded, and a new notice may then be posted.
- 4. Stored items may be retrieved from storage based on a description with sufficient specificity to demonstrate ownership.

B. Occupied Encampments

For occupied encampments, when shelter is available in the City, the City will provide campers with shelter and service information while expediting cleanup and removal of the site.

1. Campers will be directed to remove their belongings from the site.
 - a. Items that a camper leaves behind will be deemed abandoned.
 - b. Requests for additional time or assistance to remove items will be evaluated for reasonableness and, if reasonable, accommodated to the extent practicable.
2. A separate and unclaimed portion of an otherwise occupied encampment will be treated as an unoccupied encampment per Section A above.

C. Prioritized Removals Expedited

1. The City will prioritize and expedite the removal of an encampment, whether occupied or unoccupied, if any of the following conditions is observed or reasonably suspected in connection with an encampment:
 - a. physical threats or violence;
 - b. criminal activity not inherent in the act of unauthorized camping (e.g., drug use or sales, theft, sex trafficking);
 - c. a condition that significantly increases the likelihood of disease or the spread of disease (e.g., rodents, exposed meat, human waste);
 - d. a condition that presents a significant risk of bodily injury or death (e.g., discarded needles, vehicular traffic, weapons);
 - e. any other substantial threat to public health or safety;
 - f. damage (including potential or foreseeable damage) to the natural environment of environmentally critical areas;
 - g. significant amounts of trash;
 - h. significant disruption to a primary intended use of public property (e.g., blocking a doorway, on a sports field or court; obstructing a large portion of a sidewalk);
 - i. occupation of an area in which the public is not allowed to be present during the times camping is occurring.
2. Any of the factors enumerated in the above section that are observed at an encampment that is the subject of removal shall be documented with a specific description, which may include a police report, and available photographic or videographic evidence including footage from body worn cameras. In addition to documentation, the police officer or other person responsible for documentation shall include a statement indicating whether such conditions place the public at risk and how removal of the encampment is related to preservation of public health or safety.

D. Other Expedited Removals

1. The following types of encampments are subject to expedited removal whether the encampment is occupied or unoccupied:
 - a. An encampment in an area the public is not allowed to access at the time of removal, with clear signage to that effect.
 - b. An encampment in an area that has been clearly signed as specially off-limits to camping and subject to expedited removal.
 - c. An encampment that significantly disrupts a primary intended use of public property (e.g., blocking a doorway, on a sports field or court, or obstructing a large portion of a sidewalk).
 - d. An encampment that poses a significant risk of bodily injury (e.g., directly adjacent to vehicular traffic, requires walking across highway traffic to access).
 - e. An encampment that appears to have been entirely abandoned (e.g., no persons present, no items of obvious value, overrun with litter).
 - f. An encampment prohibited under SMC 12.02.1012.
2. In an expedited removal, the City will follow the same clean-up procedures, including storage procedures, but without prior written notice.

Section 12.02.1014 Severability

If any part, provision, or section of this chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

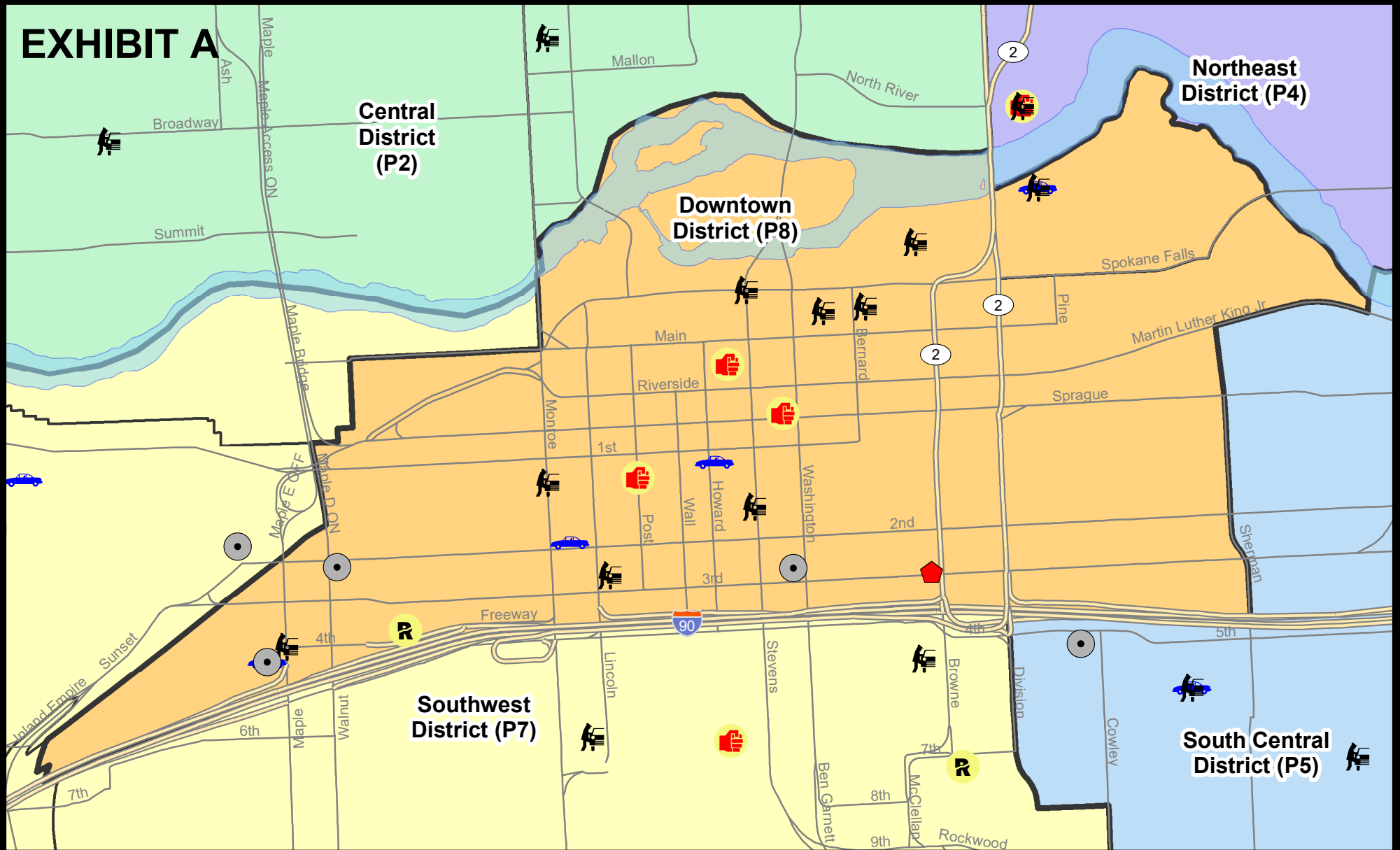
Assistant City Attorney

Mayor

Date

Effective Date

EXHIBIT A



City of Spokane
Downtown District (P8)
Selected
Crime Types
2021-09-12 to 2021-09-18
 Prepared By:
 Crime Analysis Unit
 Spokane Police Department

Legend

NIBRS Events

- | | | | |
|-------------------|--------------------|----------------------|---------------------|
| Criminal Homicide | Robbery Commercial | Aggravated Assault | Burglary Commercial |
| Rape | Robbery Person | Burglary Residential | Vehicle Prowling |
| | | Burglary Garage | Vehicle Theft |
| | | Arson | |

Cases Represent LERMS Crime Codes
 Points may indicate multiple events
 Note: Veh Prowl is only Larceny category displayed



For Additional Information on Incidents
 pertaining to an Area, Trend, or Pattern
 Contact Information Analysis

0 0.2 Miles



THIS IS NOT A LEGAL DOCUMENT:
 The information shown on this map is compiled
 from various sources and is subject to constant
 revision. Information shown on this map should
 not be used to determine the location of facilities
 in relationship to property lines, section lines,
 streets, etc.

