

Smith & Lowney PLLC
Knoll Lowney, WSBA # 23457
Katelyn Kinn, WSBA # 42686
2317 E. John St.
Seattle, WA 98122

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

JEWELS HELPING HANDS and BEN
STUCKART.

Plaintiffs,

vs.

BRIAN HANSEN, CITY OF SPOKANE,
SPOKANE COUNTY, and VICKY
DALTON, in her official capacity.

Defendants.

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1.1 The City of Spokane Initiative proposed by Brian Hansen (“the Initiative”) is outside of the scope of the local initiative process and should be enjoined from the ballot. Unlike the state initiative process, there are “multiple limits on the local initiative power.” *Protect Public Health v. Freed*, 192 Wn.2d 477, 482 (2018). The Initiative is attached as **Exhibit A**. The resolution putting the Initiative on the ballot is attached as **Exhibit B**. Courts routinely conduct pre-election review of local initiatives and referenda and will remove such a measure from the ballot if it is beyond the scope of the local initiative power. *Id.*

1.2 Pre-election “scope” challenges do not turn on the merits of the proposal, and this case is not about the illegality of the Initiative’s policies, although those are also likely in violation of the state and federal constitutions.¹ Rather, *this lawsuit focuses on the initiative process*. The Initiative cannot move forward to the ballot because its sponsors chose an unlawful process to pursue their policy goals, ignoring well-established limits to the local initiative process.

1.3 Homelessness is a humanitarian crisis that requires great focus and resources, as recognized by the Washington Legislature. To advance the goal of ending homelessness, the Legislature has established a comprehensive statutory scheme for homelessness planning and decision-making that precludes the use of the local initiative process. The statutory scheme established in RCW Chapter 43.185C and related laws includes multiple avenues for the Initiative’s sponsors and other stakeholders to influence homelessness policy, but the local initiative process is not one of them. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 351 (1994) (“The absence of any mention of referenda indicates the statute's rejection of referendum rights.”)

1.4 The Legislature gave the “legislative authority” of local governments (e.g., the city council) the exclusive authority to enact local homelessness response plans, which renders the Initiative beyond the scope of the initiative power. *Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn.2d 41, 51 (2012) (“When the legislature enacts a general law granting authority to

¹ For example, the Initiative would likely criminalize unhoused individuals for merely trying to sleep outdoors, even when there is no shelter space available, violating the state and federal constitutions. *See e.g. Martin v. Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (finding that cities violate the federal constitution’s prohibition on cruel punishment when they criminalize “being homeless in public spaces” and “conduct that is an unavoidable consequence of being homeless” including “sitting, lying, or sleeping on the streets.”); *City of Seattle v. Drew*, 70 Wn.2d 405, 423 P.2d 522 (1967) (It is fundamental that no ordinance may unreasonably or unnecessarily interfere with a person's freedom, whether it be to move about or to stand still. The right to be let alone is inviolate; interference with that right is to be tolerated only if it is necessary to protect the rights and the welfare of others.”).

the legislative body (or legislative authority) of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the people through the initiative or referendum process.”)

1.5 While the Initiative’s sponsors are impatient for action on homelessness, as are we all, the Initiative could undermine the significant action that is already underway. For example, the City and its regional partners are working towards creating a regional homelessness authority,² but such regional action would become impossible if the voters of any one jurisdiction could utilize the initiative process to undermine regional decision-making and cooperation.

1.6 Finally, the Initiative violates a well-established limitation on the scope of the local initiative and referendum process. “[Z]oning ordinances and regulations are beyond the power of initiative or referendum in Washington because the power and responsibility to implement zoning was given to the legislative bodies of municipalities, not to the municipality as a whole.” *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174 (2006) (internal citations omitted).

1.7 Electioneering and soundbites – the defining nature of an initiative campaign – are neither an appropriate nor a legal method for addressing a complex and evolving regional crisis. Moreover, allowing homelessness policy to be established by local initiative would open a floodgate to local initiative and referenda on homelessness, which could be used to derail action to address affordable housing and homelessness.

1.8 Plaintiffs seek a declaration that the Initiative is beyond the scope of the local initiative power and an order enjoining it from appearing on the ballot.

² Mai Hong, *Spokane Aims to Reduce Homelessness by 40% with Regional Authority*, CROSSCUT (July 3, 2023), <https://crosscut.com/news/2023/07/spokane-aims-reduce-homelessness-40-regional-authority>.

II. PARTIES

2.1 Jewels Helping Hands is a homeless services organization that serves people experiencing homelessness in Spokane and Spokane county. Jewels Helping Hands provides services to those experiencing homelessness that range from basic needs to advocating for housing justice and the right to exist. Jewels Helping Hands is a community-based organization that operates 75% of services with community donations and with local community partners to ensure appropriate interventions and assistance options. Passing of this initiative will limit the organization's work by making it more difficult to locate and provide services to those living unsheltered. Jewels Helping Hands provides basic needs to those surviving outside. Loss of items from "sweeps" due to this initiative would be detrimental to the organization's ability to replace those items. Further, loss of those items could result in inadequate gear to safely exist in extreme weather for our clients. People being moved regularly due to this initiative could result in loss of a safe space and cause trauma to those who find themselves unsheltered. Loss of services or ability to receive services makes it impossible to exit their cycles of homelessness.

2.2 Ben Stuckart is the Executive Director of the Spokane Low Income Housing Consortium and a taxpayer.

2.3 Plaintiffs are taxpayers and represent taxpayers. Plaintiffs provided notice to the Attorney General requesting that he take action to protect taxpayers from the costs of holding an illegal election on the Initiative. **Exhibit C**. Plaintiffs therefore represent the interests of taxpayers in this lawsuit.

2.4 Defendant, Brian Hansen, is sponsor of the Initiative.

2.5 Due to the request for injunctive relief, additional necessary parties are City of Spokane, a political subdivision of the State of Washington, Spokane County, a political subdivision of the State of Washington, and Spokane County Auditor Vicky Dalton, named only in her official capacity.

III. JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over this action under chapter 7.24 RCW and chapter 7.40 RCW and chapter 29A.68 RCW.

3.2 Venue is proper in Spokane County, Washington, including under RCW 4.12.020.

IV. FACTUAL BACKGROUND

A. The Legislature adopted a comprehensive statutory scheme for addressing the homelessness crisis.

4.1 In 2005, the State Legislature enacted the Homelessness Housing and Assistance Act, which was subsequently updated in 2018 by the Washington Housing Opportunity Act, codified in RCW Chapter 43.185C (collectively the “Act”). The Legislature continued to modify the statutory scheme as the crisis has worsened, including during the 2021 session.

1. The Act recognizes the State’s interest in combating homelessness and establishes a coordinated, statewide effort to meet state policy goals.

4.2 The Act’s original findings established homelessness response as a matter of statewide concern:

The support and commitment of all sectors of the statewide community is critical to the chances of success in ending homelessness in Washington. *While the provision of housing and housing-related services to the homeless should be administered at the local level to best address specific community needs, the legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role.* There must be a clear assignment of responsibilities and a clear statement of achievable and quantifiable goals.

RCW 43.185C.005 (emphasis added).

1 4.3 The Act created a comprehensive statewide scheme to address homelessness,
2 including the creation of a “homeless housing program to develop and coordinate a statewide
3 strategic plan aimed at housing homeless persons.” RCW 43.185C.020.

4 **2. The Act creates a process for establishing state homelessness policy and**
5 **statewide planning.**

6 4.4 Under RCW 43.185C.040(1), the Department of Commerce is required to prepare a
7 “five-year homeless housing strategic plan”³ to be submitted to the Legislature by July 1, 2019, and
8 every five years thereafter. The strategic plan must address: “performance measures and goals to
9 reduce homelessness;” existing resources; new or innovative funding, program, or service strategies
10 to pursue; drivers of homelessness; and implementation strategies. *Id.*

11 4.5 The department must then provide annual and biennial reporting on its plan. RCW
12 43.185C.045 requires “By December 1st of each year, the department must provide an update of the
13 state’s homeless housing strategic plan and its activities for the prior fiscal year.”⁴

14 **3. Local homelessness planning must be closely coordinated with statewide**
15 **objectives and processes.**

16 4.6 The Act provides a comprehensive process for adopting local homelessness plans,
17 coordinated by the department of commerce and the governing body of the local authority.

18 “To guide local governments in preparation of local homeless housing plans due December 1,
19 2019, the department shall issue by December 1, 2018, guidelines consistent with this chapter
and including the best available data on each community's homeless population. Program

20 ³ The Legislature originally required the Department of Commerce and local governments to do homelessness planning
on a ten-year horizon, but the 2018 Act required planning on a five-year basis with annual updates.

21 ⁴ In addition, “The department shall . . . report biennially to the governor and the appropriate committees of the
22 legislature an assessment of the state's performance in furthering the goals of the state five-year homeless housing
strategic plan and the performance of each participating local government in creating and executing a local homeless
23 housing plan which meets the requirements of this chapter.” RCW 43.185C.040(4). The report must include “year-to-year
comparisons, highlights of program successes and challenges, and information that supports recommended strategy or
operational changes.” *Id.* It lists examples of performance measures that may be tracked. *Id.*

1 outcomes, performance measures, and goals must be created by the department in
2 collaboration with local governments against which state and local governments' performance
will be measured.”

3 RCW 43.185C.040(3).

4 **4. The Legislature gave city and county councils exclusive authority to adopt local**
5 **homelessness response plans following specified stakeholder processes.**

6 4.7 The Legislature created a process where local planning is informed by specified
7 stakeholders with expertise, but it made the “local government legislative authority” (the City
8 Council or County Council) the exclusive authority to enact local homelessness housing plans.

9 *(1) Each local homeless housing task force shall prepare and recommend to its local*
10 *government legislative authority a five-year homeless housing plan for its jurisdictional area,*
11 *which shall be not inconsistent with the department's statewide guidelines issued by*
12 *December 1, 2018, and thereafter the department's five-year homeless housing strategic plan,*
13 *and which shall be aimed at eliminating homelessness. The local government may amend the*
14 *proposed local plan and shall adopt a plan by December 1, 2019. Performance in meeting the*
15 *goals of this local plan shall be assessed annually in terms of the performance measures*
16 *published by the department. Local plans may include specific local performance measures*
17 *adopted by the local government legislative authority, and may include recommendations for*
18 *any state legislation needed to meet the state or local plan goals.*

19 RCW 43.185C.050 (emphasis added).

20 4.8 The Legislature conferred broad authority on local legislative bodies to include a wide
21 range of activities in their local homelessness plans. Eligible activities under the local plans include:

- 22 (a) Rental and furnishing of dwelling units for the use of homeless persons;
- 23 (b) Costs of developing affordable housing for homeless persons, and services for formerly
24 homeless individuals and families residing in transitional housing or permanent housing and
still at risk of homelessness;
- (c) Operating subsidies for transitional housing or permanent housing serving formerly
homeless families or individuals;
- (d) Services to prevent homelessness, such as emergency eviction prevention programs
including temporary rental subsidies to prevent homelessness;
- (e) Temporary services to assist persons leaving state institutions and other state programs to
prevent them from becoming or remaining homeless;
- (f) Outreach services for homeless individuals and families;

- (g) Development and management of local homeless plans including homeless census data collection; identification of goals, performance measures, strategies, and costs and evaluation of progress towards established goals;
- (h) Rental vouchers payable to landlords for persons who are homeless or below thirty percent of the median income or in immediate danger of becoming homeless; and
- (i) Other activities to reduce and prevent homelessness as identified for funding in the local plan.

RCW 43.185C.050.

4.9 The Legislature requires that the local task forces that develop local homelessness plans include certain stakeholders with expertise, including at least one person with lived experience of homelessness. RCW 43.185C.010(18); 43.185C.160(1);⁵ 43.185C.100(1).⁶

4.10 In other sections of the Act, the Legislature confirmed the exclusive authority of the local legislative authorities to enact a homelessness plan. See RCW 43.185C.080(1) (“A city choosing to operate a separate homeless housing program . . . shall adopt a local homeless housing plan meeting the requirements of this chapter for county local plans. However, *the city may by resolution of its legislative authority accept the county's homeless housing task force as its own and based on that task force's recommendations adopt a homeless housing plan specific to the city.*”) (emphasis added); *id.* at (2) (“All subcontracts shall be consistent with the *local homeless housing plan adopted by the legislative authority of the local government*, time limited, and filed with the department and shall have specific performance terms.”) (emphasis added).

⁵ RCW 43.185C.160(1) (“Membership on the task force may include counties, cities, towns, housing authorities, civic and faith organizations, schools, community networks, human services providers, law enforcement personnel, criminal justice personnel, including prosecutors, probation officers, and jail administrators, substance abuse treatment providers, mental health care providers, emergency health care providers, businesses, real estate professionals, at large representatives of the community, and a homeless or formerly homeless individual.”)

⁶ RCW 43.185C.100(1) (State offers technical assistance to “appropriate parties to participate on local homeless housing task force;”)

1 **5. The coordinated planning process governs distribution of State funds.**

2 4.11 These local plans govern the distribution of state funding. “The department may
3 approve applications [from grants from the homeless housing account] only if they are consistent
4 with the local and state homeless housing program strategic plans.” RCW 43.185C.070(3). *See also*
5 RCW 43.185C.090 (“The department shall allocate grant moneys from the homeless housing account
6 to finance in whole or in part programs and projects in approved local homeless housing plans . . .”)

7 4.12 A local government “must provide an annual report on the current condition of
8 homelessness in its jurisdiction, its performance in meeting the goals in its local homeless housing
9 plan, and any significant changes made to the plan If a local government fails to report or
10 provides an inadequate or incomplete report, the department must take corrective action, which may
11 include withholding state funding” RCW 43.185C.040.

12 **6. In 2021, the statutory scheme for homelessness planning and decision-making**
13 **became even more comprehensive by involving a diverse stakeholder process and**
14 **an extensive expert investigation.**

15 4.13 In 2021, the Legislature enacted ESSHB 1277 (Chapter 214, Laws of 2021), which
16 increased the State’s investments into homelessness response with a new \$100 document recording
17 surcharge, to fund a wide variety of housing strategies largely focused on those living unsheltered at
18 the time of initial engagement, including vouchers, housing acquisition and emergency housing,
19 rapid rehousing, and related services. ESSHB 1277 took effect July 25, 2021.

20 4.14 ESSHB 1277 requires the department to involve a diverse group of stakeholders in
21 development of performance measures and benchmarks:

22 (4) The department must ensure equity by developing performance measures and
23 benchmarks that promote both equitable program access and equitable program
24 outcomes. Performance measures and benchmarks must be developed by the
department in consultation with stakeholder groups, including persons at risk of

homelessness due to unpaid rent, representatives of communities of color, homeless service providers, landlord representatives, local governments that administer homelessness assistance, a statewide association representing cities, a statewide association representing counties, and affordable housing advocates.

ESSHB 1277, Sec. 2. The Legislature required such benchmarks to ensure that race and ethnicity of the households served are proportional to the number of people at risk of homelessness in each county. *Id.*

4.15 ESSHB 1277 updated the requirements for the state's homeless housing strategic plan under RCW 43.185C.045 requiring county-level assessment of the new programs. *Id.*⁷

4.16 The Legislature also commenced an expert process to inform the state's homelessness strategy:

The legislature intends to provide for an examination of the economic, social, and health causes of current and expected patterns of housing instability and homelessness, and to secure a common understanding of the contribution each has to the current crisis. The legislature intends for this examination to result in a widely accepted strategy for identifying how best to address homelessness in ways that: (A) Address the root causes of the problem; (B) clearly assign responsibilities of state and local government to address those causes; (C) support local control and provision of services at the local level to address specific community needs, recognizing each community must play a part in the solution; (D) respect property owner rights and encourage private sector involvement in solutions and service; and (E) develop pathways to permanent housing solutions and associated services to break the cycle of housing insecurity and homelessness.

ESSHB 1277, Sec. 6.

4.17 The State chose the William D. Ruckelshaus Center to conduct the investigation and "facilitate meetings and discussions to develop and implement a long-term strategy to improve services and outcomes for persons at risk or experiencing homelessness and develop pathways to

⁷ In addition, by December 15, 2021, the department, in consultation with the stakeholder group, must create a set of performance metrics for each county receiving funds under the new law, and the counties' performance under those metrics will determine the allocation of a portion of funds. RCW 43.185C.060(2).

1 permanent housing solutions.” *Id.* The center must work with a defined group of stakeholders,
2 legislators, and representatives of the executive branch, conduct extensive fact finding and
3 stakeholder discussions “for the purpose of identifying options and recommendations to develop and
4 implement a long-term strategy to improve the outcome and services for persons at risk or
5 experiencing homelessness and develop pathways to permanent housing solutions . . .” *Id.*

6 **B. In 2019, the 9th Circuit issued *Martin v. Boise*, which limits municipalities’ regulation of
7 homeless camping when shelters are unavailable.**

8 4.18 *Martin v. City of Boise* ruled that it is unconstitutional for a city to enforce ordinances
9 prohibiting camping in public places against homeless individuals at times when no shelter space is
10 available. *Martin v. City of Boise*, 920 F.3d 584 at 618 (9th Cir. 2019). Enforcement of such an
11 ordinance is cruel and unusual punishment under the Eighth Amendment if a homeless person has no
12 alternative to living and sleeping outside:

13 As long as there is no option of sleeping indoors, the government cannot criminalize indigent,
14 homeless people for sleeping outdoors, on public property, on the false premise they had a
15 choice in the matter.

16 *Id.* at 617.

17 4.19 In footnote 8, the *Martin* court set forth some limits on the scope of its decision:

- 18 1. It does not cover individuals who do have access to adequate temporary shelter
19 but choose not to use it.
- 20 2. Even when shelter is unavailable, an ordinance may prohibit sitting, lying, or
21 sleeping outside at certain times or in certain locations.
- 22 3. An ordinance may prohibit obstruction of rights-of-way or the erection of certain
23 types of structures.
- 24 4. Whether such ordinances are consistent with the Eighth Amendment will depend
on “whether it punishes a person for lacking the means to live out the ‘universal
and unavoidable consequences of being human...’”

Id.

1 4.20 The *Martin* decision fundamentally altered the legal landscape for cities’ regulation of
2 public camping and the constitutionality of their approach to regulating camping by unhoused
3 people. Getting it wrong risked lawsuits and liability for denial of constitutional rights. Indeed, the
4 City of Spokane has already spent significant sums defending lawsuits on these topics.

5 **C. In 2022, the City adopted Ordinance 36272 to align its homeless camping laws with the**
6 **Constitutional mandates established in *Martin v. Boise*.**

7 4.21 There was heated debate within Spokane City government about how to alter the
8 City’s laws to address the *Martin* decision. The Mayor ultimately brokered a compromise and the
9 City Council enacted Ordinance 36272, which expressly stated it was intended to bring the City’s
10 homeless encampment laws into alignment with *Martin*:

11 Since *Martin v. City of Boise*, which was the 9th Circuit ruling in 2019 that has prohibited
12 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.

13 Agenda Sheet for City Council Meeting of 9/12/22, regarding Ordinance 36272. Attached as
14 **Exhibit D.**

15 **D. The Initiative would upend the City’s political and legal compromise, undermining**
16 **homelessness response without following any required procedures.**

17 4.22 The Initiative upends this political compromise and takes on extreme legal risk by
18 prohibiting camping and personal property storage in large swaths of the City, regardless of shelter
19 availability. This overrides the City Council’s compromise on the limited geographic areas where
20 camping is prohibited regardless of shelter availability, which is found in Ordinance 36272 and also
21 the City’s existing laws on public camping, SMC Chapter 6.15, which are only enforced when shelter
22 space is available, SMC 6.15.080.

1 4.23 The Initiative uses the sledgehammer of the initiative process to destroy the political
2 compromise reached on homeless camping, which was designed to balance community needs and
3 legal risks under *Martin*. The Initiative thus seeks to use the initiative process to modify the
4 component of the City’s homelessness response plan adopted through SMC 6.15.080 and Ordinance
5 36272. Yet, the Initiative does not follow any of the procedures for homelessness planning. The
6 Initiative was written by its sponsors and did not follow any of the planning processes required
7 under RCW 43.185C.050. It was not recommended by a housing task force that meets the statutory
8 criteria of RCW 43.185C. It was not designed to meet State planning standards or be consistent with
9 the State’s five-year plan. And it is not being put before the City’s legislative authority for approval.

10 **E. The Initiative would undermine homelessness response and services.**

11 4.24 The Initiative is misguided and won’t even achieve the Sponsor’s goals. Ordinance
12 36272 was designed to be *enforceable* under the legal dictates of *Martin*. This Ordinance is one of
13 the City’s tools to help connect houseless people with services and ultimately with housing, but that
14 plan does not work if the City’s camping prohibition is expanded to the point where they are
15 unenforceable under *Martin*.

16 4.25 This is one of the many problems with the Initiative. It was not designed with *Martin*
17 in mind and likely render the City’s camping regulations unenforceable. This would (perhaps
18 unintentionally) undermine one of the City’s tools for moving people inside – adding a poison pill
19 into the City’s homelessness response plan.

1 **V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

2 5.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

3 5.2 Courts review before elections a local initiative or referendum to determine, notably,
4 whether “the proposed law is beyond the scope of the initiative power.” *City of Port Angeles v. Our*
5 *Water - Our Choice!*, 170 Wn.2d 1, 7 (2010). This body of law applies to charter amendments and
6 has been used to strike a city charter amendment from the ballot. *Spokane Entrepreneurial Ctr. v.*
7 *Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 101 (2016).

8 5.3 A controversy exists between Plaintiffs and Defendants regarding whether the subject
9 matter of the Initiative is within the scope of the initiative power.

10 5.4 Pre-election review of a local initiative is permitted where, as here, there is a dispute
11 regarding whether the subject matter of the proposed initiative is beyond the scope of the local
12 initiative power. If the invalid initiative were to be placed on the ballot, Plaintiffs’ members would be
13 required to expend significant resources to oppose the initiative and would be threatened with future
14 initiatives on a wide variety of homelessness matters.

15 5.5 Plaintiffs seek a declaration that the Initiative is invalid because it is beyond the scope
16 of the local initiative power on multiple grounds, as follows:

17 **A. The Initiative extends beyond the scope of the local initiative power by exercising**
18 **powers delegated to the City’s legislative authority.**

19 5.6 “An initiative is beyond the scope of the initiative power if the initiative involves
20 powers granted by the legislature to the governing body of a city, rather than the city itself. ... When
21 the legislature enacts a general law granting authority to the legislative body (or legislative authority)
22 of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the
23 people through the initiative or referendum process.” *Mukilteo Citizens for Simple Gov’t*, 174 Wn.2d

at 51 (internal citations omitted). “Stated another way, the people cannot deprive the city legislative authority of the power to do what the constitution and/or a state statute specifically permit it to do.” *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943 (2006).

5.7 The Initiative interferes with at least two different powers that the Legislature exclusively delegated to the Spokane City Council. Each independently requires invalidation of the Initiative.

1. The Initiative interferes with the City Council’s exclusive authority over land use.

5.8 The Initiative purports to prohibit homeless encampments and storage of personal property in large swaths of the City. By attempting to modify the zoning code, the Initiative runs afoul of the most well-established limit on the scope of local initiative process. As early as 1976, the State Supreme Court held that only the legislative body can modify zoning codes. *Leonard v. Bothell*, 87 Wn.2d 847, 853 (1976). This rule has been followed consistently:

[Z]oning ordinances and regulations are beyond the power of initiative or referendum in Washington because the power and responsibility to implement zoning was given to the legislative bodies of municipalities, not to the municipality as a whole.

Lince v. City of Bremerton, 25 Wn. App. 309, 312-13, 607 P.2d 329 (1980) (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 854, 557 P.2d 1306 (1976)); see generally J.R. Kemper, Annotation, *Adoption of Zoning Ordinance or Amendment Thereto as Subject of Referendum*, 72 A.L.R.3d 1030 (1976) (surveying cases); see also *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174, 149 P.3d 616 (2006); *Accord Save our State Park v. Bd. of Clallam County Comm’rs*, 74 Wn. App. 637, 649, 875 P.2d 763 (1994) (“*Lince*, *Leonard*, and *Anderson* establish collectively that initiative and referendum are not compatible with zoning ordinances.”)

1 5.9 The decision of where to allow camping is a clear exercise of the City’s land use and
2 zoning powers. The City of Spokane currently regulates camping as “Land Use Standards” in SMC
3 17C.319.200, which states that an RV or tent or other temporary shelter “may not be occupied on
4 private land . . . for more than fourteen days in a consecutive twelve-month period” and prohibits the
5 use of an RV as a permanent dwelling unit.⁶ Such limitations have been upheld as a valid “zoning
6 restrictions.” *Snohomish Cty. v. Long*, NO. 38587-9-I, 1997 Wash. App. LEXIS 1116 (Ct. App. July
7 21, 1997).

8 5.10 There are a myriad of cases recognizing that decisions about encampments are land
9 use and zoning decisions. *See Mercer Island Citizens for Fair Process v. Tent City 4*, 156 Wash.
10 App. 393, 395, 232 P.3d 1163, 1164 (2010) (allowing “a church to use its property to host a
11 homeless encampment was a land use decision;”) *City of Woodinville v. Northshore United Church*
12 *of Christ*, 166 Wn.2d 633, 211 P.3d 406 (2009) (finding that a city moratorium against land use
13 permits that prevented a church from using its property as an encampment for the homeless
14 substantially burdened the Church's religious exercise, especially since it had no alternatives); *Safe*
15 *Seattle v. Low Income Hous. Inst.*, 2019 Wash. Super. LEXIS 10723 (same); *Homeward Bound in*
16 *Puyallup v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 23 Wash. App. 2d 875, 913, 517 P.3d 1098,
17 1118 (2022) (recognizing that zoning of homelessness services was subject to procedures and
18 appellate process under the Growth Management Act); *Peranzi v. City of Olympia*, No. 11-2-0011,
19 2012 WL 13180833, at *9 (W. Wash. Growth Mgmt. Hr'gs Bd. May 4, 2012) (same; recognizing that
20 homelessness encampment may constitute an essential public facility under the Growth Management
21 Act, but had not gone through that process, invalidating the City’s homelessness encampment
22 decision, and ordering Olympia “to bring its development regulations into compliance with the
23

Growth Management Act pursuant to this decision within 120 days.”). *See also* COMMENT: Tent Cities: An Interim Solution to Homelessness and Affordable Housing Shortages in the United States, 99 Calif. L. Rev. 1037, 1064 (“Zoning restrictions can place a broad constraint on tent cities, limiting the permissible uses for a parcel of land and thus restricting the geographical location of encampments.”); NOTE & COMMENT: NO DIRECTION HOME: CONSTITUTIONAL LIMITATIONS ON WASHINGTON’S HOMELESS ENCAMPMENT ORDINANCES, 85 Wash. L. Rev. 781, 784 (noting “At least thirteen municipalities in Washington have taken action to regulate homeless encampments. Municipalities have approved . . . updates to municipal zoning codes . . . regulating these encampments.”)

5.11 Ordinance 36272 is a classic land use law, prohibiting certain land uses within certain areas of the City with the goal of protecting public safety and welfare. The decision of where to allow camping is within the City Council’s exclusive zoning powers. The City Council exercised this power in enacting Ordinance 36272 and the Sponsors cannot amend it through the initiative process.

2. The Initiative interferes with the City Council’s exclusive authority over homelessness planning.

5.12 The initiative process is inconsistent with the entire statutory scheme for homelessness response planning, but the starkest example is that the Legislature has delegated this planning to the “local government legislative authority.” RCW 43.185C.050, .080. In attempting to radically alter the City’s homelessness planning by initiative, the Initiative constrains the City’s exercise of its statutory authority. *Mukilteo Citizens for Simple Gov’t*, 174 Wn.2d at 51.

5.13 Chapter 43.185C RCW requires many inputs to local homelessness planning – including from state planning and local stakeholders – but gives the “local government legislative

1 authority” (the City Council or County Council) the exclusive authority to enact local homeless
2 housing plans:

3 (1) *Each local homeless housing task force shall prepare and recommend to its local*
4 *government legislative authority a five-year homeless housing plan* for its jurisdictional area,
5 which shall be not inconsistent with the department's statewide guidelines issued by
6 December 1, 2018, and thereafter the department's five-year homeless housing strategic plan,
7 and which shall be aimed at eliminating homelessness. *The local government may amend the*
8 *proposed local plan and shall adopt a plan by December 1, 2019.* Performance in meeting the
9 goals of this local plan shall be assessed annually in terms of the performance measures
10 published by the department. *Local plans may include specific local performance measures*
11 *adopted by the local government legislative authority,* and may include recommendations for
12 any state legislation needed to meet the state or local plan goals.

13 RCW 43.185C.050 (emphasis added).

14 5.14 Elsewhere, the Legislature confirmed this exclusive delegation. *See* RCW
15 43.185C.080(1) (“the city may by resolution of its legislative authority accept the county’s homeless
16 housing task force as its own and based on that task force's recommendations adopt a homeless
17 housing plan specific to the city”); *id.* at (2) (“subcontracts shall be consistent with the local
18 homeless housing plan adopted by the legislative authority of the local government . . .”).

19 5.15 By expressly overriding the City Council’s decision making on homelessness issues,
20 the Initiative impermissibly interferes with the Council’s statutory authority.

21 **B. The Initiative is inconsistent with the statutory scheme for homelessness response**
22 **planning.**

23 5.16 “Initiative and referendum procedures can be invoked at the local level *only* if their
24 exercise is not in conflict with state law.” *Citizens Against Mandatory Bussing v. Palmason*, 80
Wn.2d 445, 450, 495 P.2d 657 (1972) (emphasis added). The Initiative is invalid because the use of
the local initiative and referendum process is fundamentally incompatible with the statutory scheme
for homeless response planning. In *Brisbane* and *Anderson* and subsequent cases, the Supreme Court

1 ruled that the local initiative and referenda process could not be used to interfere with planning under
2 the Growth Management Act (“GMA”) or to exercise authority under the GMA. That series of cases
3 forecloses the use of the initiative process for homelessness response planning.

4 5.17 **First**, the Court held that local initiatives and referenda cannot be used where the
5 Legislature has enacted a comprehensive decision-making scheme that does not include initiative and
6 referenda. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 351, 884 P.2d 1326 (1994). This is the case
7 here. Chapter 43.185C RCW creates a comprehensive planning and decision-making process that
8 includes state and local government and involves stakeholders at multiple levels:

9 Department of Commerce creates a five-year homeless housing strategic plan by July 1, 2
10 019. RCW 43.185C.040(1).

11 Department provides annual and biennial reporting on its plan. RCW 43.185C.045.

- 12 • Expert process created by ESSHB 1277 convenes stakeholders to develop long term
13 strategy to address homelessness.
- 14 • “To guide local governments in preparation of local homeless housing plans . . . the
15 department shall issue . . . guidelines consistent with this chapter and including the
16 best available data on each community’s homeless population.” RCW
17 43.185C.040(3).
- 18 • State and local government “must” create program outcomes, performance measures,
19 and goals “in collaboration.” RCW 43.185C.040(3).
- 20 • Task force of local stakeholders and experts recommend local plans that must be
21 consistent with state plan. RCW 43.185C.010 (task force must include City and
22 County and formerly homeless person); RCW 43.185C.160 (task force may include
23 other stakeholders); RCW 43.185C.100(1) (state offers technical assistance on task
24 force members).
- Local legislative body may make changes and then adopts local homelessness plan.
 RCW 43.185C.050.
- Local government provides annual reports. RCW 43.185C.040.
- State funds allocated in part based upon local plans. RCW 43.185C.049, .070(3)

1 5.18 Nowhere does this statutory scheme envision the use of local initiative and
2 referendum, which “indicates the statute’s rejection” of such rights. *Brisbane*, 125 Wn.2d at 351.

3 5.19 **Second**, the express goal of this statutory scheme is coordinated planning. RCW
4 43.185C.005 (while housing is provided locally, “the legislature also recognizes the need for the state
5 to play a primary coordinating, supporting, and monitoring role” with “clear assignment of
6 responsibilities”). The Supreme Court has repeatedly held that the local initiative and referendum
7 process cannot be appended onto coordinated planning statutes. *See Brisbane*, 125 Wn.2d
8 345 (striking referendum because “the GMA seeks coordinated planning. ... allowing referenda is
9 structurally inconsistent with this mandate”); *1000 Friends of Washington v. McFarland*, 159 Wn.2d
10 at 180-181, 188 (holding use of a referendum “is inconsistent with integrated, comprehensive
11 planning”). The coordinated system of homelessness response decision-making, while implemented
12 at the local level, is a matter of statewide concern and therefore is not subject to local initiative and
13 referenda. *See, e.g., Snohomish County v. Anderson*, 123 Wn.2d 151, 159, 868 P.2d 116
14 (1994) (“Permitting the referendum would jeopardize an entire state plan and thus would extend
15 beyond a matter of local concern”).

16 5.20 Under *Brisbane* and its progeny, the Initiative exceeds the scope of the initiative power
17 and is invalid.

18 **C. The Initiative is impermissibly administrative.**

19 5.21 The “power to administer the law, and administrative matters, particularly local
20 administrative matters, are not subject to initiative or referendum.” *City of Port Angeles v. Our*
21 *Water-Our Choice!*, 170 Wn.2d 1, 8, 239 P.3d 589, 593-94 (2010) (“*Our Water*”). “Generally
22 speaking, a local government action is administrative if it furthers (or hinders) a plan the local
23

1 government or some power superior to it has previously adopted.” *Our Water*, 170 Wn.2d 1, 8. For
2 example, in *Our Water*, the court invalidated initiatives that sought to prohibit the city from
3 fluoridating its drinking water because Port Angeles has already adopted a decision on fluoridation
4 pursuant to Department of Health regulations set drinking water standards and state statutes. 170
5 Wn.2d at 13-14. The court held that the initiatives, by reversing a prior decision, “explicitly seek to
6 administer the details of the city's existing water system. . . . These are not details of a new policy or
7 plan, indicative of a legislative act; these are modifications of a plan already adopted by the
8 legislative body itself, or some power superior to it, indicative of an administrative act.” *Id.* at 14
9 (internal quotation marks omitted). *See also Spokane Entrep. Ctr.*, 185 Wn.2d at 108 (where the city
10 already adopted a process for zoning, an initiative to modify that process was impermissibly
11 administrative).

12 5.22 The facts in this case parallel those in *Our Water* and *Spokane Entrepreneurial*
13 *Center*. The City has struck a careful balance as to where camping and personal property storage will
14 be prohibited only when shelters are available vs. all the time regardless of shelter availability. This
15 balance is not just political but is governed by constitutional rights as set forth in *Martin*.

16 5.23 While the Sponsors may want to upset that balance and extend the “never camping
17 zone” throughout the City, that would subject the City to lawsuits for deprivation of constitutional
18 rights – lawsuits the City will likely lose. The risk of being sued is very real. Numerous municipal
19 entities have faced similar lawsuits in recent years to challenge encampment sweeps. *E.g.*
20 *Sacramento Homeless Union v. County of Sacramento* (E.D. Cal. July 28, 2022) No. 2:22-cv-01095-
21 TLN-KJN, 2022 WL 3019735, 2022 U.S. Dist. LEXIS 135696; *Blain v. Cal. DOT*, 616 F.Supp. 3d
22
23

952 (N.D. Cal. 2022); *Yeager v. City of Seattle*, No. 2:20-cv-01813-RAJ, 2020 U.S. Dist. LEXIS 237717 (W.D. Wash. Dec. 17, 2020); *Shipp v. Schaaf*, 379 F. Supp. 3d 1033 (N.D. Cal. 2019).

5.24 Unhoused people often prevail in these cases because the balancing of interests tips in favor of the health and safety of people living outdoors. *See Sacramento Homeless Union*, 2022 WL 3019735, at *1199 (finding that the balance of equities tipped in favor of unhoused individuals due to the “strong ‘public interest in maintaining the protection afforded by the constitution to those most in need of such protections,’” *quoting Cobine v. City of Eureka*, C 16-02239 JSW, 2016 U.S. Dist. LEXIS 58228, 2016 WL 1730084, at *7 (N.D. Cal. May 2, 2016)); *see also Blain*, 616 F.Supp. 3d 952, at 959.

5.25 The Initiative’s modification of the camping rules does not create new policies but is modifying existing policies, and thus administrative. *See Spokane Entrep. Ctr.*, 185 Wn.2d at 108 (initiative seeking to modify existing zoning law held administrative), *Ruano v. Spellman*, 81 Wn.2d 820, 823-24, 505 P.2d 447, 449-50 (1973) (initiative to prevent construction of a stadium held administrative where city previously decided to build the stadium).

VI. SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF

6.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

6.2 Because the Initiative is not a lawful exercise of the initiative power, it should be enjoined from appearing on any future ballot. *Protect Pub. Health*, 192 Wash. 2d at 643. (“I-27 is outside the scope of the local initiative power, and the superior court properly enjoined it from the ballot.”)

1 **VII. RELIEF REQUESTED**

2 WHEREFORE, Plaintiffs seek relief as follows:

3 7.1 Entry of judgment declaring that the Initiative, in its entirety, is invalid because it is
4 beyond the scope of the local initiative power, and therefore null and void;

5 7.2 Entry of an injunction against City of Spokane, Spokane County, and Spokane County
6 Elections to bar the Initiative from appearing on a future ballot or taking any actions to conduct the
7 election on the Initiative;

8 7.3 Granting such other relief as the Court deems just and equitable.

9 DATED this 2nd day of August 2023.

10 Smith & Lowney, PLLC
11 By: Knoll Lowney
12 Knoll Lowney, WSBA # 23457
13 Katelyn Kinn, WSBA # 42686
14 Attorneys for Plaintiffs
2317 E. John St., Seattle WA 98122
Tel: (206) 860-2883 Fax: (206) 860-4187
knoll@smithandlowney.com
katelyn@smithandlowney.com

Exhibit A

**Agenda Sheet for City Council Meeting of:**

05/15/2023

Date Rec'd

5/11/2023

Clerk's File #

LGL 2023-0027

Renews #**Submitting Dept**

CITY CLERK

Cross Ref #

INITIATIVE 2023-4

Contact Name/Phone

TERRI PFISTER 625-6354

Project #**Contact E-Mail**

TPFISTER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Special Considerations

Requisition #**Agenda Item Name**

0260-INITIATIVE 2023-4 PROHIBITING ENCAMPMENTS

Agenda Wording

City Clerk Report on Initiative 2023-4 filed by Brian Hansen prohibiting encampments near schools, parks, playgrounds, and child care facilities.

Summary (Background)

On May 10, 2023, Brian Hansen filed a revised (new) initiative with the Office of the City Clerk that addresses concerns in the Hearing Examiner's opinion regarding his previously submitted Initiative 2023-3. The City Attorney reviewed the measure pursuant to SMC 2.02.230. Per SMC 2.02.040, upon receiving this report from the City Clerk, the City Council may pass the measure as proposed, reject the initiative measure and propose another one dealing with the same subject to be considered as

Lease? NO

Grant related? NO

Public Works? NO

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

PFISTER, TERRI

Study Session\Other**Division Director****Council Sponsor****Finance**

MURRAY, MICHELLE

Distribution List**Legal**

SMITHSON, LYNDEN

mpiccolo@spokanecity.org

For the Mayor

PERKINS, JOHNNIE

Brian.Hansen@hcahealthcare.com

Additional Approvals**Purchasing**



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

council legislation or submit the initiative measure to the voters on its own motion. If the City Council does not pass the measure as proposed or submit the initiative measure to the voters, the initiative and the ballot title and summary of the measure will be forwarded by the City Clerk to the City Hearing Examiner who shall issue a formal written opinion as to the legal validity and effect of the proposed measure.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment.

INITIATIVE PETITION TO THE CITIZENS OF THE CITY OF SPOKANE INITIATIVE NO. 2023 - 4

We, the undersigned citizens and legal voters of the City of Spokane, Washington, respectfully direct that this proposed City Ordinance, known as Initiative No. 2023 - 4, a full, true and correct copy of which is printed herein, be submitted to the electors of the City of Spokane for their approval or rejection at the next available special or general municipal election. The proposed City Ordinance amendment shall appear as the following proposition:

BALLOT TITLE

INITIATIVE PROHIBITING ENCAMPMENTS NEAR SCHOOLS, PARKS, PLAYGROUNDS, & CHILD CARE FACILITIES.

The Spokane Municipal Code prohibits camping underneath or within 50 feet of any railroad viaduct located within the Spokane Police Department's Downtown Precinct and within three blocks of any congregate shelter. This measure amends SMC 12.02.1010 A. 3, to extend the prohibition on unauthorized camping to within 1,000 feet of any public or private school, public park, playground, or licensed child care facility as those terms are defined in the Revised Code of Washington.

Shall the Spokane Municipal Code be amended to prohibit encampments within 1,000 feet of any public or private school, public park, playground, or licensed child care facility?

_____ YES

_____ NO

Each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the City of Spokane; my residence address is correctly stated; and I have knowingly signed this petition only once.

(The full text of the proposed City Ordinance is printed on the reverse side of this page and continuing on the pages following)

PETITIONER'S SIGNATURE (in dark ink and as shown on the signer's voter registration)	PRINTED NAME (legibly in dark ink)	ADDRESS WHERE REGISTERED TO VOTE (Street Address, City, State, Zip Code)
1.		
20.		

Petitioner: Brian Hansen, 8603 N Upper Mayes Ln, Spokane, WA 99208,
(770) 680-6518; initiative2023.3@gmail.com

Signature-gathering firm: Groundgame Political Solutions, LLC, 217 E Capitol Ave,
Jefferson City, Missouri 65101, (573) 415-8234;
City Business Registration No. 604951621-001-0001

SUMMARY OF MEASURE

THE LAW AS IT CURRENTLY EXISTS:

The Spokane Municipal Code currently prohibits camping underneath or within 50 feet of any railroad viaduct located within the Spokane Police Department's Downtown Precinct and within three blocks of any congregate shelter.

THE EFFECT OF THE PROPOSAL, IF APPROVED:

This measure amends the Spokane Municipal Code Section 12.02.1010A.3. by creating a new subsection 12.02.1010A.3.c. This ordinance amendment would make it unlawful to camp or store personal property, including camp facilities and camp paraphernalia, or to have unauthorized encampments within 1,000 feet of any public or private school, public park, playground, or licensed child care facility as those terms are defined in the Revised Code of Washington.

DECLARATION OF SIGNATURE GATHERER

I, (print name legibly), swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

_____(Signature)_____(Date)

ORDINANCE NO. C - _____

AN ORDINANCE TO PROHIBIT ENCAMPMENTS WITHIN ONE THOUSAND (1000) FEET OF A PUBLIC OR PRIVATE SCHOOL, PUBLIC PARK, PLAYGROUND OR LICENSED CHILD CARE FACILITY

WHEREAS, the citizens of the City of Spokane recognize the need to protect schools, parks, playgrounds and child care facilities and have previously enacted laws to create protective areas around areas where children gather; and

WHEREAS, minor children are particularly vulnerable when they walk to and from schools, parks and playgrounds and deserve a safe environment when doing so; and

WHEREAS, Spokane has experienced criminal and traumatic acts in the presence and plain view of children near existing encampments; and

WHEREAS, the citizens of Spokane desire to act to keep the children of their City safe and provide law enforcement and the prosecutor lawful ordinances to enforce to keep schools, parks, playgrounds, and child care facilities safe.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SPOKANE HEREBY ORDAIN:

Section 1. That Section 12.02.1010 of Title 12 of the Spokane Municipal Code is amended to read as follows:

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 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 12.02.1011.

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.
 - c. In public within one thousand (1,000) feet of the perimeter of the grounds of a park (SMC Section 12.06A.030(B&D)), a day care center or child care facility (RCW 35.63.170(3-4)), or a public or private school (RCW 28A.150.010 and RCW 28A.195.010).

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.

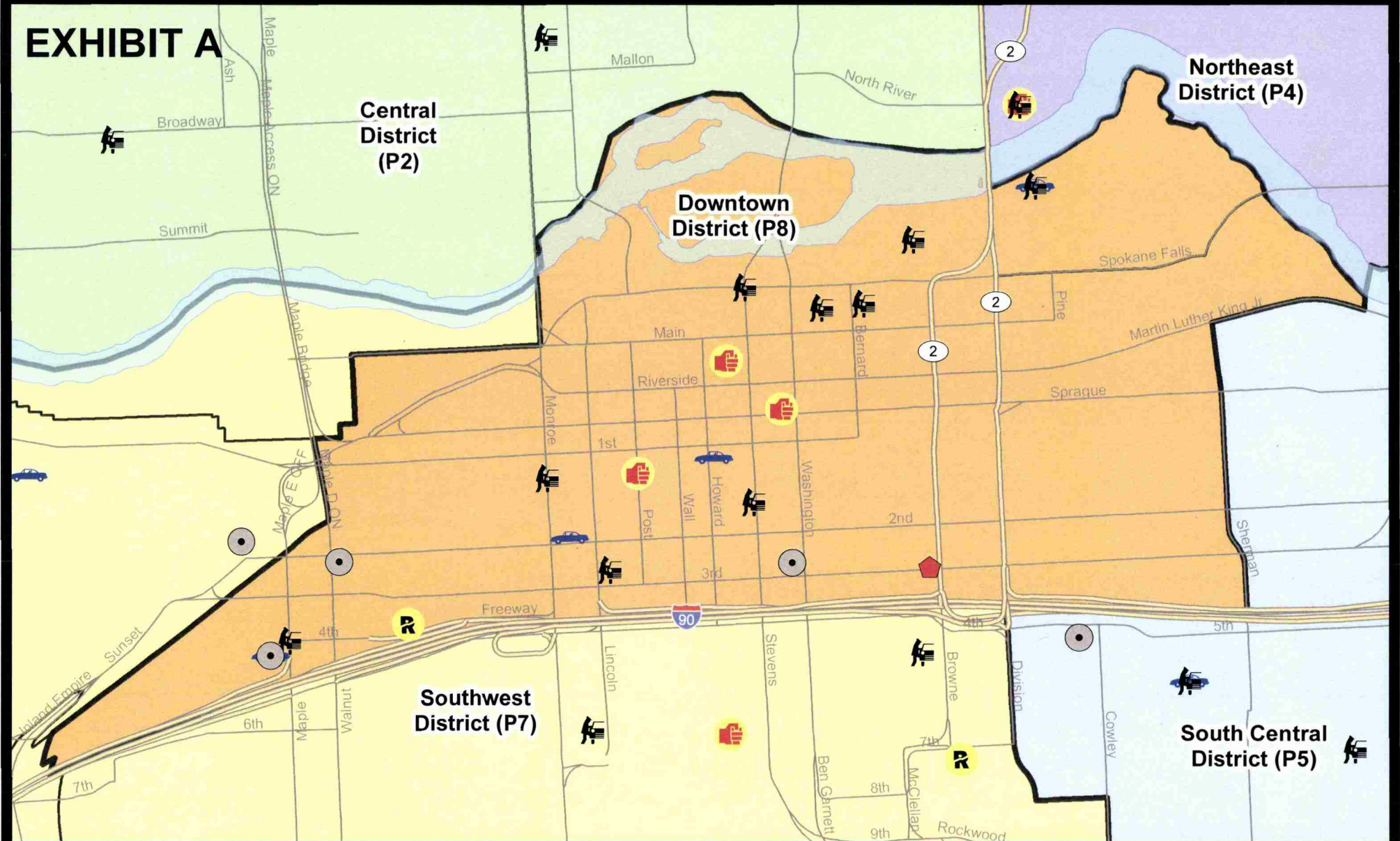
- b. Confirmation of overnight shelter availability may come from data provided through a City-approved data system or through direct contact with regional low-barrier shelters, and shall consist of the following:
 - i. whether a shelter has available space for sleeping,
 - ii. the number of available 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 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 3. Submission to the Voters. This City ordinance shall be submitted to the voters of the City of Spokane for their approval or rejection at the next applicable election under Section 82 of the Spokane City Charter.

Section 4. Effective Date. If approved by the electors, this city ordinance amendment shall take effect and be in full force upon issuance of the certificate of election by the Spokane County Auditor's Office.

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

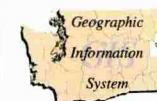


Cases Represent LERMS Crime Codes
 Points may indicate multiple events
 Note: Veh Prowl is only Larceny category displayed



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.



Exhibit B

Spokane County Resolution Cover Sheet

This form must accompany each resolution filed with Spokane County Elections. The contact person or persons should have the authority to do so and be available to answer questions.

Name of District: City of Spokane

District Address: 808 W. Spokane Falls Blvd, Spokane, WA 992201

Date of Election: November 7, 2023

Contact Person: Terri Pfister Title: City Clerk

Contact Phone: (509) 625-6354 Fax: (509) 625-6205

Contact Email: tpfister@spokanecity.org

2nd Contact Person: Mike Piccolo Title: Assistant City Attorney

2nd Contact Phone: (509) 625-6237

2nd Contact Email: mpiccolo@spokanecity.org

Attorney for District: Lynden Smithson

Attorney Phone: (509) 625-6283 Attorney Fax: _____

Attorney Email Address: lsmithson@spokanecity.org

Type of Election (levy, bond, lid lift, etc.): Citizen initiative

Please state the pass/fail requirement for this measure (i.e. simple majority, 60%, etc.) as determined by your legal counsel, together with applicable statutory references: simple majority

Signature: 
of person filing this form

Date: 8/11/2023

This form may be filled out and printed.

This mandatory resolution cover sheet must accompany any resolution.



Agenda Sheet for City Council Meeting of:

07/24/2023

Date Rec'd

7/19/2023

Clerk's File #

RES 2023-0067

Renews #

Submitting Dept

CITY COUNCIL

Cross Ref #

Contact Name/Phone

TERRI PFISTER 6354

Project #

Contact E-Mail

TPFISTER@SPOKANECITY.ORG

Bid #

Agenda Item Type

Resolutions

Requisition #

Agenda Item Name

0320 - BALLOT INITIATIVE PROHIBITING ENCAMPMENTS

Agenda Wording

A Resolution requesting the Spokane County Auditor to hold a special election on November 7, 2023, in conjunction with the scheduled general election to submit to the voters of the City of Spokane a proposition regarding an amendment to the Spokane Municipal Code relating to the prohibition of encampments within one thousand feet of a public or private school, public park, playground, or licensed child care facility.

Summary (Background)

On May 10, 2023, Brian Hansen filed a new initiative with the City Clerk's Office identified as Initiative No. 2023-4 regarding an amendment to the Spokane City Charter relating to the prohibition of encampments within one thousand feet of a public or private school, public park, playground or licensed child care facility, replacing a previously filed initiative.

Lease? NO

Grant related? NO

Public Works? NO

Fiscal Impact

Budget Account

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals

Council Notifications

Dept Head

BYRD, GIACOBBE

Study Session\Other

N/A

Division Director

Council Sponsor

Kinnear & Bingle

Finance

Distribution List

Legal

gbyrd@spokanecity.org

For the Mayor

Additional Approvals

Purchasing

Adopted by Spokane City Council
on: 7/31/2023

city clerk

RESOLUTION NO. 2023 - 0067

A RESOLUTION REQUESTING THE SPOKANE COUNTY AUDITOR TO HOLD A SPECIAL ELECTION ON NOVEMBER 7, 2023 IN CONJUNCTION WITH THE SCHEDULED GENERAL ELECTION TO SUBMIT TO THE VOTERS OF THE CITY OF SPOKANE A PROPOSITION REGARDING AN AMENDMENT TO THE SPOKANE MUNICIPAL CODE RELATING TO THE PROHIBITION OF ENCAMPMENTS WITHIN ONE THOUSAND FEET OF A PUBLIC OR PRIVATE SCHOOL, PUBLIC PARK, PLAYGROUND OR LICENSED CHILD CARE FACILITY.

WHEREAS, pursuant to section 82 of the City Charter, an initiative regarding amendments to the Spokane Municipal Code may be submitted to popular vote for adoption or rejection; and

WHEREAS, on April 14, 2023, Brian Hansen filed with the City Clerk's Office an initiative designated as Initiative No. 2023-3 regarding an amendment to the Spokane Municipal Code relating to the prohibition of encampments within one thousand feet of a public or private school, public park, playground or licensed child care facility; and

WHEREAS, on May 10, 2023, Brian Hansen filed a new initiative with the City Clerk's Office identified as Initiative No. 2023-4 regarding an amendment to the Spokane Municipal Code relating to the prohibition of encampments within one thousand feet of a public or private school, public park, playground or licensed child care facility, replacing the previously filed initiative; and

WHEREAS, the ballot title for Initiative No. 2023-4 is as follows:

Shall the Spokane Municipal Code be amended to prohibit encampments within 1,000 feet of any public or private school, public park, playground, or licensed child care facility?

WHEREAS, on June 12, 2023, a representative of Initiative 2023-4 filed with the City Clerk's Office the petition signatures for Initiative No. 2023-4; and

WHEREAS, on July 10, 2023, the City Council held a hearing pursuant to SMC 2.02.080 for Initiative No. 2023-4, designated by the City Council as Ordinance No. C - 36408, at which time the City Council voted to have the City Clerk validate the signatures; and

WHEREAS, on July 17, 2023, the Spokane County Elections Office certified that Initiative No. 2023-4 satisfied the required number of valid signatures of registered voters to be placed on the November 7, 2023 general election as required by Section 82 of the City Charter; and

WHEREAS, pursuant to SMC 2.02.100, the City Council held a hearing on July 31, 2023 on the initiative petition where Ordinance No. C - 36408 was given a second and final reading; and

WHEREAS, RCW 29A.04.330 requires the City to transmit to the Spokane County Auditor by August 1, 2023 a resolution calling for a special election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Spokane, pursuant to Section 82 of the City Charter, that:

1) the Spokane County Auditor is hereby requested pursuant to RCW 29A.04.330 to hold a special election on November 7, 2023, in conjunction with the scheduled general election for the purpose of submitting to the voters of the City of Spokane for their approval or rejection the following proposition to amend the Spokane Municipal Code as set forth in Initiative 2023-4:

PROPOSITION NO. 2

CITY OF SPOKANE

**INITIATIVE PROHIBITING ENCAMPMENTS NEAR SCHOOLS, PARKS,
PLAYGROUNDS, & CHILD CARE FACILITIES.**

Shall the Spokane Municipal Code be amended to prohibit encampments within 1,000 feet of any public or private school, public park, playground, or licensed child care facility as set forth in Ordinance No. C-36408?

____ YES

____ NO

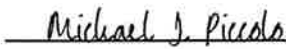
2) the City Clerk is directed to deliver a certified copy of this resolution to the Spokane County Auditor no later than August 1, 2023.

Adopted July 31, 2023



City Clerk

Approved as to form:

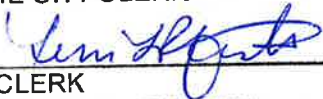


Assistant City Attorney



RESOLUTION 2023-0067

I HEREBY CERTIFY THIS IS A TRUE AND ACCURATE COPY
OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE
OF THE CITY CLERK



CITY CLERK
SEAL: CITY OF SPOKANE
COUNTY OF SPOKANE
STATE OF WA

8/1/2023
DATE

Certificate Of Completion

Envelope Id: F9E2D302DBB24A0BB82D40F78B3C8E29

Status: Completed

Subject: RES 2023-0067 RESOLUTION IMITATIVE PROHIBITING ENCAMPMENTS

Source Envelope:

Document Pages: 3

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

Daniel Rose

AutoNav: Enabled

Stamps: 1

808 W. Spokane Falls Blvd.

Envelopeld Stamping: Enabled

Spokane, WA 99201

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

drose@spokanecity.org

IP Address: 198.1.39.252

Record Tracking

Status: Original

Holder: Daniel Rose

Location: DocuSign

8/1/2023 8:12:44 AM

drose@spokanecity.org

Signer Events**Signature****Timestamp**

Terri L. Pfister

tpfister@spokanecity.org

City Clerk

City of Spokane

Security Level: Email, Account Authentication (None)

Signature Adoption: Uploaded Signature Image
Using IP Address: 155.190.3.5

Sent: 8/1/2023 8:18:50 AM

Viewed: 8/1/2023 9:03:32 AM

Signed: 8/1/2023 9:03:46 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Michael J. Piccolo

mpiccolo@spokanecity.org

Assistant City Attorney

Security Level: Email, Account Authentication (None)

*Michael J. Piccolo*Signature Adoption: Pre-selected Style
Using IP Address: 155.190.3.7

Sent: 8/1/2023 9:03:47 AM

Viewed: 8/1/2023 9:10:29 AM

Signed: 8/1/2023 9:10:44 AM

Electronic Record and Signature Disclosure:

Accepted: 8/1/2023 9:10:29 AM

ID: 5fc33f50-a234-4fb1-84c1-1f176c3c3925

Terri L. Pfister

tpfister@spokanecity.org

City Clerk

City of Spokane

Security Level: Email, Account Authentication (None)

Terri L. PfisterSignature Adoption: Uploaded Signature Image
Using IP Address: 155.190.3.5

Sent: 8/1/2023 9:10:45 AM

Viewed: 8/1/2023 9:13:20 AM

Signed: 8/1/2023 9:13:33 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp**

Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/1/2023 8:18:50 AM
Certified Delivered	Security Checked	8/1/2023 9:13:20 AM
Signing Complete	Security Checked	8/1/2023 9:13:33 AM
Completed	Security Checked	8/1/2023 9:13:33 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

CONSUMER DISCLOSURE

From time to time, SHI International Corp OBO City of Spokane (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

How to contact SHI International Corp OBO City of Spokane:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: klund@spokanecity.org

To advise SHI International Corp OBO City of Spokane of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at klund@spokanecity.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from SHI International Corp OBO City of Spokane

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to klund@spokanecity.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with SHI International Corp OBO City of Spokane

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to klund@spokanecity.org and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

****** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify SHI International Corp OBO City of Spokane as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by SHI International Corp OBO City of Spokane during the course of my relationship with you.

Exhibit C

SMITH & LOWNEY
____ PLLC ____
ATTORNEYS AT LAW

July 28, 2023

Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Via us mail and email

Subject: Request for enforcement

Attorney General Ferguson,

I am writing on behalf of our clients Jewels Helping Hands and Ben Stuckart to request that your office take immediate action to prevent the Proposed City of Spokane Initiative (proposed by Brian Hansen) from being placed on the ballot using taxpayer funds.

This measure is outside of the scope of the local initiative process because it seeks to override the Spokane City Council political compromise on public camping and would undermine homelessness response without following any required procedures.

We ask that you immediately commence an action to prohibit this measure from the ballot. Given the urgency of this election law matter, we can give your office only until the middle of next week before we may need to commence an action to protect taxpayers. Please get in touch if you would like further information or to discuss this matter, or if your office needs additional time to investigate.

Yours very truly,

SMITH & LOWNEY, PLLC

By: Knoll Lowney
Knoll Lowney



Exhibit D



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

Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

Budget Account

Approvals

Dept Head	ALLERS, HANNAHLEE
Division Director	
Finance	
Legal	
For the Mayor	

Council Notifications

Study Session\Other	8/29 Public Safety
Council Sponsor	CP Beggs, CM Kinnear

Additional Approvals

Purchasing		
-------------------	--	--

Distribution List

mharrington@spokanecity.org
mmuramatsu@spokanecity.org
gbyrd@spokanecity.org

FIRST READING OF THE ABOVE
ORDINANCE HELD ON

9/12/2022
AND FURTHER ACTION WAS DEFERRED
Leri Haggis
CITY CLERK

PASSED BY
SPOKANE CITY COUNCIL:

9/19/2022
Leri Haggis
CITY CLERK

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.))~~

~~((C-))~~ 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.

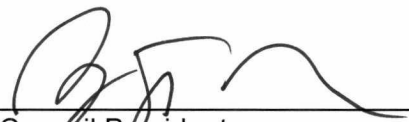
D. Other Expedited Removals

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

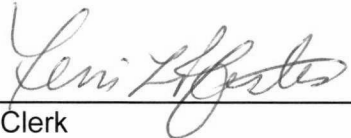
If any part, provision, or section of this chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

PASSED by the City Council on September 19, 2022.



Council President

Attest:



City Clerk

Approved as to form:



Assistant City Attorney

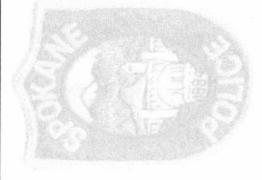
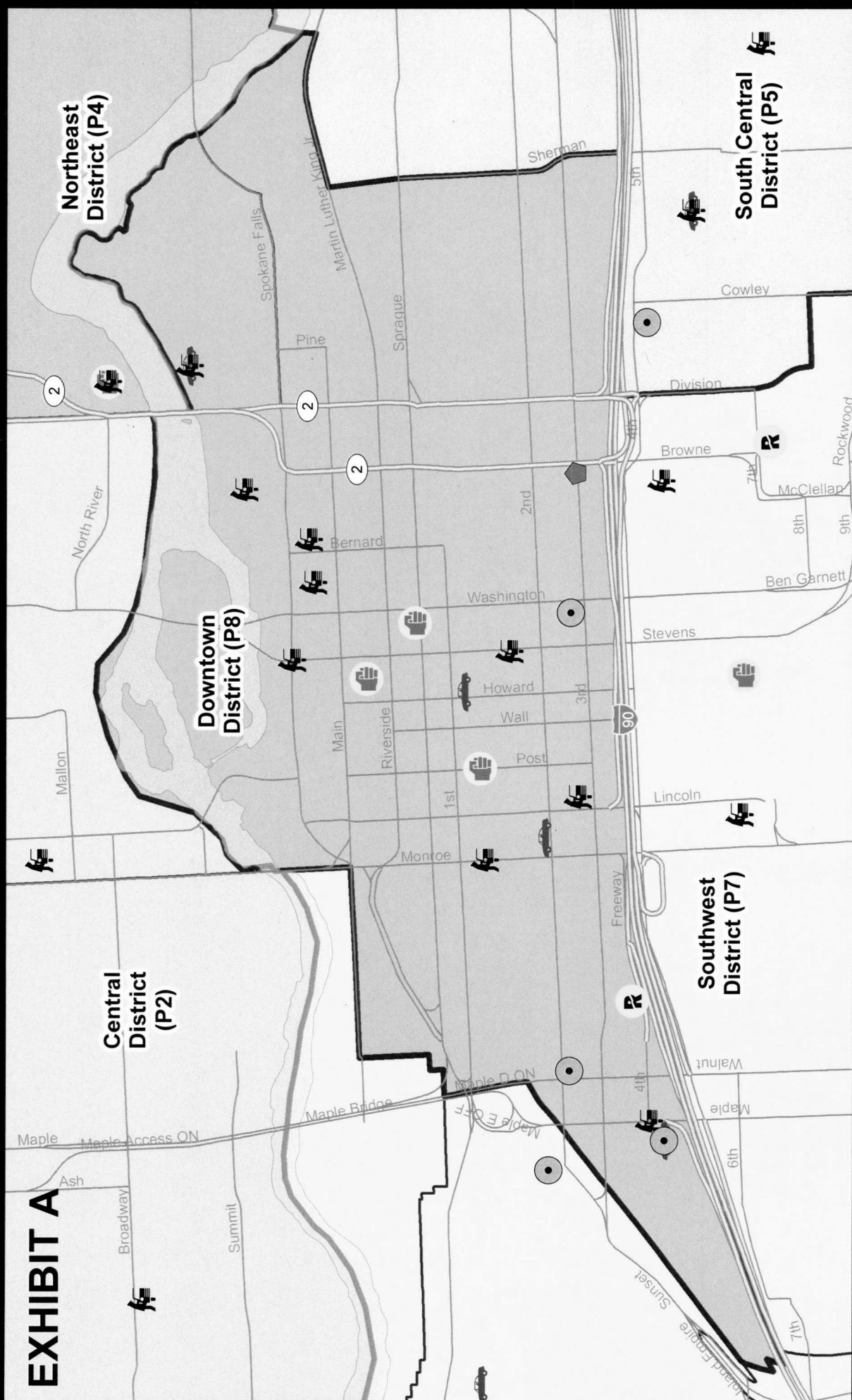
Madame. Howard
Mayor



Sept. 23, 2022
Date

October 23, 2022
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

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

Notes

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



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.

Committee Agenda Sheet

PSCH COMMITTEE

Submitting Department	City Council
Contact Name & Phone	Giacobbe Byrd
Contact Email	gbyrd@spokanecity.org
Council Sponsor(s)	Breean Beggs & Lori Kinnear
Select Agenda Item Type	☐ Consent ☒ Discussion Time Requested: 15 minutes
Agenda Item Name	Proposed Illegal Camping Ordinance
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.
Proposed Council Action & Date:	Final Council consideration on 08/12/2022
Fiscal Impact: Total Cost: Approved in current year budget? ☐ Yes ☐ No ☒ N/A Funding Source ☐ One-time ☐ Recurring Specify funding source: Expense Occurrence ☐ One-time ☐ Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
<i>What impacts would the proposal have on historically excluded communities?</i> 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.	
<i>How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?</i> Council may ask the Administration to collect, analyze, and report this information.	
<i>How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?</i> Council may ask the Administration to collect data regarding the effectiveness of this policy.	
<i>Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?</i> 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 and RCW 35A.11.020.	