Spokane Plan Commission Agenda

August 26, 2015
Briefing Center

TIMES GIVEN ARE AN ESTIMATE AND ARE SUBJECT TO CHANGE

2:00 P.M. **City Council Chambers**	**Public Comment Period:** Citizens are invited to address the Plan Commission on any topic not on the agenda.....3/m each
	Commission Briefing Session:
2:00 - 2:15	1) Approve August 12, 2015 Meeting Minutes 2) City Council/Community Assembly Liaison Reports 3) President Report – Dennis Dellwo 4) Transportation Subcommittee Report – John Dietzman 5) Secretary Report – Louis Meuler
	Workshops:
2:15 - 2:45 2:45 - 3:15 3:15 - 3:45 3:45 - 4:15 4:15 - 5:15	1) Draft Pedestrian Plan Review-Ken Pelton 2) Electric Fence Ordinance-Boris Borisov 3) Cell Tower Development Standards Update-Tami Palmquist 4) Annual Development Code Cleanup-Tami Palmquist 5) Manufactured Housing Comprehensive Plan Amendment-Nathan Gwinn
	Adjournment:
	1) Next Plan Commission meeting will be an offsite retreat held on September 9th, 2015.

The password for City of Spokane Guest Wireless access has been changed:

Username: COS Guest

Password:

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: *The City of Spokane is committed to providing equal access to its facilities, programs, and services for persons with disabilities. The Council Chambers and the Council Briefing Center in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., are both wheelchair accessible. The Council Briefing Center is equipped with an audio loop system for persons with hearing loss. The Council Chambers currently has an infrared system and headsets may be checked out by contacting the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Chris Cavanaugh at (509) 625-6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or ccavanaugh@spokanecity.org. Persons who are deaf or hard of hearing may contact Ms. Cavanaugh at (509) 625-6383 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.*

BRIEFING PAPER
City of Spokane
Planning Services Department
August 26, 2015

Subject
Proposal to amend Spokane Municipal Code to allow electric fences in commercial and industrial zones.

Background
Electric Guard Dog LLC is seeking a Text Amendment to the Spokane City fence code, to allow business owners in commercial and industrial zones to install electric fence security systems. The current code does not permit fences or barriers charged with electricity in residential, commercial, downtown, or industrial zones. In Residential Agricultural (RA) zones, the use is permitted for the containment of livestock only.

The text amendment is to allow the installation of electric fence security systems with the following features:

- Powered by commercial storage batter not to exceed 12 volts DC.
- Battery is charged primarily by a solar panel; can be augmented by commercial trickle charger.
- Electric fences shall have a height of ten feet.
- Electric fences shall be completely surrounded by a non-electrical fence or wall that is not less than six feet.
- Location: Permitted on any non-residential outdoor storage areas.
- Warning Signs: electric fences shall be clearly identified with warning signs at intervals of not less than sixty feet.
- Electric fences shall be governed and regulated under burglar alarm regulations and permitted as such.

Impact
Electric fences are a tool to deter crime. The Fire, Building, and Planning Departments have developed a list of possible issues and impacts this proposal may have. See attached document highlighting concerns and response from applicant (Technical Advisory Committee Questions –EGD Reponses).

Funding
This is a private application. The applicant has paid the application fee required for text amendments.

For further information contact: Boris Borisov, Planning Services Department, 625-6156 or bborisov@spokanecity.org

Action

This is a workshop to introduce the application and received initial feedback from the Plan Commission.

Attachments:

- Text amendment application
- Summary of Electric Guard Dog Security System
- The University of Wisconsin Madison Safety Report
- YRC Site Plans
- Technical Advisory Committee Questions – Electric Dog Security (EGD) Reponses
- IEC Standard
- MetLab Report 2014

For further information contact: Boris Borisov, Planning Services Department, 625-6156 or bborisov@spokanecity.org

The Electric Guard Dog

The #1 Theft Deterrent Service in the U.S.

121 Executive Center Drive • Suite 230

Columbia, SC 29210

Phone: (803) 404-6189 | Fax: (803) 404-5378

July 1, 2015

Grant Wencel
Planning & Development
City of Spokane
1026 West Broadway
Spokane WA 99260

RE: Text Amendment

Dear Mr. Wencel:

As discussed, Electric Guard Dog LLC is submitting a proposal to update the Spokane City fence code to all low voltage security fencing. The following documents are enclosed for consideration and to be presented to the Planning Commission.

1. Check in the amount of $5000 (expedited process of 3 months)
2. Responses to the Code Amendment Application
    a. General Question Responses
    b. Text Amendment Response
3. Proposed Text Amendment Language
4. Environmental Checklist
5. MetLabs Report
6. Webster Report
7. IEC 60335-2-76

Please advise of the July date for the Workshop with the Planning Commission and if we will be considered to be on the August 13th meeting agenda. We look forward to working with the City of Spokane City.

Please contact me with any questions.

Sincerely,

Carol Bausinger
Compliance Manager
The Electric Guard Dog
The #1 Theft Deterrent Service in the U.S.
Perimeter Security that Stops Crime Before it Happens

The Electric Guard Dog

The #1 Theft Deterrent Service in the U.S.

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Columbia, SC 29210

(803) 404-6189 • Fax (803) 404-5378

1. General Questions (all proposals) with Responses:

a. Describe the nature of the proposed amendment and explain why the change is necessary.

The amendment is to allow for local business owners in the Commercial, Industrial and Manufacturing zones to install solar powered, electric security fences inside their perimeter fence to keep their property, employees and customers/visitors safe.

b. How will the proposed change provide a substantial benefit to the public?

Being that the security fence would only be located in the above zones, it would provide substantial benefits to the surrounding businesses by deterring future criminal activity and allow the local law enforcement agency to better patrol other areas in greater need of their attention.

c. Is this application consistent or inconsistent with the Comprehensive Plan goals, objectives and policies? Describe and attach a copy of any study, report or data, which has been developed that supports the proposed change and any relevant conclusions. If inconsistent please discuss how the analysis demonstrates that changed conditions have occurred which will necessitate a shift in goals and policies.

This application is neutral for the Comprehensive Plan goals, objectives and policies. It is not a detriment to the development and is supportive of the existing facilities and infrastructure.

d. Is this application consistent or inconsistent with the goals and policies of state and federal legislation, such as the Growth Management Act (GMA) or environmental regulations? If inconsistent, describe the changed community needs or priorities that justify such an amendment and provide supporting documents, reports or studies.

This application is neutral in regards to the Growth Management Act. The text amendment is only applicable to the current Fence code (Section 17C.124.310)

e. Is this application consistent with the Countywide Planning Policies (CWPP), the comprehensive plans of neighboring jurisdictions, applicable capital facilities or special district plans, the Regional Transportation Improvement District, and official population growth forecasts? If inconsistent please describe the changed regional needs or priorities that justify such an amendment and provide supporting documents, reports or studies.

This application is neutral in regards to the Countywide Planning Policies. The text amendment is only applicable to the current Fence code (Section 17C.124.310)

f. Are there any infrastructure implications that will require financial commitments reflected in the Six-Year Capital Improvement Plan?

There are no infrastructure implications requiring financial commitments. This application is for an amendment to allow security fencing for businesses with Spokane City.

g. Will this proposal require an amendment to any supporting documents, such as development regulations, Capital Facilities Program, Shoreline Master Program, Downtown Plan, critical areas regulations, any neighborhood planning documents adopted after 2001, or the Parks Plan? If yes, please describe and reference the specific portion of the affected plan, policy or regulation.

This proposal requires an amendment to the Spokane City Fence code,

Section 17C.124.310 Fences

D. Prohibited Fences.

2. No person may maintain a fence or barrier charged with electricity.

h. If this proposal is to modify an Urban Growth Area (UGA) boundary, please provide a density and population growth trend analysis. Changes to the Urban Growth Area may occur only every five years and when the Board of County Commissioners (BoCC) reviews all UGA's countywide.

This proposal will not modify the Urban Growth Area.

MET Laboratories, Inc. Safety Certifications - EMI - Telecom - Environmental Simulation - NRTL/NVLAP
901 Sheldon Drive · Cary, North Carolina 27513 · Ph: (919) 481-9319 or (800) 321-4655· Fax: (919) 481-6716

Mr. Michael Pate
Electric Guard Dog
7608 Fairfield Rd.
Columbia, SC 29203

June 2, 2014

Reference:	Job Number SAFN7634
Initial Review Date:	March 3, 2014
Final Review Date:	March 4, 2014
Final Inspection Facility Name:	Electric Guard Dog
Final Inspection Facility Address:	7608 Fairfield Road, Columbia, SC 29203

Dear Mr. Pate,

We have completed our referenced field inspection in accordance with our Field Labeling program. The inspection included 70 total pieces of equipment (units) as noted on pages 2 through 6.

The equipment was evaluated in accordance with the applicable sections of the National Electrical Code (NEC), the Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation (NFPA791), and the IEC Standard as noted with each piece of equipment (units) on pages 2 through 6.

This test report contains only findings and results regarding the indicated equipment when it is installed per the IEC guidelines and manufacturer's instructions. Any modifications other than normal maintenance items will require re-inspection before being placed back into service. This equipment was evaluated as extensively as possible in the field with respect to electrical fire and electrical shock hazards only.

This completes the work anticipated under our Field-Labeling program. If you should have any questions, please do not hesitate to contact us.

Sincerely,

Mr. Tim Douthit
Sr. Project Engineer
MET Southeast

Reviewed By,

Brad Collison
Managing Engineer
MET Southeast

	Unit 1	Unit 2	Unit 3
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF170	EF170	EF170
Serial #	S0377	S0379	S0375
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186501	186502	186503

	Unit 4	Unit 5	Unit 6
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF170	EF170	EF170
Serial #	S0381	S0385	S0384
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186504	186505	186506

	Unit 7	Unit 8	Unit 9
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF170	EF170	EF170
Serial #	S0382	S0378	S0380
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186507	186508	186509

	Unit 10	Unit 11	Unit 12
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF170	EF170	EF170
Serial #	S0376	S0374	S0383
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186510	186511	186512

	Unit 13	Unit 14	Unit 15
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF170	EF170	EF171
Serial #	S0387	S0386	S0401
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 2J	12VDC, 1 Zone – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186513	186514	186515

	Unit 16	Unit 17	Unit 18
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF171	EF171	EF171
Serial #	S0400	S0395	S0388
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186516	186517	186518

	Unit 19	Unit 20	Unit 21
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF171	EF171	EF171
Serial #	S0393	S0396	S0399
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186519	186520	186521

	Unit 22	Unit 23	Unit 24
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF171	EF171	EF171
Serial #	S0397	S0402	S0392
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186522	186523	186524

	Unit 25	Unit 26	Unit 27
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF171	EF171	EF171
Serial #	S0391	S0390	S0389
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J	12VDC, 1 Zone – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186525	186526	186527

	Unit 28	Unit 29	Unit 30
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF171	EF172	EF172
Serial #	S0398	S0411	S0403
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 1 Zone – 5J	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186528	186529	186530

	Unit 31	Unit 32	Unit 33
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF172	EF172	EF172
Serial #	S0410	S0406	S0405
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186531	186532	186533

	Unit 34	Unit 35	Unit 36
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF172	EF172	EF172
Serial #	S0407	S0409	S0404
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186534	186535	186536

	Unit 37	Unit 38	Unit 39
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF172	EF172	EF172
Serial #	S0408	S0751	S0750
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186537	186538	186539

	Unit 40	Unit 41	Unit 42
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF172	EF172	EF173
Serial #	S0749	S0778	S0419
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 2J	12VDC, 2 Zones – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186540	186541	186542

	Unit 43	Unit 44	Unit 45
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF173	EF173	EF173
Serial #	S0414	S0415	S0422
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186543	186544	186545

	Unit 46	Unit 47	Unit 48
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF173	EF173	EF173
Serial #	S0779	S0758	S0420
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186546	186547	186548

	Unit 49	Unit 50	Unit 51
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF173	EF173	EF173
Serial #	S0413	S0757	S0418
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186549	186550	186551

	Unit 52	Unit 53	Unit 54
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF173	EF173	EF174
Serial #	S0417	S0421	S0431
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 5J	12VDC, 2 Zones – 2/5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186552	186553	186554

	Unit 55	Unit 56	Unit 57
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF174	EF174	EF174
Serial #	S0425	S0426	S0423
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186555	186556	186557

	Unit 58	Unit 59	Unit 60
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF174	EF174	EF174
Serial #	S0429	S0430	S0792
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186558	186559	186560

	Unit 61	Unit 62	Unit 63
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF174	EF174	EF174
Serial #	S0794	S0791	S0790
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186561	186562	186563

	Unit 64	Unit 65	Unit 66
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF174	EF174	EF174
Serial #	S0793	S0795	S0427
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186564	186565	186566

	Unit 67	Unit 68	Unit 69
Description	Electric Fence Controller	Electric Fence Controller	Electric Fence Controller
Model	EF174	EF174	EF175
Serial #	S0432	S0424	S0772
Manufacturer	Advanced Perimeter Systems	Advanced Perimeter Systems	Advanced Perimeter Systems
Ratings	12VDC, 2 Zones – 2/5J	12VDC, 2 Zones – 2/5J	12VDC, 3 Zones – 5J
Standard(s)	IEC 60335-2-76	IEC 60335-2-76	IEC 60335-2-76
Field Label #	186567	186568	186569

	Unit 70
Description	Electric Fence Controller
Model	EF177
Serial #	S0774
Manufacturer	Advanced Perimeter Systems
Ratings	12VDC, 3 Zones – 2J
Standard(s)	IEC 60335-2-76
Field Label #	186570

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Summary of Electric Guard Dog Security System

Our Electric Guard Dog security system is a primary low voltage (12V), battery powered (DC), independent of the electrical grid, self-contained system that has a variety of functions to it which make for a 100% medically safe and extremely effective crime deterrent. This system is 10' high and is placed approximately 4"-12" inside of the existing perimeter fence. It is comprised of 20, 12.5 gauge, galvanized steel wires which are run horizontally to the height of 10'. In our system the first layer of protection (visual deterrent) is our signage (located every 50') which advertises that it is an electric fence. This deters most would-be criminals.

The second layer of protection (audible deterrent) of our system is sirens. These sirens sound when an illegal criminal trespasser cuts the wires or places objects on them to insulate them so as to bypass the system. The sirens will automatically shut off after a set amount of time. This audible deterrent usually drives away most of the would-be criminals that are bold enough to proceed in spite of the aforementioned visual deterrent (signage). Included in this second layer of protection is that we monitor our systems. In the event of an alarm, a signal will be sent to our monitoring station, who in turn, contacts our clients to let them know they had an alarm event. Our system does not directly connect to emergency services.

The final layer of protection is our voltage. We have a burst of voltage (from the 12V battery) that has a duration of four-ten-thousandths of one second (.00004). If a criminal was bold enough to actually grab or touch our system, they will receive this temporary pulse of voltage which is akin to a slap on the hand from a ruler. This final layer of protection stops the remaining number of criminals that are not deterred by the other layers of protection.

With the inclusion of a perimeter barrier fence, electric security fences are as specified in IEC 60335-2-76, the risk of accidental contact is substantially lowered.

Please also take a moment to look at our website, www.electricguarddog.com, you will find it helpful as well.

2. For Text Amendments:

a. Please provide a detailed description and explanation of the proposed text amendment. Show proposed edits in "line in/line out" format, with text to be added indicated by underlining, and text to be deleted indicated with strikeouts.

We are requesting a text amendment for the installation 10-foot high electric fence security system (Electric Guard Dog aka EGD) approximately 4"-12" inside an existing perimeter fence.

The EGD Security system is a 10' high, electrically charged fence powered by 12 Volt marine battery which is charged by a solar panel. An energizer retains the voltage for 1.3 seconds and thus when released it is boosted to 7,000 volts of a totally safe, pulsed electrical charge. Signage posted a minimum of every 60' warns of the electric fence. However, the safety of the 'shock' is not advertised and therefore, due to our inherent fear of electricity, most criminals will not take a chance in breeching the perimeter. With this, the EGD proactively deters crime unlike cameras, beams and alarms that react to a crime in commission.

The amendment would help provide secure locations for businesses to operate and store equipment and merchandise outdoors. Businesses containing highly desirable, easily 'fenceable' inventory are most susceptible to an even higher increase in would-be criminal activity.

Many businesses in various industries (industrial, commercial, manufacturing, trucking) use 'electric fence' security systems to effectively protect their property where other systems have failed. In addition, Homeland Security has recommended Electric Guard Dog, LLC to many businesses of this nature to protect their business and employees.

Essential safety facts regarding Electric Guard Dog fence

- Totally independent of the city's electrical grid
- Powered by 12-Volt marine battery and solar panel
- Totally enclosed inside a perimeter fence of 6' minimum height
- Pulsed current, shock delivered every 1.3 seconds for one-ten thousandth of a second
- Shortness of duration makes it very safe.
- Fully tested and approved by:
  - MetLabs, a Nationally Recognized Testing Lab with equal authority as UL
  - Dr. Webster, University of Wisconsin, the leading expert in pulsed electricity
- Adheres to International Standard IEC 60336.2.76 of which the United States is a supporting member.

See attached document for proposed text amendment language.

b. Reference the name of the document as well as the title, chapter and number of the specific goal, policy or regulation proposed to be amended/added.

Section 17C.124.310 Fences

D. Prohibited Fences.

2. No person may maintain a fence or barrier charged with electricity.

PROPOSED ELECTRIC FENCE ORDINANCE

Section 17C.124.310 Fences

D. Prohibited Fences.

~~*2. No person may maintain a fence or barrier charged with electricity.*~~

A. The construction and use of electric fences shall be allowed in the city only as provided in this section, subject to the following standards:

1. IEC Standard 60335-2-76: Unless otherwise specified herein, electric fences shall be constructed or installed in conformance with the specifications set forth in International Electro technical Commission (IEC) Standard No. 60335-2-76.

2. Electrification:

(a) The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

(b) The electric charge produced by the fence upon contact shall not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of IEC Standard No. 60335-2-76.

3. Perimeter fence or wall:

(a) No electric fence shall be installed or used unless it is completely surrounded by a non-electrical fence or wall that is not less than six feet.

4. Location: Electric fences shall be permitted on any non-residential outdoor storage areas.

5. Height: Electric fences shall have a height of 10 feet.

6. Warning signs: Electric fences shall be clearly identified with warning signs that read: "Warning-Electric Fence" at intervals of not less than sixty feet.

7. Electric fences shall be governed and regulated under burglar alarm regulations and permitted as such.

B. It shall be unlawful for any person to install, maintain or operate an electric fence in violation of this section.

City of Spokane

Planning Services Department

Comprehensive Plan or Land Use Code Amendment

Application

Electric Fence Code Amendment

DESCRIPTION OF THE PROPOSED AMENDMENT Please check the appropriate box(es):

(Inconsistent Amendments will only be processed every other year beginning in 2005.)

☐ Comprehensive Plan Text Change

☐ Land Use Designation Change

☒ Regulatory Code Text Change

☐ Area-wide Rezone

Please respond to these questions on a separate piece of paper. Incomplete answers may jeopardize your application's chances of being reviewed during this amendment cycle.

1. General Questions (for all proposals):

a. Describe the nature of the proposed amendment and explain why the change is necessary.

b. How will the proposed change provide a substantial benefit to the public?

c. Is this application consistent or inconsistent with the Comprehensive Plan goals, objectives and policies? Describe and attach a copy of any study, report or data, which has been developed that supports the proposed change and any relevant conclusions. If inconsistent please discuss how the analysis demonstrates that changed conditions have occurred which will necessitate a shift in goals and policies.

d. Is this application consistent or inconsistent with the goals and policies of state and federal legislation, such as the Growth Management Act (GMA) or environmental regulations? If inconsistent, describe the changed community needs or priorities that justify such an amendment and provide supporting documents, reports or studies.

e. Is this application consistent with the Countywide Planning Policies (CWPP), the comprehensive plans of neighboring jurisdictions, applicable capital facilities or special district plans, the Regional Transportation Improvement District, and official population growth forecasts? If inconsistent please describe the changed regional needs or priorities that justify such an amendment and provide supporting documents, reports or studies.

f. Are there any infrastructure implications that will require financial commitments reflected in the Six-Year Capital Improvement Plan?

g. Will this proposal require an amendment to any supporting documents, such as development regulations, Capital Facilities Program, Shoreline Master Program, Downtown Plan, critical areas regulations, any neighborhood planning documents adopted after 2001, or the Parks Plan? If yes, please describe and reference the specific portion of the affected plan, policy or regulation.

h. If this proposal is to modify an Urban Growth Area (UGA) boundary, please provide a density and population growth trend analysis. Changes to the Urban Growth Area may occur only every five years and when the Board of County Commissioners (BoCC) reviews all UGA's countywide.

THE UNIVERSITY of WISCONSIN MADISON

Safety of electric security fences

John G. Webster
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University of Wisconsin-Madison
Madison WI 53706

Electric current shocks us, not voltage

Most of us can remember receiving an electric shock; it can happen during a regular day. How can that happen and when? Walking across a carpet during dry weather, then touching a doorknob and feeling a spark that jumps to the doorknob is a very common way. Placing a finger inside of a lamp socket that inadvertently was turned on is yet another. Touching the spark plug in a car or lawn mower has happened to many people as well. But why are we all still alive after receiving these electric shocks during a regular day? *We are still alive because even though the voltage is high, not enough electric current flowed through our heart.*

Even when the voltage is high, when the current flows for only a very short duration we can not be electrocuted. Furthermore, it is even hard to get electrocuted in the home because the power line voltage of 120 volts can't drive enough continuous current through the high resistance of our dry skin. Kitchens and bathrooms fall in a different category; they are dangerous places because our skin may be wet. When our skin is wet, our skin resistance is low and permits a large electric current to flow through the body as shown in Figure 1. A large enough current can cause ventricular fibrillation. During ventricular fibrillation the pumping action of the heart ceases and death occurs within minutes unless treated. In the United States, approximately 1000 deaths per year occur in accidents that involve cord-connected appliances in kitchens, bathrooms, and other wet locations.

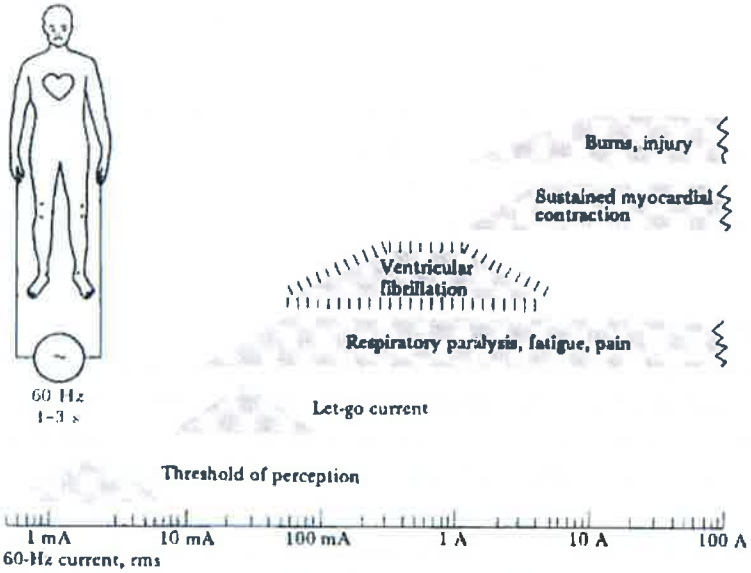

Figure 1 Physiological effects of electricity. Threshold or estimated mean values are given for each effect in a 70 kg human for a 1- to 3 s exposure to 60 Hz current applied via copper wires grasped by the hands. From W. A. Olson, Electrical Safety, in J. G. Webster (ed.), *Medical Instrumentation Application and Design*, 3rd. ed., New York: John Wiley & Sons, 1998.

Short duration pulses are safer than continuous electric current

Figure 2 shows that shock durations longer than 1 second are the most dangerous. Note that as the shock duration is shortened to 0.2 seconds, it requires much more electric current to cause ventricular fibrillation. Electric security fences have taken advantage of this fact by shortening their shock duration to an even shorter duration of about 0.0003 seconds. Therefore, electric security fences are safe and do not lead to ventricular fibrillation due to the short 0.0003 second shock duration. .

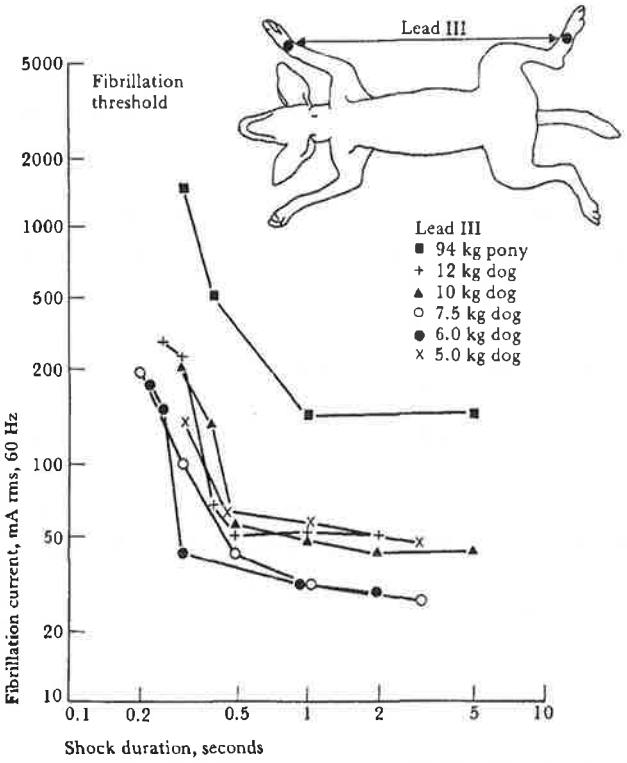

Figure 2 Thresholds for ventricular fibrillation in animals for 60-Hz ac current. Duration of current (0.2 to 5 s) and weight of animal body were varied. Fibrillation current versus shock duration for a 70 kg human is about 100 milliamperes for 5 second shock duration. It increases to about 800 milliamperes for 0.3 second shock duration. From L. A. Geddes, *IEEE Trans. Biomed. Eng.*, 1973, 20, 465–468.

Electricity near the heart is most dangerous

There are four situations where electricity may be applied close to the heart. (1) Figure 3(b) shows when a catheter tube is threaded through a vein into the heart, any accidental current is focused within the heart and a small current can cause ventricular fibrillation. (2) Cardiac pacemakers also pass electric current inside the heart, but the current is kept so small that ventricular fibrillation does not occur. (3) A Taser weapon may rarely shoot a dart between the ribs very close to the heart and apply a 0.0001 second pulse, but this has not been shown to cause ventricular fibrillation. Typically when a person takes an overdose of drugs, he creates a disturbance, police are called, the person refuses to obey, the police Taser him, afterwards he dies of a drug overdose, and the newspapers report, "Man dies after Taser shot." (4) A defibrillator applies a 0.005 second, 40 ampere electric current. This causes massive heart contraction that can change ventricular fibrillation to normal rhythm and save a life.

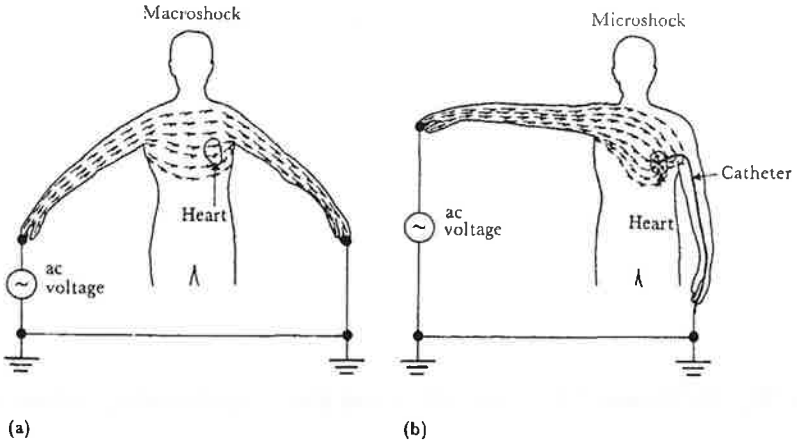

Figure 3 Effect of entry points on current distribution. (a) *Macroshock,* externally applied current spreads throughout the body, (b) *Microshock,* all the current applied through an intracardiac catheter flows through the heart. From F. J. Weibell, "Electrical Safety in the Hospital," *Annals of Biomedical Engineering,* 1974, 2, 126–148.

When comparing an electric security fence to the above examples, we know that an electric security fence is similar to Figure 3(a). Why do we know that? If a person contacts an electric fence, electric current is concentrated in the limbs and causes a deterrent shock; when it continues to pass through the torso, it spreads out and becomes more diffuse. Therefore as shown in Figure 3(a) and in Figure 2 electric security fences are safe because the deterrent shock spreads out and becomes more diffuse and is of a very short duration.

Only power lines cause ventricular fibrillation

Table 1 shows that short duration electric pulses, even though applied near the heart do not cause ventricular fibrillation. In contrast, the continuous current from power lines kills 1000 persons per year.

Table 1 Only power lines cause ventricular fibrillation

	Duration of pulse in seconds	Current in amperes	Likely to be applied near heart?	Caused ventricular fibrillation?
Power lines	Continuous	0.1	No	1000 per year
Electric security fence	0.0003 0.8 times/sec	10	No	No
Taser	0.0001 19 times/sec	2	May be	No
Cardiac pacemaker	0.001 1 time/sec	0.005	Yes	No
Defibrillator	0.005 1 time	40	Yes	Cures ventricular fibrillation
Spark plug	0.00002 1 time	0.2	No	No
Doorknob	0.00002 1 time	0.2	No	No

Sentry Security Systems, LLC position on the relationship of security fences to codes and standards

Electric fencing is used safely throughout the world, with applications for both animal control and commercial security. In a commercial security setting, security fences deter crime and help apprehend criminals. The mere presence of a security fence discourages unlawful entry, theft and the destruction of property. Additionally, it is easier to apprehend the determined criminal because the owner and police are notified instantaneously when the criminal distorts or breaks the fence. Security fences also protect the people who work at a site, providing business owners and employees significant peace of mind.

The security fence sold by Sentry Security Systems is powered by a 12 volt DC marine (or similar) battery. The National Electric Code does not cover battery powered products such as smoke alarms. Therefore, the security fence sold by Sentry Security Systems is not covered by the NEC.

There is in fact no US standard that addresses security fences whether main or battery powered. UL 69 addresses animal control fences but not security fences. There is, however, a good international standard - IEC 60335-2-76 - that addresses security fences. This standard is attached for your information.

We respectfully request that you determine that, as a battery powered device, security fences do not fall under the National Electric Code.

Safety of electric fence energizers

Amit J. Nimunkar1 and John G. Webster1

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E-mail: Webster@engr.wisc.edu (John G. Webster) Tel 608-263-1574, Fax 608-265-9239

Abstract

The strength–duration curve for tissue excitation can be modeled by a parallel resistor–capacitor circuit that has a time constant. We tested five electric fence energizers to determine their current-versus-time waveforms. We estimated their safety characteristics using the existing IEC standard and propose a new standard. The investigator would discharge the device into a passive resistor–capacitor circuit and measure the resulting maximum voltage. If the maximum voltage does not exceed a limit, the device passes the test.

Key words: strength–duration curve, cardiac stimulation, ventricular fibrillation, electric safety, electric fence energizers, standards.

1. Introduction

The vast majority of work on electric safety has been done using power line frequencies such as 60 Hz. Thus most standards for electric safety apply to continuous 60 Hz current applied hand to hand. A separate class of electric devices applies electric current as single or a train of short pulses, such as are found in electric fence energizers (EFEs). A standard that specifically applies to EFEs is IEC (2006). To estimate the ventricular fibrillation (VF) risk of EFEs, we use the excitation behavior of excitable cells. Geddes and Baker (1989) presented the cell membrane excitation model (Analytical Strength–Duration Curve model) by a lumped parallel resistance–capacitance (*RC*) circuit. This model determines the cell excitation thresholds for varying rectangular pulse durations by assigning the strength–duration rheobase currents, chronaxie, and time constants (Geddes and Baker, 1989). Though this model was originally developed based on the experimental results of rectangular pulses, the effectiveness of applying this model for other waveforms has been discussed (IEC 1987, Jones and Geddes 1977). The charge–duration curve, derived from the strength–duration curve, has been shown in sound agreement with various experimental results for irregular waveforms. This permits calculating the VF excitation threshold of EFEs with various nonrectangular waveforms. We present measurements on electric fence energizers and discuss their possibility of inducing VF.

2. Mathematical background and calculation procedures

Based on the cell membrane excitation model (Weiss–Lapique model), Geddes and Baker (1989) developed a lumped *RC* model (analytical strength–duration curve) to describe the membrane excitation behavior. This model has been widely used in various fields in electrophysiology to calculate the excitation threshold. Figure 1 shows the normalized strength–duration curve for current (*I*), charge (*Q*) and energy (*U*). The expression of charge is also known as the charge–duration curve which is important for short duration stimulations.

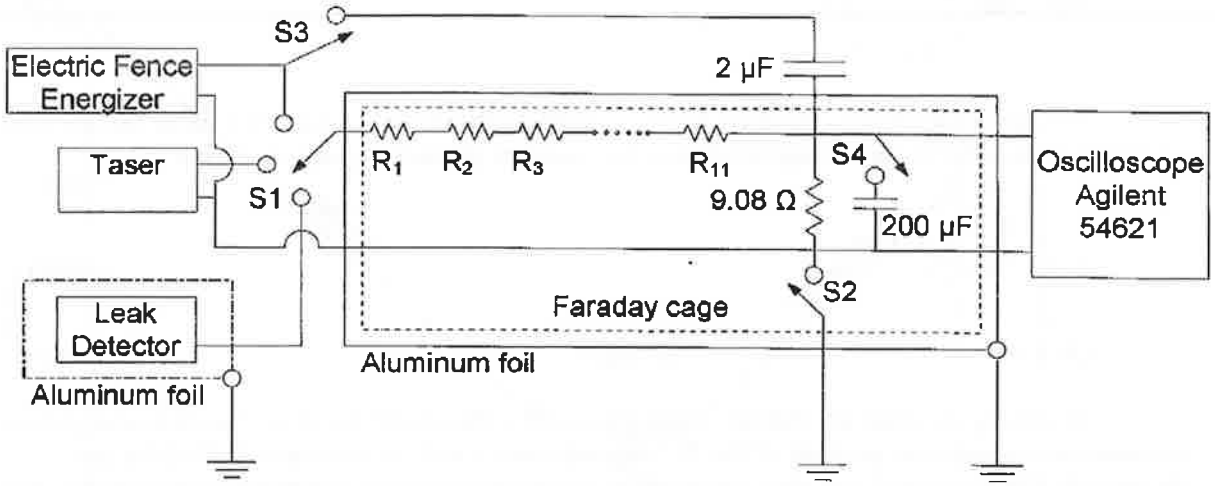


Figure 2. The EFE is selected by S1. The current flows through a string of 47 Ω resistors R_1–R_{11} (total 518 Ω) which approximates the internal body resistance of 500 Ω. The 9.08 Ω yields a low voltage that is measured by the oscilloscope.

3.1. Determination of current

EFEs are used in conjunction with fences wires to form animal control fences and security fences. We tested five EFEs (EFE1–EFE5) using the experimental set-up in Figure 2 and obtained the output currents shown in Figure 3.

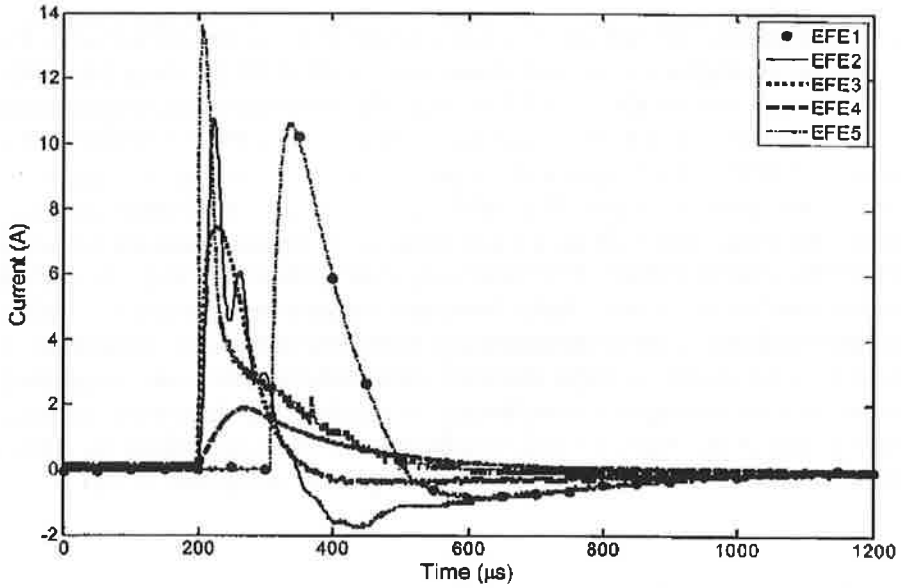


Figure 3. The output current waveform for five EFEs. EFE1 yields about 7.75 A for 151 μs = 1170 μC, EFE2 yields about 3.34 A for 345 μs = 1150 μC, EFE3 yields about 5.69 A for 91 μs =

518 μC, EFE4 yields about 1.25 A for 252 μs = 315 μC and EFE5 yields about 5.7 A for 137 μs = 781 μC.

4. Results

Table 1 shows the approximate results for the rms current, power, duration and charge for all the EFEs.

Table 1 Approximate results for all EFEs.

EFEs		EFE1	EFE2	EFE3	EFE4	ECF5
Parameters	Units					
A. (IEC)						
Total Energy	A^2ms	7.94	4.04	3.10	0.42	4.69
95% Energy Duration	μs	129	346	91	253	138
I_{rms}	A	7.65	3.33	5.69	1.25	5.69
IEC Standard I_{rms}	A	13.0	6.21	16.8	7.85	7.37
Pass IEC Standard	Yes/No	Yes	Yes	Yes	Yes	Yes
B. Proposed standard						
Voltage	V	3.88	2.91	NAv	NAv	NAv
Duration	μs	233	132			
Current	A	3.33	4.41			
Charge	μC	776	582			

NA- not applicable, NAv- not available

IEC (2006) defines in 3.116 "impulse duration: duration of that part of the impulse that contains 95% of the overall energy and is the shortest interval of integration of $I^2(t)$ that gives 95% of the integration of $I^2(t)$ over the total impulse. $I(t)$ is the impulse current as a function of time." In 3.117 it defines "output current: r.m.s. value of the output current per impulse calculated over the impulse duration." In 3.118 it defines "standard load: load consisting of a non-inductive resistor of 500 Ω ± 2.5 Ω and a variable resistor that is adjusted so as to maximize the energy per impulse or output current in the 500 Ω resistor, as applicable." In 22.108, "Energizer output characteristics shall be such that – the impulse repetition rate shall not exceed 1 Hz; – the impulse duration of the impulse in the 500 Ω component of the standard load shall not exceed 10 ms; – for energy limited energizers the energy/impulse in the 500 Ω component of the standard load shall not exceed 5 J; The energy/impulse is the energy measured in the impulse over the impulse duration. – for current limited energizers the output current in the 500 Ω component of the standard load shall not exceed for an impulse duration of greater than 0.1 ms, the value specified by the characteristic limit line detailed in Figure 102; an impulse duration of not greater than 0.1 ms, 15 700 mA. The equation of the line relating impulse duration (ms) to output current (mA) for 1 000 mA < output current < 15 700 mA, is given by impulse duration = $41.885 \times 10^3 \times (\text{output current})^{-1.34}$." We used these definitions and calculated the total energy, the shortest duration where 95% of the total energy occurs, the rms current for that duration from Figure 3 for the EFEs (EFE1–EFE5). Similarly we calculated the output current using the relationship impulse duration = $41.885 \times 10^3 \times (\text{output current})^{-1.34}$, provided by the IEC for all the EFEs (EFE1–EFE5). Table 1 lists these under the heading "A. (IEC)". Table 1 shows that all the EFEs pass the IEC standard.

5. Proposed new standard

IEC (2006) uses the rms current for the shortest duration where 95% of the total energy occurs as the standard to determine if the EFE is safe for use. Geddes and Baker (1989) have shown that for pulses shorter than the cardiac cell time constant of 2 ms, the electric charge is the quantity that excites the cells. We propose a simple experimental set-up shown in Figure 2 to determine the maximum amount of charge that would flow from the EFEs and cause cardiac cell excitation. The cardiac cell is modeled as an *RC* circuit in Fig. 2 with $R = 9.08\ \Omega$ and $C = 200\ \mu F$ (GECONOL 9757511FC 200 μF ±10% 250 VPK) with the *RC* time constant of 1.82 ms. For the EFEs (EFE1 and EFE2) the switches S1 and S4 are closed. This allows the 200 μF capacitor to charge rapidly (about 100 μs) and discharge fairly slowly ($\tau = RC = 1.82$ ms). Figures 4 and 5 show the voltage vs time waveforms for the different EFEs. The test was not performed for electric fence energizers EFE3–EFE5.

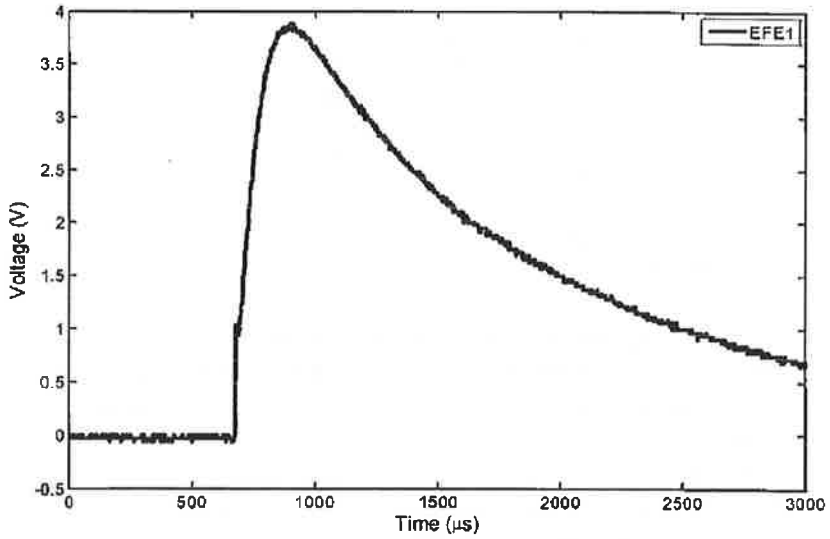


Figure 4. Output voltage waveform for EFE1. The maximal charge that flows through the cardiac cell model is given by $Q = CV = 200\ \mu F \times 3.88\ V = 775\ \mu C$, the current during which the capacitor charges to maximal value is given by $I = CV/T = (200\ \mu F \times 3.88\ V)/233\ \mu s = 3.33\ A$.

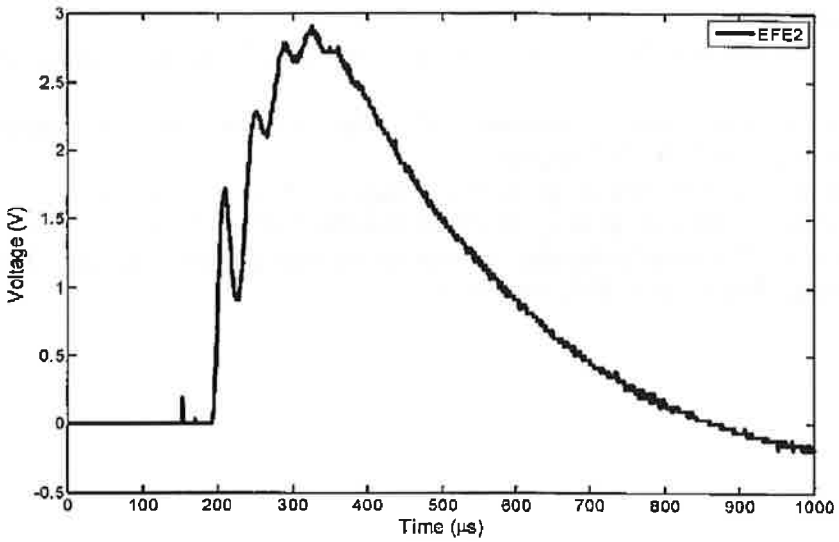


Figure 5. Output voltage waveform for the electric fence energizers EFE2. The maximal charge that flows through the cardiac cell model is given by $Q = CV = 200\ \mu F \times 2.91\ V = 582\ \mu C$, the current during which the capacitor charges to maximal value is given by $I = CV/T = (200\ \mu F \times 2.91\ V)/132\ \mu s = 4.41\ A$.

6. Discussion

Geddes and Baker (1989) have shown that for pulses shorter than the cardiac cell time constant of 2 ms, the electric charge is the quantity that excites cardiac cells. Because the first half wave is the largest, the charge integrated in the first half wave determines cardiac cell excitation. The next half wave discharges the cardiac cell capacitance and does not contribute to cardiac cell excitation. Thus we list integral $I(t)$ = charge Q in Table 1.

IEC (2006) integrates $I^2(t)$, which is roughly equal to $I(t)$. Their Figure 102 roughly follows charge.

We propose revising EFE standards for measuring current to determine a safety standard to prevent VF. The new standard would measure cardiac cell excitation. It would not require the complex calculations required to determine "The current which flows during the time period in which 95 percent of the output energy (is delivered)." It would use a simple circuit similar to that in Figure 2 composed of resistors and a capacitor. The investigator would discharge the device into the circuit and measure the maximum voltage. If the maximum voltage does not exceed 5 V (as a conservative estimate), the EFE passes the test. The 500 Ω resistor closely approximates the resistance of the body and determines the current that flows through the body.

Acknowledgements

We thank L Burke O'Neal and Silas Bernardoni for their help and suggestions.

References

Geddes L A, and Baker L E 1989 *Principles of applied biomedical instrumentation* (New York: John Wiley & Sons) pp 458–61

Geddes L A and Bourland J D 1985 The strength-duration curve. *IEEE. Trans. Biomed. Eng.* **32(6)** 458–9

IEC 1987 *International Electrotechnical Commission IEC Report: Effects of current passing through the human body* (IEC 60479-2) pp 47

IEC 2006 *Household and similar electrical appliances – Safety – Part 2-76: Particular requirements for electric fence energizers*, (IEC 60335-2-76, Edition 2.1)

Jones M and Geddes L A 1977 Strength duration curves for cardiac pacemaking and ventricular fibrillation *Cardiovasc. Res. Center Bull.* **15** 101–12

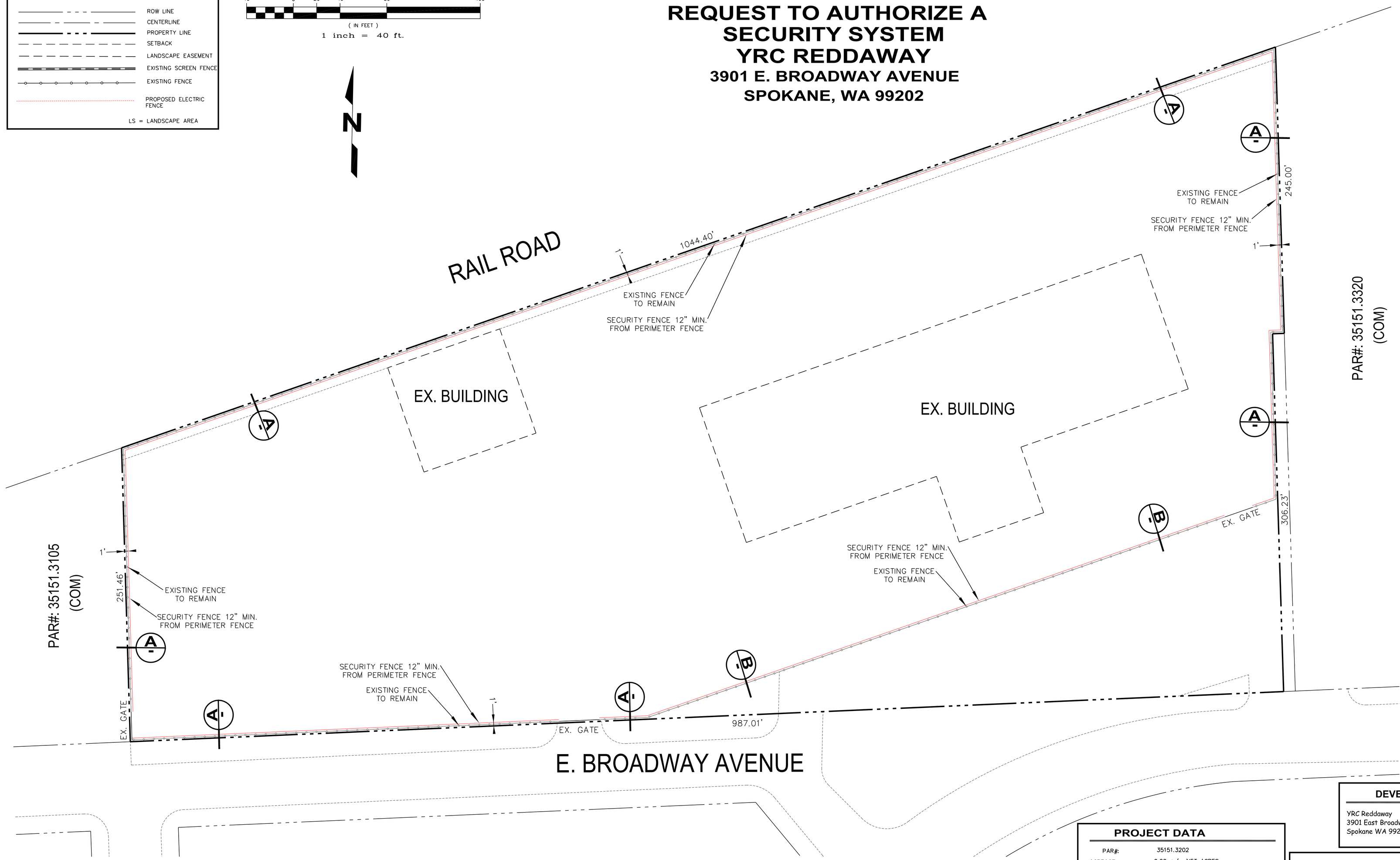
SITE PLAN
REQUEST TO AUTHORIZE A SECURITY SYSTEM
YRC REDDAWAY
3901 E. BROADWAY AVENUE
SPOKANE, WA 99202

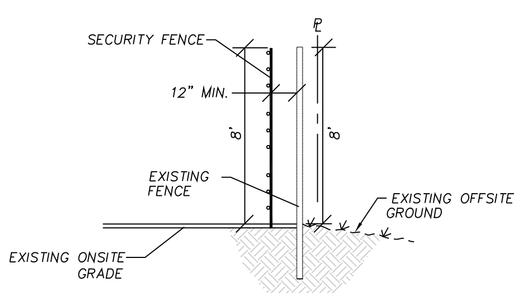
LEGEND

- ROW LINE
- CENTERLINE
- PROPERTY LINE
- SETBACK
- LANDSCAPE EASEMENT
- EXISTING SCREEN FENCE
- EXISTING FENCE
- PROPOSED ELECTRIC FENCE
- LS = LANDSCAPE AREA

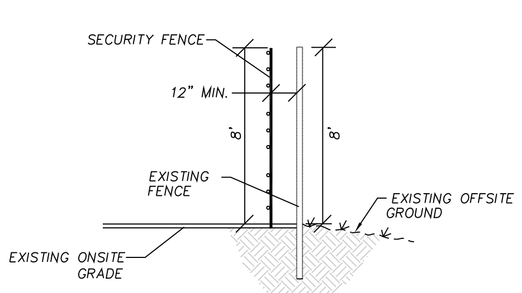
GRAPHIC SCALE
40 0 20 40 80 160
(IN FEET)
1 inch = 40 ft.

N





A- EXISTING PERIMETER FENCE SECTION
NTS.



B- EXISTING PERIMETER FENCE SECTION
NTS.

STORM DRAIN:
THERE IS NO EXISTING STORM DRAIN ADJACENT TO THE PROPERTY. NO STORM DRAIN IS BEING PROPOSED AS PART OF THIS PROJECT.

UTILITY RIGHT-OF-WAY/EASEMENTS NOTE:
THERE ARE NO UTILITY RIGHT-OF-WAY OR EASEMENTS LOCATED ON THE PROPERTY.

DRAINAGE/IRRIGATION NOTE:
THIS PROPERTY IS NOT LOCATED IN THE 100-YEAR FLOOD ZONE. THERE ARE NO IRRIGATION OR DRAINAGE EASEMENTS ON THE PROPERTY.

LANDSCAPE/RESERVATIONS NOTE:
ALL COMMON AREA LANDSCAPE WILL BE MAINTAINED BY A LANDSCAPE MAINTENANCE ASSOCIATION. THERE ARE NO RESERVATIONS FOR PARKS, SCHOOLS OR OTHER PUBLIC USES.

PROJECT DATA

PAR#:	35151.3202
ACREAGE:	9.00 +/- NET ACRES 9.00 +/- GROSS ACRES
BUILDING FOOTPRINT:	42,600 TOTAL S.F.
LOT COVERAGE:	10.8% COVERAGE
ZONING:	EXISTING: COM PROPOSED: COM
PARKING:	REQUIRED: 43 SPACES. PROVIDED: 43+ SPACES
MINIMUM FENCE SETBACKS:	FRONT – 1' REAR – 1' SIDE – 1'

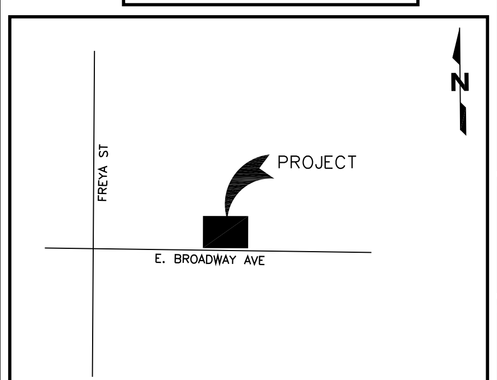
NOTES:

POLE LOCATIONS:
STEEL POLES: TO BE LOCATED APPROXIMATELY ON EACH SIDE OF GATE(S) & EVERY 90' (OR GREATER) TURN IN FENCE LINE. FIBERGLASS/INTERMEDIATE POLES: TO BE LOCATED APPROXIMATELY EVERY 30'

DISCLAIMER:
POLE LOCATIONS MAY SLIGHTLY DEVIATE FROM STIPULATIONS ABOVE DUE TO ON-SITE CONDITIONS"

DEVELOPER

YRC Reddaway
3901 East Broadway Ave
Spokane WA 99202



VICINITY MAP
NOT TO SCALE

#	DATE / DESCRIPTION

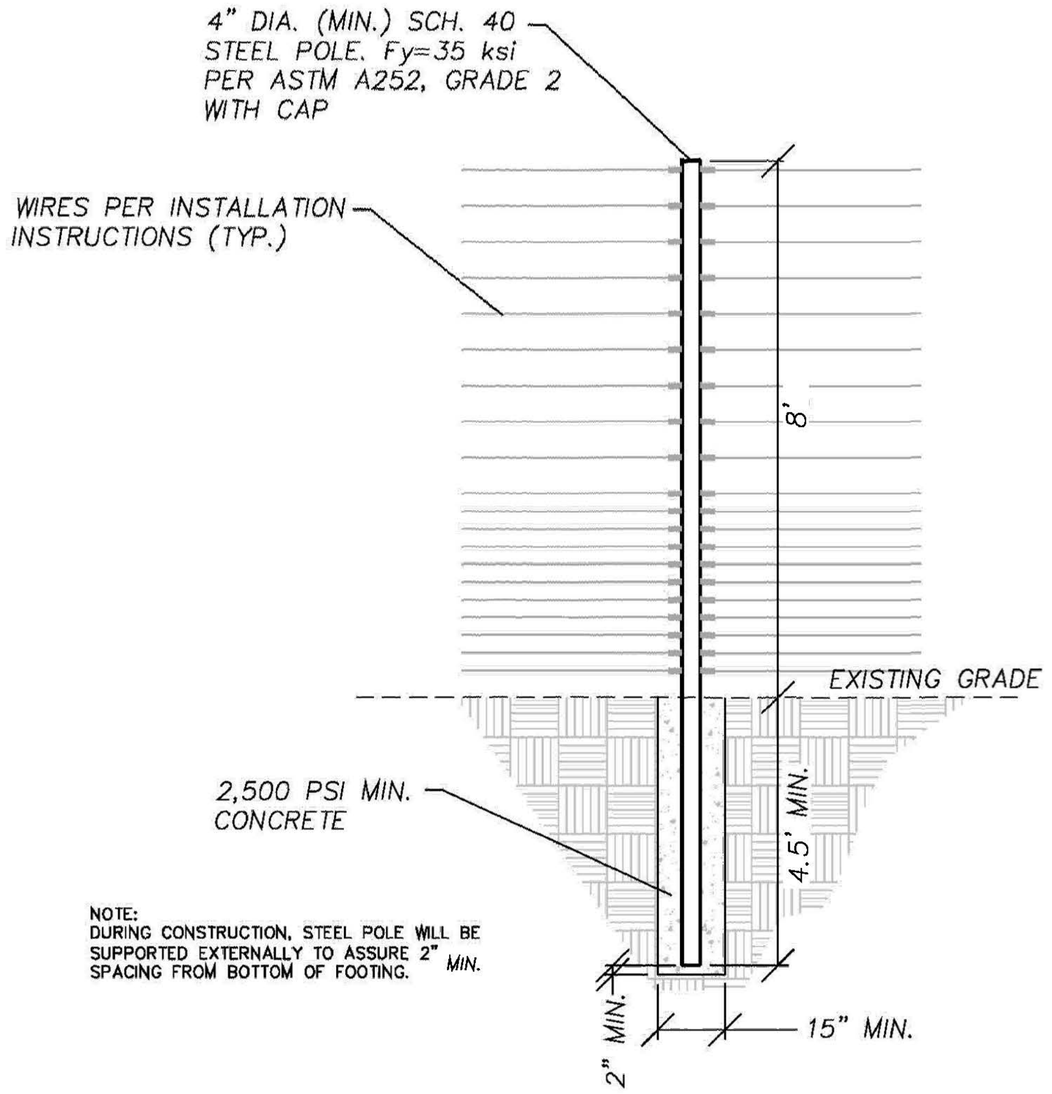
Electric Guard Dog
7608 Fairfield Road
Columbia, SC 29203
PHONE: 803-786-6333
FAX: 803-404-5378

PROJECT: REQUEST TO AUTHORIZE A SECURITY SYSTEM
3901 E. BROADWAY AVENUE
SPOKANE, WA 99202
PAR#: 35151.3202

SHEET TITLE: SITE PLAN

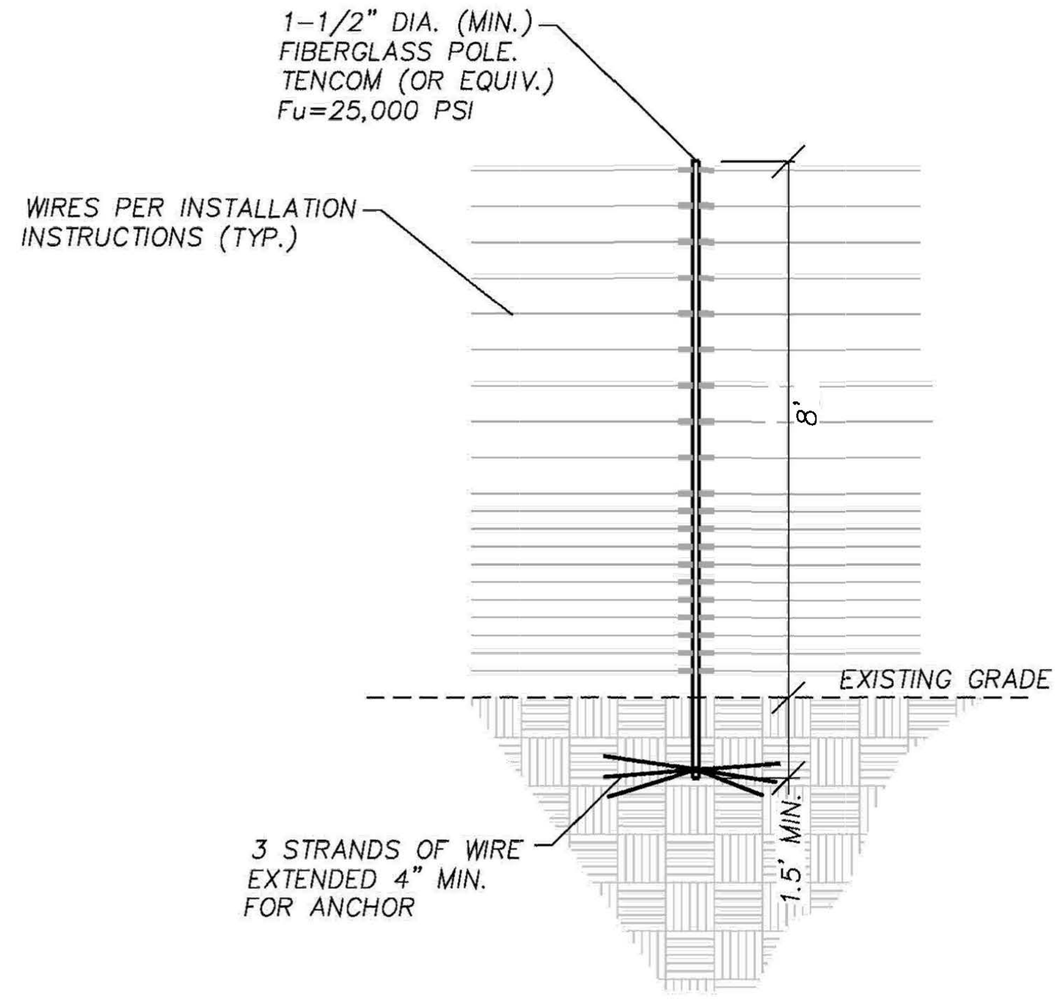
DATE: APR. 03, 2015
SCALE: 1" = 40'

SHEET
1 OF 3



STEEL POLE DETAIL

NTS



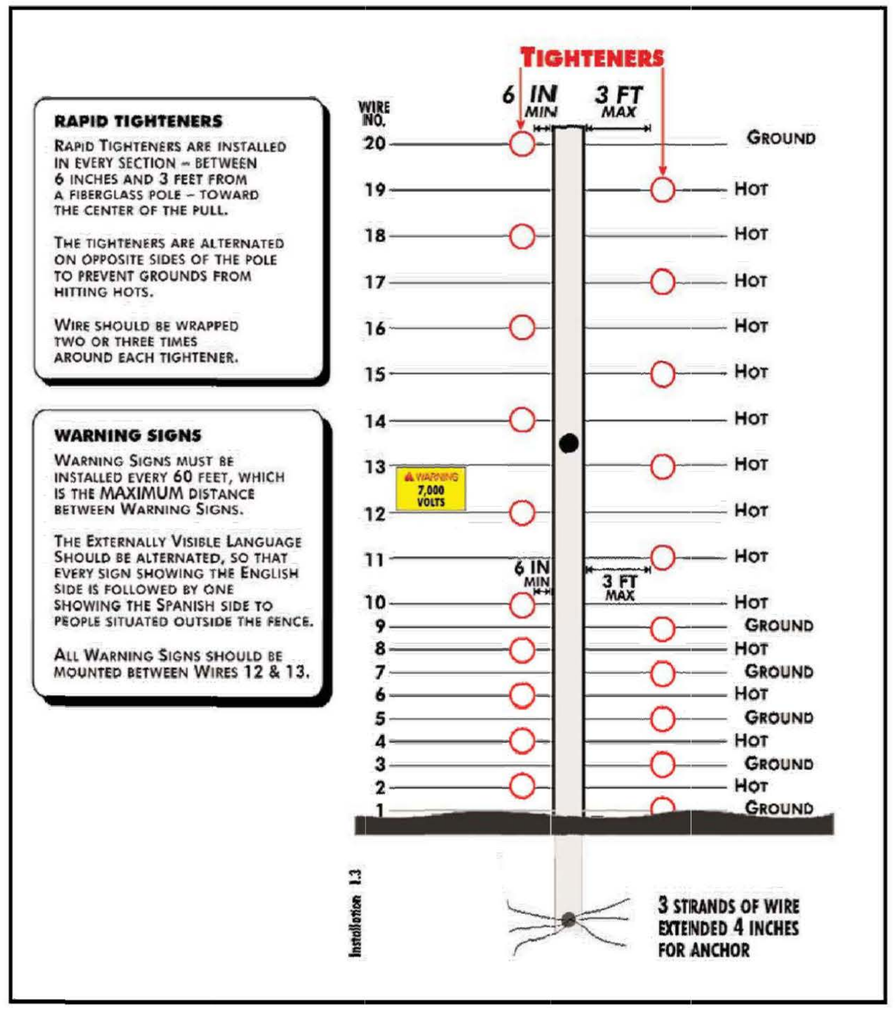
FIBERGLASS POLE DETAIL

NTS

NOTE:
BOTH ENGLISH AND SPANISH VERSION OF THE "WARNING SIGN" WILL BE PLACED EVERY 60 FEET MAXIMUM..

EXAMPLE WARNING SIGNS

NTS



WIRE CONNECTIONS

NTS

#	DATE / DESCRIPTION

Electric Guard Dog
7608 Fairfield Road
Columbia, SC 29203
PHONE: 803-786-6333
FAX: 803-404-5378

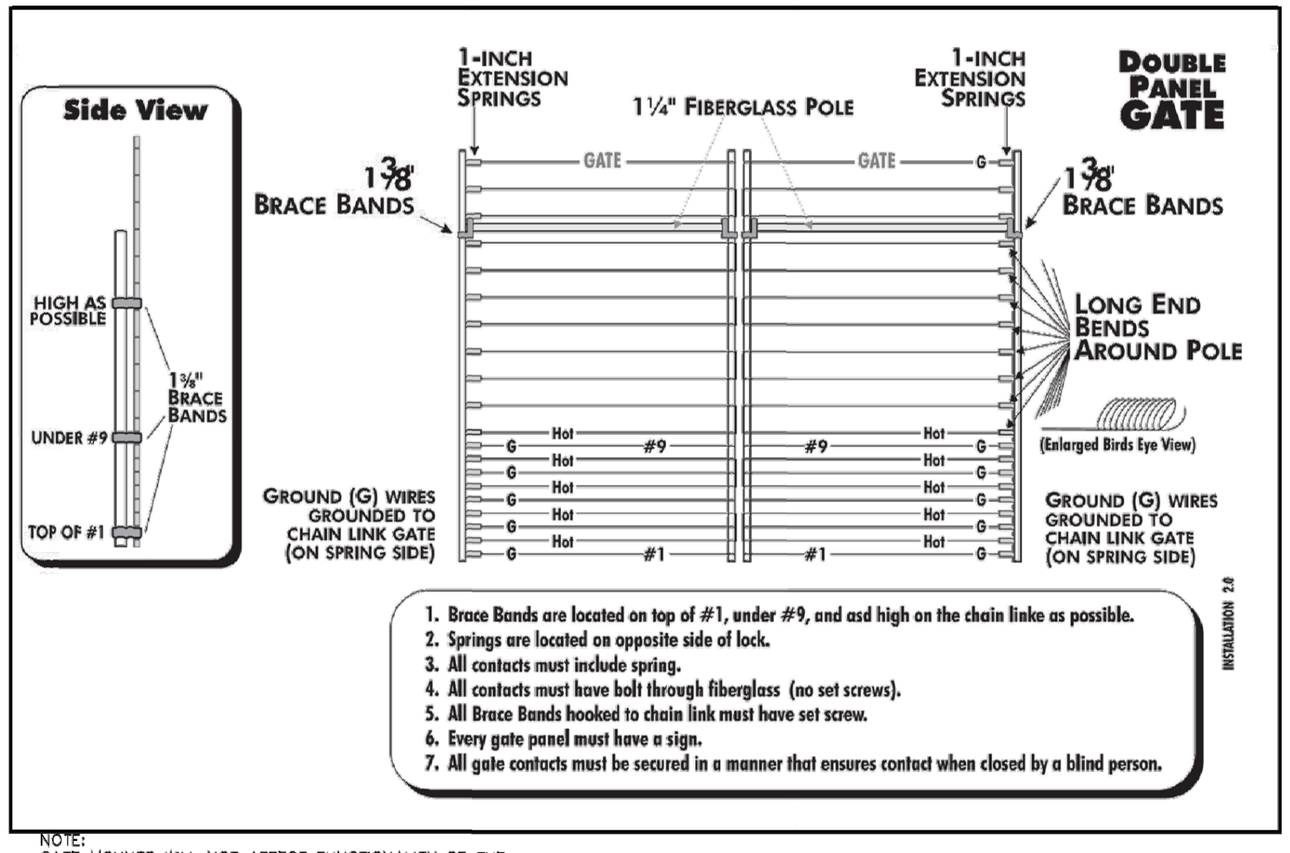
PROJECT: REQUEST TO AUTHORIZE A SECURITY SYSTEM
3901 E. BROADWAY AVENUE
SPOKANE, WA 99202
PAR#: 35151.3202

SHEET TITLE: TYPICAL DETAILS

DATE: APR. 03, 2015

SCALE: N/A

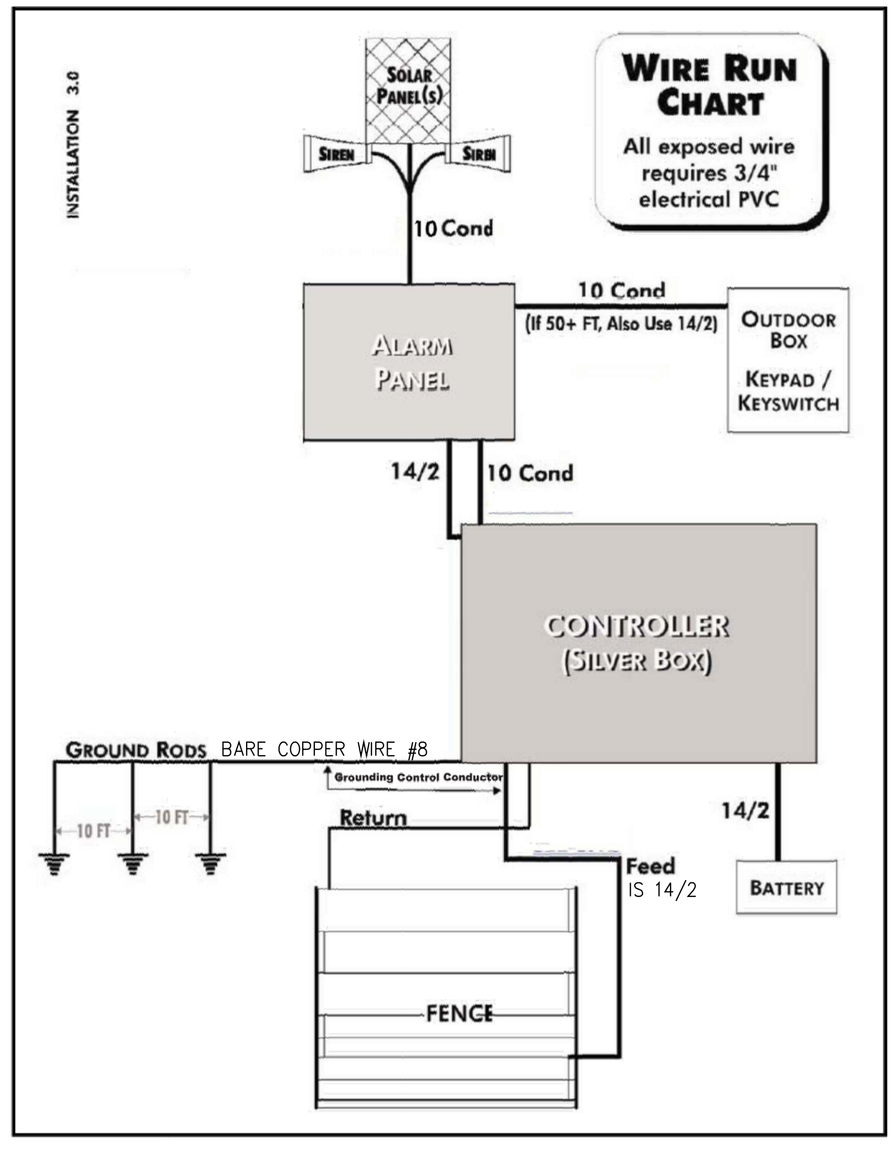
SHEET
2 OF 3



NOTE:
GATE MOUNTS WILL NOT AFFECT FUNCTIONALITY OF THE GATE(S).

GATE DETAIL

NTS



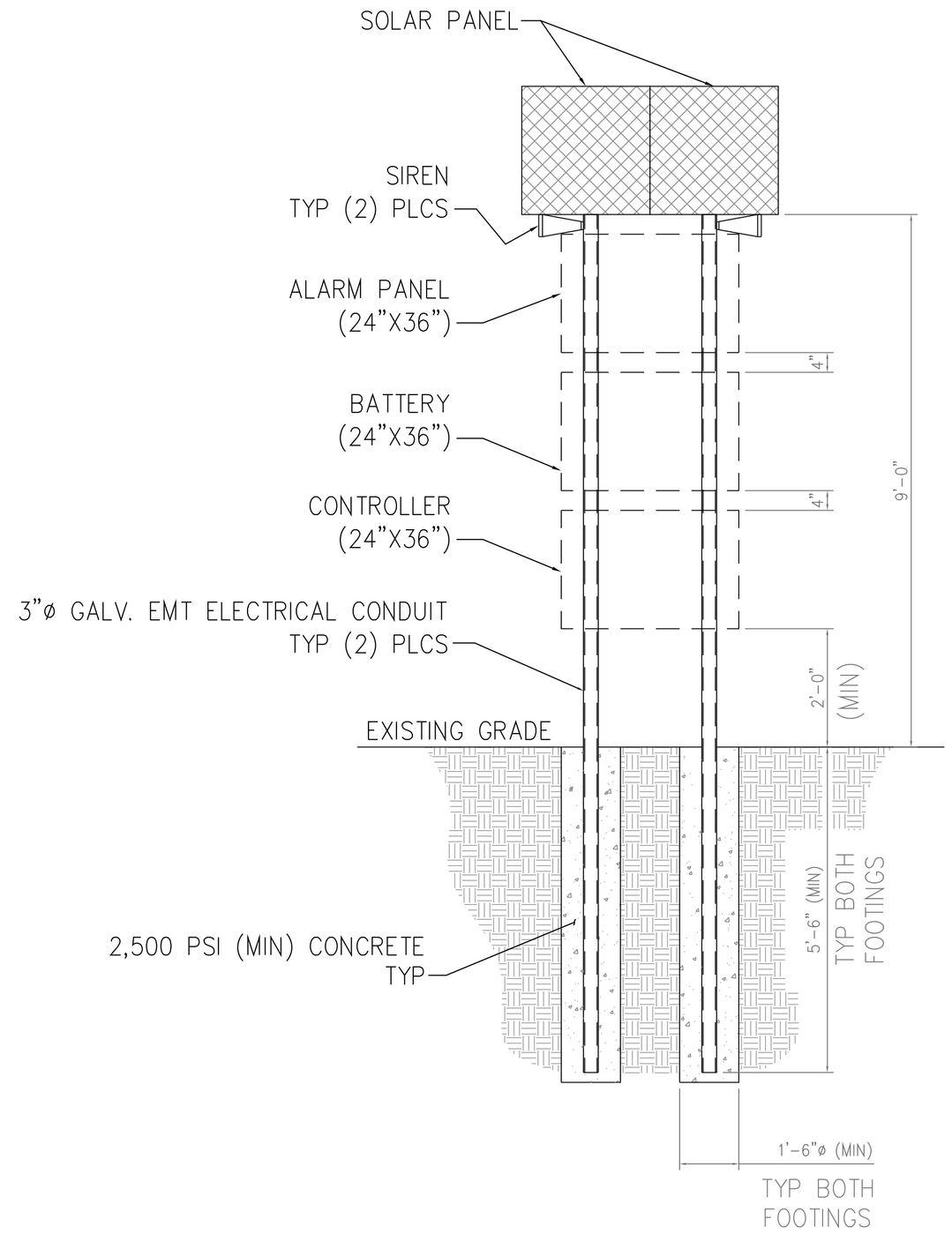
WIRE RUN DETAILS

NTS

OUTSIDE MOUNTED ELECTRONICS

MOUNT THREE EMPTY GALVANIZED SILVER BOXES TO A PAIR OF 3"ø GALVANIZED EMT ELECTRICAL CONDUIT STEEL POLES.

THE BOTTOM OF THE LOWEST BOX MUST BE AT LEAST 2 FEET ABOVE GROUND LEVEL, AND THE POLES MUST BE ANCHORED AT LEAST 5'-6" BELOW GROUND LEVEL.



STEEL POLE DETAIL

#	DATE / DESCRIPTION

Electric Guard Dog
7608 Fairfield Road
Columbia, SC 29203
PHONE: 803-786-6333
FAX: 803-404-5378

PROJECT: REQUEST TO AUTHORIZE A SECURITY SYSTEM
3901 E. BROADWAY AVENUE
SPOKANE, WA 99202
PAR#: 35151.3202

SHEET TITLE: TYPICAL DETAILS

DATE: APR. 03, 2015

SCALE: N/A

SHEET
3 OF 3

Memo

City of Spokane
Planning and
Development

To: City Plan Commission Members

From: Tami Palmquist, Associate Planner

Date: **8/20/2015**

Re: UDC Maintenance Project

Please see the attached document which contains the items that are included in the Unified Development Code Maintenance Project for 2015.

Please let me know if you have any questions. Thank you.

625-6157 or tpalmquist@spokanecity.org

Unified Development Code Maintenance Project

Introduction:

The attached document represents the list of recommended amendments to the Spokane Municipal Code.

To help understand the types of changes that are recommended, the amendments are generally categorized under three types.

The three types are:

Minor: These include changes such as corrections to cross references or moving code sections directly from chapter 11.19 to Title 17 without changing their substance.

Clarification: These include changes such as fixing conflicting provisions within the code, or fixing code provisions that were either oversights or mistakes when the code was adopted.

Substantive: These include changes such as adjusting permitted uses, adjusting a development standard, or improving the practical application of the code.

TABLE OF CONTENTS

TOPICS, COMMENTARIES, PROPOSED AMENDMENTS

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 07 Finance Chapter 07.02 Bonds in Favor of City			
SMC 07.02.070	Clarification	Update functions that have been reassigned from the director of engineering services/building services to the development services center manager.	

Chapter 07.02 Bonds in Favor of City

Section 07.02.070 Street Obstruction

An applicant for a street obstruction permit, as provided in SMC 17G.010.210(D) must furnish a bond, which may be combined with another bond and cover all activities on an annual basis, approved by the ~~director of engineering services~~ development services center manager, in the minimum amount of ten thousand dollars, conditioned that the permittee shall:

A. indemnify and hold harmless the City against all claims, costs, and losses arising from the obstruction of the public way;

B. conduct all activities in strict compliance with the requirements of law and the permit; restore all public property and facilities to their original condition and guarantee the restoration for a period of two years; and comply with requirements of SMC 12.02.720.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
SMC 08.02.0220 – Sidewalk Cafes			
SMC 08.02.0220 – Sidewalk Cafes	Clarification	The above changes to the Sidewalk Café codes are being recommended to encourage compliance, promote sidewalk cafés to local businesses, reduce processing time for new applicants, and provide correct references and code clarification.	

Section 08.02.0220 – Sidewalk Cafes

A. An annual fee of ~~two hundred fifty~~ one hundred dollars shall be paid for operation of a sidewalk café as long as the original approved site plan is implemented. Modifications of the sidewalk café which extend beyond the original approved plan shall require a new review and a review fee of two hundred fifty dollars.

B. The application fee for a new sidewalk café is fifty dollars ($50).

~~B.~~C. The review fee for a new sidewalk café is three hundred dollars.

**Sidewalk Café renewals are less involved than new applications. We recommend reducing the annual fee to encourage greater compliance while increasing the new application review fee.*

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Section 08.02.038 Shoreline Management			
Section 08.02.038 Shorelines Management	Clarification	There is currently not a fee for Shoreline Exemptions, and we have been charging the pre-submittal fee of $555	

Section 08.02.038 Shorelines Management

A. The application fees for new projects are as follows:

PROJECT VALUATION	FEE
$2,500 - $10,000	$1,020
$10,001 - $50,000	$1,420
$50,001 - $250,000	$2,700
$250,001 - $1,000,000	$5,400
Over $1,000,000	$6,750 plus 0.1% of project value

For Variance Add	$2,160
For Conditional Use Add	$1,860

B. The fee for presubmittal review is five hundred fifty-five dollars.

C. The fee for a shoreline exemption is five hundred fifty-five dollars.

~~C~~. D. The fee for a permit amendment is eighty percent of the fee under this schedule.
~~D.~~ E. The fee should accompany the formal application for a permit or amendment.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 08 Taxation and Revenue Chapter 08.02 Fees and Charges Article VI. Land Use and Occupancy			
Section 08.02.065 Streets and Airspace	Clarification	Remove Fee	

Title 08 Taxation and Revenue

Chapter 08.02 Fees and Charges

Article VI. Land Use and Occupancy

Section 08.02.065 Streets and Airspace

A. The fees in connection with skywalks are:
   1. Seven thousand one hundred sixty dollars for the application to the hearing examiner.
   2. Three hundred thirty-five dollars for annual inspection; and
   3. Two thousand two hundred ninety dollars for renewal if the renewal is sought within twenty years from date of issuance of the permit.

   For the use of public airspace other than pedestrian skywalk, the fee will be as provided in the agreement.

B. ~~The landowner must pay a twenty five dollar fee plus the actual recording costs for the covenant to remove encroaching improvements in unused street right of way, as provided in SMC 17G.010.160~~

C. The fee for a street address assignment as provided in SMC 17D.050.030 is ten dollars. The fee for a street address change is twenty-five dollars.

D. The street obstruction permit fees are as follows. All fees are minimum charges for time periods stated or portions of said time periods:
   1. when the public way is obstructed by a dumpster or a temporary storage unit the fee is one hundred dollars per fifteen-day period.
   2. for long-term obstruction (longer than twenty-one days) in the central business district or other congested area the fee is twenty cents per square foot of public right-of-way obstructed for each month period. The director of engineering services may adjust these boundaries in the interests of the public health, safety, and convenience, considering the need to promote traffic flows and convenience in administrative enforcement needs. ~~(See Central Business District Zone SMC 11.19.194)~~

3. for an obstruction not provided for in subsections (1) or (2) of this section, the fees are stated below:
    a. When the public way is excavated for:
        i. the first three working days: One hundred dollars;
        ii. each additional three-working-day period: Forty dollars.
    b. When no excavation for:
        i. the first three days: Twenty-five dollars per day;
        ii. each additional three-day period: Forty dollars.
    c. Master annual permit fee set by the ~~director of engineering services~~ development services center manager based on a reasonable estimate of the expense to the City of providing permit services. Permit fees are payable at least quarterly. If a master annual permit fee is revoked, the party may apply for a refund of unused permit fees;
4. a parking meter revenue loss fee of thirteen dollars per meter per day within the City central business district and six dollars fifty cents per meter per day for all other meters shall be paid for each meter affected by an obstruction of the public right-of-way;
5. a charge of five hundred dollars is levied whenever a person:
    a. does work without a required permit; or
    b. exempt from the requirement for a permit fails to give notice as required by SMC 12.02.0740(B);
6. a charge of two hundred fifty dollars is levied whenever a permittee does work beyond the scope of the permit;
7. no fee is charged for street obstruction permits for activities done by or under contract for the City.

E. The review fee for a traffic control plan is fifty dollars.

F. The fee for a building moving permit is one hundred dollars.

G. The annual permit fee for applicators of road oil or other dust palliatives to public ways and places of public travel or resort is one hundred dollars. A contractor must notify the department of engineering services in accordance with SMC 12.02.0740(B).

H. Street vacation application fee is four hundred dollars.

I. The fees for approach permits are:
    1. For a commercial driveway: Thirty dollars; and
    2. For a residential driveway: Twenty dollars.

Date Passed: Monday, June 29, 2009
Effective Date: Saturday, August 1, 2009

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 10.26 Building Moving and Relocation			

Section 10.26.010 Relocation Permit Required	Minor	Update the name of the department.	The name of the department was changed from "building services" to "development services center".

Chapter 10.26 Building Moving and Relocation
Section 10.26.010 Relocation Permit Required

A. A person needs a relocation permit issued by the ~~building services department~~ development services center to relocate or place a building or structure upon any property in the City.

B. The applicant must be either the owner of the building or a state-registered contractor.

C. The relocation permit is in addition to the building moving permit and the street obstruction permit as provided in SMC 17G.010.210(B) and (D) and chapter 12.02 SMC. While the moving and street obstruction permits are class III licenses under chapter 4.04 SMC, the relocation permit is a species (Kris Becker Comment: species?) of building permit.

Section 10.26.020 Condition of Building	Minor	Update out-of-date code references.	Update functions that have been reassigned from the director of building services to the building official.

Section 10.26.020 Condition of Building

A.The ~~director of building services~~ building official inspects the building to determine whether it complies with the current building code.

B.If the building does not meet current code, the ~~director~~ building official either denies the relocation permit application or conditions the permit on rehabilitation, repair or alteration.

C.All work of rehabilitation, repair or alteration required by a relocation permit is subject to the normal permit requirements of Title 11 SMC. (Kris Becker Comment: Out of date reference?)

Section 10.26.030 Compliance with Zoning	Minor	Update out-of-date code references.	Update functions that have been reassigned from the director of building services to the building official.

Section 10.26.030 Compliance with Zoning

A. The ~~director of building services~~ building official inspects the site to which the building is to be moved and determines whether the relocated building would comply with the zoning code and all other applicable

provisions of Title 11 SMC. (Kris Becker Comment: Out of date reference?)

1. If some approval, such as special permit from the hearing examiner, is required, the ~~director~~ building official may make such approval a precondition to the issuance of the relocation permit.

Section 10.26.040 Conditions of Permit	Minor	Update functions.	Update functions that have been reassigned from the director of building services to the building official.

Section 10.26.040 Conditions of Permit

A. The ~~director of building services~~ building official imposes such conditions on the relocation permit as are reasonable and necessary to assure code compliance and promote the general welfare.

B. Such conditions may include that all work in connection with the required rehabilitation, repair or alteration be completed within a certain time and that the owner of the building post a bond to secure the completion of such work.

Section 10.26.060 Default	Minor	Update out-of-date code references.	

Section 10.26.060 Default

A. If a default in the conditions of the permit is not timely cured, the building official applies the bond to either complete the work required to satisfy the permit conditions or demolish and remove the building, taking into account the standards and criteria contained in chapter 11.11 SMC. (Kris Becker Comment: Out of date code reference)

B. After paying the costs of the work of completion or demolition, the building official retains twenty-five percent of the costs by way of reimbursement of administrative expense. Any money remaining is returned to the person who paid on the bond.

Section 10.26.070 Building Moving – Additional Provisions	Minor	Update the name of the department.	The department name was changed from "building services" to "development services center". Add language to allow for reimbursement to the City for inspection costs.

Section 10.26.070 Building Moving – Additional Provisions

A. Notwithstanding and in addition to the provisions of chapter 4.04 SMC, chapter 12.02 SMC and chapter 17G.010 SMC with respect to the permits for relocating a building, moving a building and obstructing a street, the moving of the building is subject to the further provisions of this section.

B. The building official coordinates review and comment on the proposal among the City departments of

police, development services center, engineering services, street, and among all utility companies having lines or other facilities along the proposed route.

C. Before the moving permit is issued the building official incorporates, by endorsement or attachment, a written description of the approved route and the time and date of the move. At least fifteen days before the move the applicant must sign the permit thereby agreeing to:

1. the route and time frame;
2. notifying the police department, the street department and affected utilities at least twenty-four hours in advance of the move; and
3. reimburse the affected departments and utility companies for the actual costs of inspection, moving lines or otherwise enabling the move.

D. When the holder of a building moving permit gives notice as provided in this section, every owner of utility facilities is required to raise, remove and replace, bypass or take other reasonable action regarding such facilities to accommodate the moving of the building.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
SMC 10.28.070 – Liquor Use and Sale SMC 10.28.020 – License Class SMC10.28.080 – Insurance Required SMC 10.28.040 - Application SMC 10.28.050 – Notice to Abutting Property Owners			
SMC 10.28.070 – Liquor Use and Sale SMC 10.28.020 – License Class SMC10.28.080 – Insurance Required SMC 10.28.040 - Application SMC 10.28.050 – Notice to Abutting Property Owners	Clarification	The above changes to the Sidewalk Café codes are being recommended to encourage compliance, promote sidewalk cafes to local businesses, reduce processing time for new applicants, and provide correct references and code clarification.	

Section 10.28.020 – License Class

Sidewalk café licenses are Class IIIE licenses and are subject to SMC Chapter 04.04.

**Add reference to appropriate SMC regarding licenses to increase clarity.*

Section 10.28.040 – Application

A. In addition to the information required by SMC 10.28.060 an application for a sidewalk café permit shall state:

1. The anticipated periods of use during the year, and the proposed hours of daily use, including Saturdays, Sundays and holidays; and
2. Whether any liquor as defined in RCW 66.04.010~~(6)~~ will be sold or consumed in the area to be

covered by the permit.

B. At the time of application the city engineer shall set a time ~~and place~~ for an administrative hearing ~~at~~before which the public may offer objections to the issuance of the license.

**Correct code to reflect the proper RCW. Public hearings for new sidewalk cafés are generally unattended by persons other than the applicant. Changing the public hearing to an administrative hearing will reduce processing time and cost to the City. Comments from the public can still be submitted for review during the administrative review time.*

Section 10.28.050 – Notice to Abutting Property Owners

A. The applicant shall mail or serve a notice stating the:
   1. Nature of the application;
   2. Sidewalk area sought to be used; and
   3. Date, time and place at which the city engineer will consider such application

At least ten days prior thereto, upon the owners, building managers and street level tenants of the properties that abut on the street segment that contains the sidewalk area sought to be used and that lie within the nearest intersections or depend upon such street segment for access, and shall file with the city enginee

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   At least ten days prior thereto, upon the owners, building managers and street level tenants of the properties that abut on the street segment that contains the sidewalk area sought to be used and that lie within the nearest intersections or depend upon such street segment for access, and shall file

with the city engineer a copy of the notice mailed and a list of the persons to whom it was sent.

C. The city engineer shall prepare ~~and post notices~~ notices containing the aforesaid information ~~upon any utility poles or other prominent place in the immediate vicinity and at the nearest intersection,~~ and shall deliver to the applicant a public notice, which shall be posted in a window or on the building exterior of the adjacent property.

**Current practice is to delegate the posting of notices to the applicant.*

Section 10.28.070 – Liquor Use and Sale

Liquor, as defined in RCW 66.04.010~~(16)~~, as now existing or hereafter amended, may be used and sold at a sidewalk café when authorized in both the use permit provided for herein and by permit of the Washington State liquor control board, and not otherwise.

**Correct reference to proper RCW.*

Section 10.28.080 – Insurance Required

An applicant for a permit for a sidewalk café shall, prior to issuance of such a permit, provide and maintain in full force and effect while the permit is in effect, public liability insurance in the amount specified by SMC ~~7.02.070~~ 12.02.0718 to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to the use of sidewalk area for sidewalk café purposes, naming the City as an additional insured.

**Correct reference to proper SMC.*

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**Correct reference to proper SMC.*

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 12 Public Ways and Property Chapter 12.02 Obstruction, Encroachment of Public Ways			
SMC 12.02.060, 12.02.0706, 12.02.0707, 12.02.0708, 12.02.00716, 12.02.0718, 12.02.0720, 12.02.0724, 12.02.0730, 12.02.0740, 12.02.0745, 12.02.0750, 12.02.0755, 12.02.704	Clarification	These code changes are needed to: Update out-of-date code references. Update functions that have been reassigned from the director of engineering services/building services to the development services center manager Update the name of the department which was changed from "building services" to "development services center" Clarify the city's policy for extensions on obstruction permits. Update bond and insurance requirements for obstruction permit contractors	

Title 12 Public Ways and Property

Chapter 12.02 Obstruction, Encroachment of Public Ways

Article IV. Obstruction of Public Right-of-way

Section 12.02.060 Fences and Hedges – Incidental Encroachments

Incidental encroachments upon the public right-of-way from private property not obstructing the use of the right-of-way may be permitted by ~~the director of building services~~ development services center manager as provided in SMC 17G.010.160. Such encroachments are revocable without compensation and create no vested rights.

Section 12.02.0706 Permits Required

A. Obstruction of the public way is forbidden except by permit as provided in SMC 17G.010.210(D) and this article. Special uses for sidewalks are specifically treated in SMC 12.02.0730, et seq.

B. In case of an emergency situation endangering the public health or safety requiring immediate

obstruction and/or work in a public way, such obstruction and/or work may be accomplished without a permit, providing the director is notified as soon as practicable of the emergency situation and the activity necessary to correct the adverse condition. In such cases, permits will be required and issued for such activity, as may have been necessary, after the fact.

C. City employees obstructing public ways in the performance of their official duties must first coordinate with the ~~division of public works and~~ utilities development services center in a manner prescribed by the director.

Section 12.02.0707 Master Annual Permit for High Volume Users

A. In lieu of an individual permit for users whose estimated annual permit need is in excess of seven hundred permits per year under SMC 12.02.0706, an annual master permit may be issued as provided in this section and SMC 17G.010.210(D). Except as otherwise provided, all conditions of an individual permit apply to a master permit. A master annual permit is individually approved by the ~~director of engineering services~~ development services center manager.

B. If the ~~director of engineering services~~ development services center manager deems in his sole discretion that the public convenience is not served by a master permit, an application may be denied or a master permit revoked. Denial or revocation of a master permit does not affect eligibility for an individual permit under SMC 12.02.0706.

Section 12.02.0708 Conditions of Permission

Permits to obstruct public ways are issued on the condition that:

A. Permittees must repair, replace, and fully restore all portions of the public way affected by their activities.

B. Activity permitted hereunder may be suspended, terminated, or conditioned upon such terms as the director may require in the exercise of his responsibilities for the protection of the public safety and convenience of other public uses.

C. The original permit granted to a permittee functioning as a prime contractor shall cover the permittee's work and work to be done by all the permittee's subcontractors. If the work is not completed within the time constraints of the original permit, the permittee must obtain ~~a new permit specifically~~ an extension of the original permit for the work yet to be accomplished.

D. All repairs, replacement, and restoration of a disturbed public way must be completed within the time specified on the permit. ~~One extension of the permit up to a maximum of three working days, without charge, may be authorized, for reasonable cause, at the discretion of the director. Thereafter, a new permit will be required.~~

Section 12.02.0710 Director May Restore Public Way

A. Where repair or restoration of a public way remains uncompleted, is unsatisfactory, or where deemed necessary, in the discretion of the director for the protection of the public health and safety and the convenience of the public, the director may do all work needed to repair and restore the public way to its original and proper condition. Issuance of the street obstruction permit is notice to

the permittee of this section.

B. Such repair and restoration is at the expense and liability of the permittee and/or of any surety required as a condition of the permit or continued enjoyment of permit privileges.

Section 12.02.0712 Temporary Repairs

A. If, in the judgment of the director, it is not appropriate to patch or otherwise restore the public way, in part or in whole, in a permanent manner, because of soil conditions, weather, or other causes, the director may direct that the permittee lay a temporary patch of suitable material designated by the director until such time as a permanent repair is appropriate.

B. Temporary repair measures ordered by the director must be promptly commenced, in no event longer than twenty-four hours after the notice of an order is given, or earlier, if the director deems it required by imminent circumstances. Such repairs must be promptly completed.

C. In default of prompt accomplishment of temporary repairs in the manner directed, the City may proceed at once to accomplish the same at the permittee's expense and liability.

Section 12.02.0714 Notice of Completion – Penalty for Delay

Upon completion of the permitted activities, the permittee shall give notice to the director within one working day. Time of receipt of this notification shall be used to determine compliance with the time limits of the permit.

Section 12.02.0716 Long Term Permits – Temporary Passageway

A. Where a permit allows the obstruction, disturbance, or other such use of a public street, highway, or alley (including the sidewalk, if any) for an extended period of time and affecting a substantial portion of the public ways, as determined by the ~~director of engineering services~~ development service center manager, said permit privileges will be established by the director in coordination with the street director. Each such request for an obstruction permit will be considered on its own merit and the limits established with due consideration for the needs of the permittee and for the interests of the public.

B. Permits issued under this section are conditioned upon the permittee's continued safe maintenance of a temporary passageway for pedestrian use along the public way.

C. Said temporary passageway shall be a minimum of four feet wide and shall extend from available permanent sidewalks, walkways, or specified pedestrian routes in the areas immediately adjacent to the permit area.

D. Said temporary passageway shall be constructed of two-inch plank or other approved material laid lengthwise upon good and sufficient supports laid not more than three feet apart.

E. The location of joining the temporary passageway to the regular sidewalk or pedestrian route must be even. The entire passageway must have a sturdy barrier or railing at least four feet high or other safe design approved by the ~~director of building services~~ building official.

F. Where the temporary passageway abuts property with construction of structures higher than twenty feet, the passageway must be completely covered at a height of a least ten feet with two-inch plank or other approved material resting upon strong supporting joists well fastened and braced to strong posts on both sides.

G. Chapter 44 of the Uniform Building Code (Kris Becker Comment: Update code reference) as adopted by the City controls over this section.

Section 12.02.0718 Insurance

A. Permit applicants must furnish public liability insurance with combined bodily injury and property damage limits in the amount of five hundred thousand dollars (Kris Becker Comment: Eldon-is this the correct amount? Or should it be 1.5M?) to insure the applicant's operations to the extent they impinge upon or affect the public way and to protect the City. This shall not apply to public or private utilities certifying in writing that they are self-insured and pledging to fully defend and protect the City against any and all claims arising from or by reason of any negligent act or omission by the utility, in a like manner as an insurer.

B. At the time of application, the applicant must furnish proof of such insurance, naming the City as an additional insured. The director shall require that such insurance be continuously maintained for a period of two years from project completion, with thirty days' notice of cancellation or material change given to the director.

C. The director may allow insurance coverage to be provided on an annual basis for master permit holders. The director may reduce or increase the amount of insurance coverage for smaller or larger jobs as the public interest requires.

Section 12.02.0720 Performance Bond Requirements

Street obstruction bonds are specified in SMC 7.02.070 except:

A. ~~Where permitted activities involve cutting into or under any public way or removal of any portion of the same, a performance bond in the sum of ten thousand dollars is required prior to issuance of the permit.~~ Said The performance bond shall provide surety for the performance of any and all necessary maintenance and repairs as may be required by the director at least two years after authorized activities are complete, or for such longer time as the director may determine to be reasonably necessary considering the degree and extent of permitted activities. In addition, the director may adjust the bond for larger or smaller jobs as the director may deem necessary and sufficient to protect the public interest in recurring repair and maintenance costs.

B. ~~The bond sum is five thousand dollars for permitted activities not involving cutting into or under any public way or removal of any portion of the same.~~

C. The director may allow the posting of an annual bond in the amount of ten thousand dollars in lieu of other bonds required in this section. In addition, the director may adjust the bond for larger or smaller jobs as the director may deem necessary and sufficient to protect the public interest in recurring repair and maintenance costs or for other appropriate reasons.

D. This shall not apply to private or public utilities certifying in writing that they are self-insured and pledging to be liable in similar manner and like amount for their acts and the acts of their agents.

E. This section shall not apply to owners and/or occupants of residential premises performing yard maintenance and minor tree trimming work in the public way abutting their real property, so long as the public way is not an arterial or in the central business district.

Section 12.02.0722 Indemnification

Every permit shall provide that the permittee agrees to fully defend, indemnify, and hold harmless the City against all claims, losses, or liabilities arising out of, or in connection with, intentional or negligent acts, errors, or omissions of the permittee, its agents, employees and/or business invitees in the course of enjoyment of permit privileges granted under this article.

Section 12.02.0723 Excavations

In cases where a trench excavation in the public way will exceed a depth of four feet, the permittee and/or person causing the same shall maintain adequate safety systems for the trench excavation that meet the requirements of the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

Section 12.02.0724 Barriers and Traffic Control

A. In case any public way is dug up, excavated, undermined, disturbed, or obstructed, or any obstruction placed thereon, the permittee and/or person causing the same shall erect and maintain around the site a good and sufficient barrier, and shall also maintain lighted amber lights during every night from sunset to daylight, at each end and safely around such obstruction.

B. In cases where a permit allows for the encroachment upon or the closure of a traffic lane, the permittee will provide traffic-control measures as may be established by the ~~engineering services director~~ the development services center manager and/or the director of the street department.

Section 12.02.0726 Denial – Revocation of Permits

The director may decline to issue a permit or revoke a permit issued to any person who is or has been delinquent in the payment of any fees or charges fixed under the authority of this article or who refuses or neglects to comply with any of the provisions of this article. At the discretion of the director, permittees disqualified from applying hereunder will be ineligible to apply for any permits.

Section 12.02.0730 Permits – Sidewalk Special Use

A. Upon plans and specifications approved by the city council, (Kris Becker Comment: Eldon- are we getting council approval on these? Is this a revocable license and permit? Do we need to change this?) the director may issue a permit for the placing in or upon the sidewalks of the City, plantings, ornamentals, or other beautification as the council may approve, or racks, stalls, or brackets for the parking, storage, or securing of bicycles or similar vehicles. Sidewalk cafes are permitted as provided in chapter 10.28 SMC. Signs are permitted as provided in chapter 17C.240 SMC.

B. Before a sidewalk special use permit shall be issued, the person proposing to make such installation shall furnish proof of liability insurance coverage for such sidewalk use and the proposed installation, wherein the City is a named insured, for liability limits of not less than one hundred thousand dollars for any one personal injury, three hundred thousand dollars for all personal injury claims in any one

accident and twenty-five thousand dollars for property damage.

C. The director may reduce or increase the amounts of required insurance coverage as the public interest requires, depending on the size and nature of the permitted activity.

Section 12.02.0735 Regulations

A. The director promulgates and interprets regulations to implement this article.

B. Regulations to enforce or implement this chapter are approved by the director and published in the *Official Gazette*. They shall have the force of law thirty days after publication.

Section 12.02.0737 Obstruction of the Public Right of Way

A. Owners and occupants of property within the City shall not obstruct the public right of way, hinder the normal flow of pedestrian or street traffic or render the public right of way unsafe. The creation of an obstruction is considered a nuisance pursuant to SMC 12.02.0208.

B. The City may cause the removal or destruction of such obstruction of the public way by notice of violation and, as appropriate in each case:

1. issuance of a class 1 civil infraction for the violation; or

2. direct action by City forces or contract, the cost of which will be billed to the owner of the property or as a utility service to the property. Fees for abatement are contained in SMC 8.02.068.

Article IV. Obstruction of Public Right-of-way

Section 12.02.0740 Fees – Notice of Commencing Work

A. Fees are specified in SMC 8.02.065.

B. The permittee shall give the ~~engineering services department~~ development services center twenty-four hours' notice of the permittee's intention to begin such work. Penalty for not notifying, in advance, to begin work will be considered the same as working without a permit.

Section 12.02.0745 Utilities and Cable TV (Kris Becker Comment: This whole section seems confusing…should we revise?)

A. Utilities and Cable TV.
Temporary use (one hour or less) of the public way for servicing operations, inspection, and maintenance of manholes and vaults will not require obstruction permits. For public and crew safety, entering such vaults and manholes shall not be permitted where they obstruct peak traffic flow. Temporary use of the public way in excess of one hour in existing vaults or manholes in the downtown area or on arterials will require obstruction permits. Work in residential vaults and manholes will not require obstruction permits when a lane of traffic is not obstructed.

B. The temporary use of the public way for placement/replacement or moving/removing poles, street

lights, or tree trimming will require a permit on arterials where a moving lane is obstructed. Setting poles or replacing poles will not require a permit in an alley or residential street.

C. Poles set on the public right-of-way where sidewalk or blacktop is cut requires a permit. The responsible party or utility shall submit a weekly repair manifest listing such locations requiring repair. A permit will be required for replacement of the sidewalk or asphalt. The affected utility or party will notify the director of its intent to do maintenance prior to any work being started.

D. The director may issue one permit by area, as determined by the director, where the work involves one project in several locations within an area. Prior to issuing an area permit, the applicant shall submit a list indicating specific work locations and type of work to be performed.

Section 12.02.0750 Loading or Unloading on Sidewalks (Kris Becker Comment: This does not state whether a permit is required or not)

The loading or unloading of goods and commodities used or required in the ordinary course of business conducted in the building abutting any sidewalk is permitted when there is no other practical or convenient way of access to the building. All such loading and unloading shall be done continuously and with dispatch and the sidewalk cleared of all such articles without delay, and an adequate portion of the sidewalk shall be kept open at all times for use by pedestrians.

Section 12.02.0755 Bus Benches/Transit Shelter Located in the Public Right-of-way

A. Bus benches, transit shelters and other similar facilities utilized for the benefit of patrons of public transportation may be placed in the public right-of-way pursuant to the approval of the City and under the direction of the ~~director of engineering services~~ development services center manager.

B. Bus bench signs at designated public transportation stops located in the public right-of-way shall be permitted, provided, however, that such signs shall have any necessary permits and comply with all applicable regulations set forth in the Spokane Municipal Code, interlocal agreements with a public transportation authority, and/or other rules or requirements.

Section 12.02.704 Definitions

A. “Public way” means any publicly dedicated or used highway, street, alley, or sidewalk.

B. “Permittee” means any person to whom an obstruction permit is issued. Permits are not transferable and have no property value.

C. “Office of primary responsibility” means the ~~director of engineering services~~ development services center manager, hereafter referred to as the director, who is the City official designated to administer this article. The director functions directly or through authorized agents, in coordination with other appropriate City agencies. The director is authorized to grant exceptions to, or impose conditions on, requirements herein, in the exercise of sound discretion, considering the requirements of permittees and the purpose of this article.

D. “Obstruction of a public way” includes, but is not limited to, obstructions that may hinder the normal flow of pedestrian or street traffic or render the public way unsafe for current and necessary use such as:

1. trees, bushes, weeds or grass; and

2. accumulations of trash and debris including but not limited to litter, glass, and scrap materials.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 17A.010 General Administration			
17A.010.070 Delegation of Administration	Minor	Duplicate sections of code	Refers to the responsibility of administration for each chapter of the SMC.

Section 17G.060.020 Administration

A. Responsibility for the administration, application and interpretation of these procedures pursuant to this ordinance is as is set forth below:
    1. The director of building services or his designee is responsible for chapter 17E.050 SMC, Division F; chapter 17G.010 SMC, Division I; and the development codes.
    2. The director of engineering services or his designee is responsible for chapter 17D.020 SMC, chapter 17D.070 SMC, chapter 17E.010 SMC, chapter 17E.050 SMC, chapter 17G.080 SMC, Division H and the development codes.
    3. The director of planning services or his designee is responsible for SMC Division B, Division C, and chapter 11.15 SMC, chapter 11.17 SMC, chapter 11.19 SMC, chapter 17D.010 SMC, chapter 17D.060 SMC, chapter 17D.080 SMC, chapter 17D.090 SMC, chapter 17E.020 SMC, chapter 17E.030 SMC, chapter 17E.040 SMC, chapter 17E.050 SMC, chapter 17E.060 SMC, chapter 17E.070 SMC, chapter 17G.020 SMC, chapter 17G.030 SMC, chapter 17G.040 SMC, chapter 17G.060 SMC, chapter 17G.070 SMC and chapter 17G.080 SMC.
B. The procedures for requesting interpretations of the land use codes and development codes shall be made by the department and may be contained under the specific codes.

Section 17A.010.070 Delegation of Administration

Except to the extent that state law requires municipal code enforcement personnel to be specifically qualified, every function, authority and responsibility vested by this title in a particular officer is delegable.

A. Responsibility for the administration, application, and interpretation of these procedures pursuant to this title is as is set forth below.
    1. The director of building services or his/her designee administers chapter 17E.050 SMC, Title 17F SMC, chapter 17G.010 SMC, Title 17I SMC, and the development codes.
    2. The director of engineering services or his/her designee administers chapter 17D.020 SMC, chapter 17D.080 SMC, chapter 17E.010 SMC, chapter 17E.050 SMC, chapter 17G.080 SMC, Title 17H SMC, and the development codes.
    3. The director of planning services or his/her designee administers Title 17B SMC, Title 17C SMC, and chapter 17D.010 SMC, chapter 17D.080 SMC, chapter 17E.020 SMC, chapter 17E.030 SMC, chapter 17E.040 SMC, chapter 17E.050 SMC, chapter 17E.060 SMC, chapter 17E.070 SMC,

chapter 17G.020 SMC, chapter 17G.030 SMC, chapter 17G.040 SMC, chapter 17G.060 SMC, chapter 17G.070 SMC, and chapter 17G.080 SMC.

4. The historic preservation officer or his/her designee administers chapter 17D.040 SMC and chapter 17E.050 SMC.

The director of wastewater management administers chapter 17D.060 SMC and chapter 17D.090 SMC.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 17A.020 Definitions			
Section 17A.020.030 "C" Definitions	Clarification	Adds an upper limit to the definition of Clear View Triangle for overhanging vegetation such as trees within a clear view triangle. Adds Clear View Triangle to Definitions to provide a consistent application of the SMC.	

Section 17A.020.030 "C" Definitions

A. Candidate Species.
   A species of fish or wildlife, which is being reviewed, for possible classification as threatened or endangered.
B. Carport.
   A carport is a garage not entirely enclosed on all sides by sight-obscuring walls and/or doors.
C. Cellular Telecommunications Facility.
   They consist of the equipment and structures involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer that connects the mobile unit with the land-based telephone lines.
D. Central Business District.
   The general phrase "central business district" refers to the area designated on the comprehensive plan as the "downtown" and includes all of the area encompassed by all of the downtown zoning categories combined.
E. Certificate of Appropriateness.
   Written authorization issued by the commission or its designee permitting an alteration or significant change to the controlled features of a landmark or landmark site after its nomination has been approved by the commission.
F. Certificate of Capacity.
   A document issued by the planning services department indicating the quantity of capacity for each concurrency facility that has been reserved for a specific development project on a specific property. The document may have conditions and an expiration date associated with it.
G. Certified Erosion and Sediment Control Lead (CESCL).
   An individual who is knowledgeable in the principles and practices of erosion and sediment control.

The CESCL shall have the skills to assess the:

1. site conditions and construction activities that could impact the quality of stormwater, and
2. effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges.

The CESCL shall have current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State department of ecology.

H. Change of Use.
For purposes of modification of a preliminary plat, "change of use" shall mean a change in the proposed use of lots (e.g., residential to commercial).

I. Channel Migration Zone (CMZ).
A corridor of variable width that includes the current river plus adjacent area through which the channel has migrated or is likely to migrate within a given timeframe, usually one hundred years.

J. Channelization.
The straightening, relocation, deepening, or lining of stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.

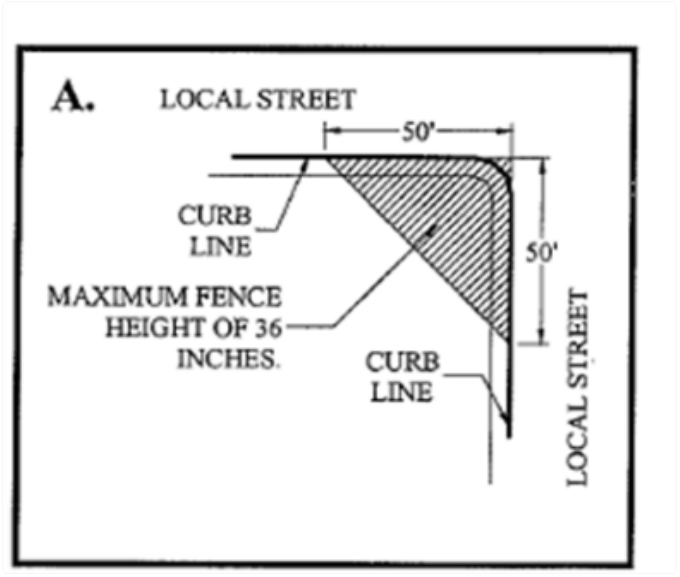
K. City.
The City of Spokane, Washington.

L. Clear Street Width.
The width of a street from curb to curb minus the width of on-street parking lanes.

M. Clear Pedestrian Zone
Area reserved for pedestrian traffic; typically included herein as a portion of overall sidewalk width to be kept clear of obstructions to foot traffic.

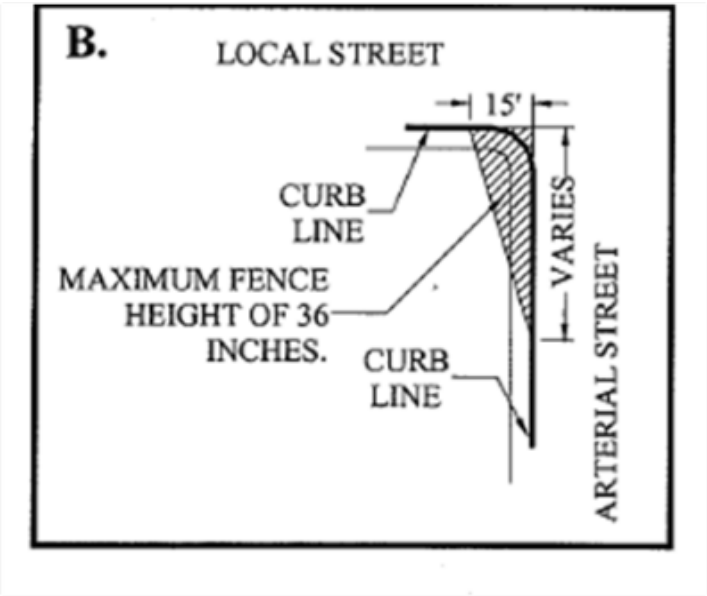
N. Clear View Triangle
A clear view maintained within a triangular space at the corner of a lot so that it does not obstruct the view of travelers upon the streets.

1. A right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or



2. A right triangle having a fifteen-foot side measured along the curb line of the residential street

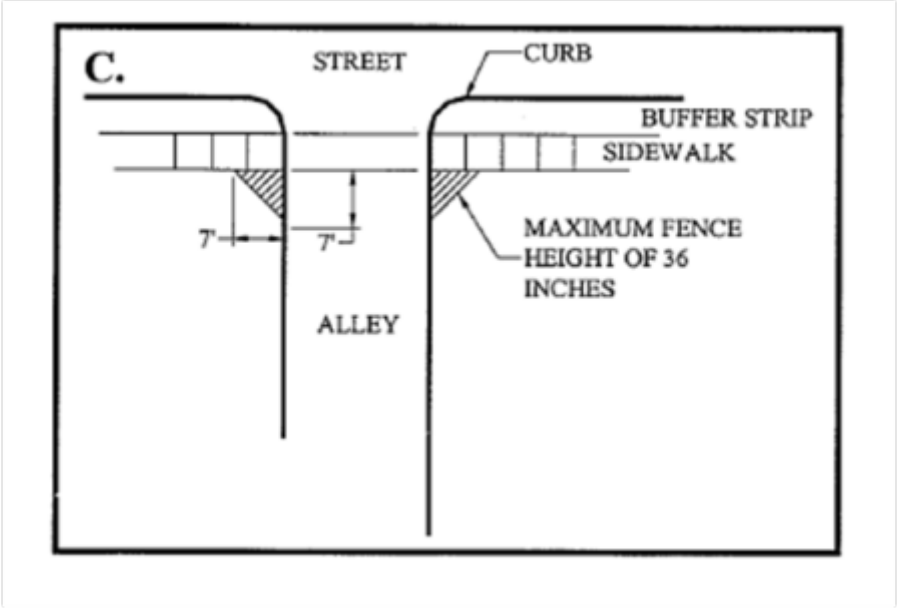
and a seventy-five foot side along the curb line of the intersecting arterial street, except that when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or



A right isosceles triangle having sides of seven feet measured along the right-of-way line of an alley and:

a. the inside line of the sidewalk; or

b. if there is no sidewalk, a line seven feet inside the curb line.



O. Clear Zone.
An unobstructed, relatively flat area provided beyond the edge of the traveled way for the recovery of errant vehicles.

P. Clearing.
The removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing

includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

Q. Cliffs.
   1. A type of habitat in the Washington department of fish and wildlife (WDFW) priority habitat and species system that is considered a priority due to its limited availability, unique species usage, and significance as breeding habitat. Cliffs are greater than twenty-five feet high and below five thousand feet elevation.
   2. A "cliff" is a steep slope of earth materials, or near vertical rock exposure. Cliffs are categorized as erosion landforms due to the processes of erosion and weathering that produce them. Structural cliffs may form as the result of fault displacement or the resistance of a cap rock to uniform downcutting. Erosional cliffs form along shorelines or valley walls where the most extensive erosion takes place at the base of the slope.

R. Closed Record Appeal Hearing.
   A hearing, conducted by a single hearing body or officer authorized to conduct such hearings, that relies on the existing record created during a quasi-judicial hearing on the application. No new testimony or submission of new evidence and information is allowed.

S. Collector Arterial.
   A relatively low speed street serving an individual neighborhood.
   1. Collector arterials are typically two-lane roads with on-street parking.
   2. Their function is to collect and distribute traffic from local access streets to principal and minor arterials.

T. Co-location.
   Is the locating of wireless communications equipment from more than one provider on one structure at one site.

U. Colony.
   A hive and its equipment and appurtenances, including one queen, bees, comb, honey, pollen, and brood.

V. Commercial Driveway.
   Any driveway access to a public street other than one serving a single-family or duplex residence on a single lot.

W. Commercial Vehicle.
   Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire.

X. Commission – Historic Landmarks.
   The City/County historic landmarks commission.

Y. Community Banner.
   A temporary banner made of sturdy cloth or vinyl that is not commercial advertising that has the purpose of the promotion of a civic event, public service announcement, holiday decorations, or similar community and cultural interests and is placed on a structure located in the public right-of-way, subject to procedures authorized by city administrator.

Z. Community Meeting.
   An informal meeting, workshop, or other public meeting to obtain comments from the public or other agencies on a proposed project permit prior to the submission of an application.
   1. A community meeting is between an applicant and owners, residents of property in the immediate vicinity of the site of a proposed project, the public, and any registered neighborhood organization or community council responsible for the geographic area containing the site of the proposal, conducted prior to the submission of an application to the City of Spokane.

2. A community meeting does not constitute an open record hearing.
3. The proceedings at a community meeting may be recorded and a report or recommendation shall be included in the permit application file.

AA. Compensatory Mitigation.

Replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. Restoration.
   The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into re-establishment and rehabilitation.
2. Re-establishment.
   The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
3. Rehabilitation.
   The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
4. Creation (Establishment).
   The manipulations of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.
5. Enhancement.
   The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.
6. Protection/Maintenance (Preservation).
   Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

AB. Comprehensive Plan.

The City of Spokane comprehensive plan, a document adopted pursuant to chapter 36.70A RCW providing land use designations, goals and policies regarding land use, housing, capital facilities, housing, transportation, and utilities.

AC. Conceptual Landscape Plan.

A scale drawing showing the same information as a general site plan plus the location, type, size, and width of landscape areas as required by the provisions of chapter 17C.200 SMC.

7. The type of landscaping, L1, L2, or L3, is required to be labeled.
8. It is not a requirement to designate the scientific name of plant materials on the conceptual landscape plan.

AD. Concurrency Certificate.

A certificate or letter from a department or agency that is responsible for a determination of the adequacy of facilities to serve a proposed development, pursuant to chapter 17D.010 SMC, Concurrency Certification.

AE. Concurrency Facilities.

Facilities for which concurrency is required in accordance with the provisions of this chapter. They are:

1. transportation,
2. public water,
3. fire protection,
4. police protection,
5. parks and recreation,
6. libraries,
7. solid waste disposal and recycling,
8. schools, and
9. public wastewater (sewer and stormwater).

AF. Concurrency Test.

The comparison of an applicant's impact on concurrency facilities to the available capacity for public water, public wastewater (sewer and stormwater), solid waste disposal and recycling, and planned capacity for transportation, fire protection, police protection, schools, parks and recreation, and libraries as required in SMC 17D.010.020.

AG. Conditional Use Permit.

A "conditional use permit" and a "special permit" are the same type of permit application for purposes of administration of this title.

AH. Condominium.

Real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to chapter 64.34 RCW.

AI. Confidential Shelter.

Shelters for victims of domestic violence, as defined and regulated in chapter 70.123 RCW and WAC 248-554. Such facilities are characterized by a need for confidentiality.

AJ. Congregate Residence.

A dwelling unit in which rooms or lodging, with or without meals, are provided for nine or more non-transient persons not constituting a single household, excluding single-family residences for which special or reasonable accommodation has been granted.

AK. Conservancy Environments.

Those areas designated as the most environmentally sensitive and requiring the most protection in the current shoreline master program or as hereafter amended.

AL. Container.

Any vessel of sixty gallons or less in capacity used for transporting or storing critical materials.

AM. Context Areas

Established by the Regulating Plan, Context Area designations describe and direct differing functions and features for areas within FBC limits, implementing community goals for the built environment.

AN. Conveyance.

In the context of chapter 17D.090 SMC or chapter 17D.060 SMC, this term means a mechanism for transporting water from one point to another, including pipes, ditches, and channels.

AO. Conveyance System.

In the context of chapter 17D.090 SMC or chapter 17D.060 SMC, this term means the drainage facilities and features, both natural and constructed, which collect, contain and provide for the flow of surface and stormwater from the highest points on the land down to receiving water. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes, and wetlands. The constructed elements of the conveyance system include gutters, ditches, pipes, channels, and most flow control and water quality treatment facilities.

AP. Copy.

Letters, characters, illustrations, logos, graphics, symbols, writing, or any combination thereof designed to communicate information of any kind, or to advertise, announce or identify a person, entity, business, business product, or to advertise the sale, rental, or lease of premises.

AQ. Cottage Housing.

1. A grouping of individual structures where each structure contains one dwelling unit.
2. The land underneath the structures is not divided into separate lots.
3. A cottage housing development may contain no less than six and no more than twelve individual structures in addition to detached accessory buildings for storing vehicles. It may also include a community building, garden shed, or other facility for use of the residents.

AR. Council.

The city council of the City of Spokane.

AS. County.

Usually capitalized, means the entity of local government or, usually not capitalized, means the geographic area of the county, not including the territory of incorporated cities and towns.

AT. Covenants, Conditions, and Restrictions (CC&Rs).

A document setting forth the covenants, conditions, and restrictions applicable to a

development, recorded with the Spokane County auditor and, typically, enforced by a property owner's association or other legal entity.

AU. Creep.

Slow, downslope movement of the layer of loose rock and soil resting on bedrock due to gravity.

AV. Critical Amount.

The quantity component of the definition of critical material.

AW. Critical Areas.

Any areas of frequent flooding, geologic hazard, fish and wildlife habitat, aquifer sensitive areas, or wetlands as defined under chapter 17E.010 SMC, chapter 17E.020 SMC, chapter 17E.030 SMC, chapter 17E.040 SMC, and chapter 17E.070.SMC.

AX. Critical Facility.

A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to:

1. schools;
2. nursing homes;
3. hospitals;
4. police;
5. fire;
6. emergency response installations; and
7. installations which produce, use, or store hazardous materials or hazardous waste.

AY. Critical Material.

1. A compound or substance, or class thereof, designated by the division director of public works and utilities which, by intentional or accidental release into the aquifer or ASA, could result in the impairment of one or more of the beneficial uses of aquifer water and/or impair aquifer water quality indicator levels. Beneficial uses include, but are not limited to:
    a. domestic and industrial water supply,
    b. agricultural irrigation,
    c. stock water, and
    d. fish propagation.

    Used herein, the designation is distinguished from state or other designation.

2. A list of critical materials is contained in the Critical Materials Handbook, including any City modifications thereto.

AZ. Critical Material Activity.

A land use or other activity designated by the manager of engineering services as involving or likely to involve critical materials.

A list of critical materials activities is contained in the Critical Materials Handbook.

BA. Critical Materials Handbook.

1. The latest edition of a publication as approved and amended by the division director of public works and utilities from time to time to accomplish the purposes of this chapter. The handbook is based on the original prepared by the Spokane water quality management program ("208") coordination office, with the assistance of its technical advisory committee. It is on file with the director of engineering services and available for public inspection and purchase.
2. The handbook, as approved and modified by the division director of public works and utilities , contains:
    a. a critical materials list,
    b. a critical materials activities list, and
    c. other technical specifications and information.
3. The handbook is incorporated herein by reference. Its provisions are deemed regulations authorized hereunder and a mandatory part of this chapter.

BB. Critical Review.

The process of evaluating a land use permit request or other activity to determine whether critical materials or critical materials activities are involved and, if so, to determine what appropriate measures should be required for protection of the aquifer and/or implementation of the Spokane aquifer water quality management plan.

BC. Critical Review Action.

1. An action by a municipal official or body upon an application as follows:
    a. Application for a building permit where plans and specifications are required, except for Group R and M occupancies (SMC 17G.010.140 and SMC 17G.010.150).
    b. Application for a shoreline substantial development permit (SMC 17G.060.070(B)(1)).
    c. Application for a certificate of occupancy (SMC 17G.010.170).
    d. Application for a variance or a certificate of compliance (SMC 17G.060.070(A) or SMC 17G.060.070(B)(1)).
    e. Application for rezoning (SMC 17G.060.070(A)).
    f. Application for conditional permit (SMC 17G.060.070(A)).
    g. Application for a business license (SMC 8.01.120).
    h. Application for a permit under the Fire Code (SMC 17F.080.060).
    i. Application for a permit or approval requiring environmental review in an environmentally sensitive area (SMC 17E.050.260).
    j. Application for connection to the City sewer or water system.
    k. Application for construction or continuing use of an onsite sewage disposal system (SMC 13.03.0149 and SMC 13.03.0304).
    l. Application for sewer service with non-conforming or non-standard sewage (SMC 13.03.0145, SMC 13.03.0314, and SMC 13.03.0324).
    m. Application involving a project identified in SMC 17E.010.120.
    n. Issuance or renewal of franchise; franchisee use of cathodic protection also requires approval or a franchise affecting the City water supply or water system.
    o. Application for an underground storage tank permit (SMC 17E.010.210); and
    p. Application for permit to install or retrofit aboveground storage tank(s) (SMC 17E.010.060(A) and SMC 17E.010.400(D)).
2. Where a particular municipal action is requested involving a land use installation or other activity, and where said action is not specified as a critical review action, the City official or body responsible for approval may, considering the objectives of this chapter, designate such as a

critical review action and condition its approval upon compliance with the result thereof.

BD. Critical Review Applicant.
A person or entity seeking a critical review action.

BE. Critical Review Officer – Authority.

1. The building official or other official designated by the director of public works and utilities.
2. For matters relating to the fire code, the critical review officer is the fire official.
3. The critical review officer carries out and enforces the provisions of this chapter and may issue administrative and interpretive rulings.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 17C			
Section 17C.110.230 Fences (Residential) **17C.110.230 G Fences, Visibility at Intersections (Residential)** **17C.120.310 E (Commercial)** **17C.122.135 E. (Centers and Corridors)** **17C.124.310 E (Downtown)** **17C.130.310 E (Industrial)** **17C.200.040 A2 Site Planting Standards, Street Frontages** **17C.200.050 F Street Tree Requirements, Clear View Zone**	Clarification	Adds an upper limit to the definition of Clear View Triangle for overhanging vegetation such as trees within a clear view triangle. Adds Clear View Triangle to Definitions to provide a consistent application of the SMC.	

Section 17C.110.230 Fences (Residential)

A. Purpose.
The fence standards promote the positive benefits of fences without negatively affecting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by

providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access and the safe movement of pedestrians and vehicles, and create an unattractive appearance.

B. Types of Fences.
The standards apply to walls, fences, trellises, arbors, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location.

1. Front Lot Line.
Fences up to forty-two inches high are allowed in required front lot line setbacks.
2. Sides and Rear Lot Line.
Fences up to six feet high are allowed in required sides or rear lot line setbacks. Except in an instance where a rear lot line joins the front lot line of another lot, the fence must be either:
    a. forty-two inches high or less, or
    b. right isosceles triangle having sides of seven feet measured along the right-of-way line of a side yard and the front property line.
3. Other.
The height for fences that are not in required building setbacks is the same as the height limits of the zone for detached accessory structures in Table 17C.110-3.
4. Alleys.
Fences shall not obstruct the clear width required in SMC 17H.010.130(G).

D. Reference to Other Standards.
Building permits are required by the building services department for all fences including the replacement of existing fences. A permit is not required to repair an existing fence.

E. Prohibited Fences.

1. No person may erect or maintain a fence or barrier consisting of or containing barbed, Constantine, or razor wire in the RSF, RTF, RMF, or RHD zones. In the RA zone, up to three strands of barbed wire are allowed for agricultural, farming or animal uses.
2. No person may construct or maintain a fence or barrier charged with electricity in the RSF, RTF, RMF, or RHD zones. In the RA zone, the use is permitted for the containment of livestock only.
3. A fence, wall, or other structure shall not be placed within the public right-of-way without an approved covenant as provided in SMC 17G.010.160 and any such structure is subject to the height requirement for the adjoining setback.
4. Fence Setbacks.
    a. Arterial Street.
    No fence may be closer than twelve feet to the curb of an arterial street.
    b. Local Access Street.
    No fence may be closer than the back of the sidewalk on a local access street. If there is no sidewalk, the fence shall be setback seven feet behind the face of the curb of a

local access street.

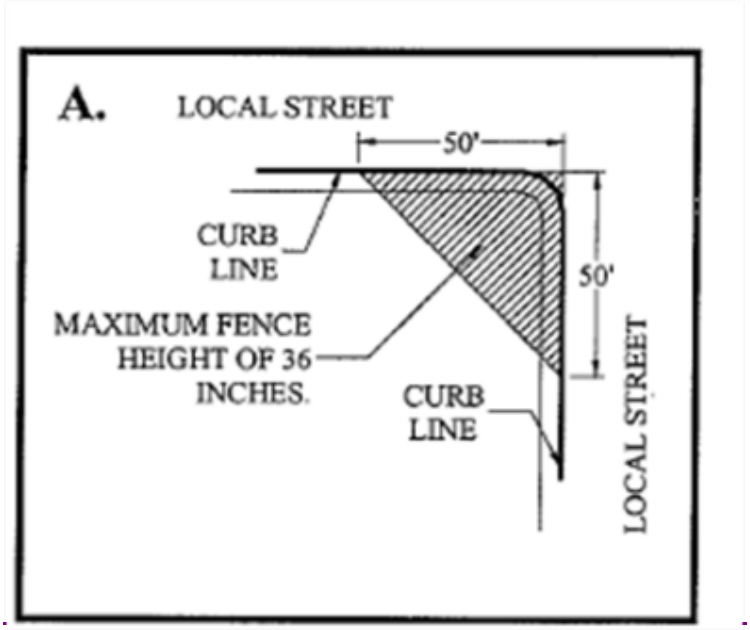
F. Enclosures for Pools, Hot Tubs, or Ponds.

1. A person maintaining a swimming pool, hot tub, pond or other impoundment of water exceeding five thousand gallons and eighteen inches or more in depth and located on private property is required to construct and maintain an approved fence by which the pool or other water feature is enclosed and inaccessible by small children.
2. The required pool enclosure must be at least fifty-four inches high and may be a fence, wall, building or other structure approved by the building services department.
3. If the enclosure is a woven wire fence, it is required to be built to discourage climbing.
4. No opening, except a door or gate, may exceed four inches in any dimension.
5. Any door or gate in the pool enclosure, except when part of the occupied dwelling unit, must have self-closing and self-locking equipment by which the door or gate is kept secure when not in use. A latch or lock release on the outside of the door or gate must be at least fifty-four inches above the ground.

G. Visibility at Intersections.
A fence, wall, hedge, or other improvement may not be erected or maintained at the corner of a lot so as to obstruct the view of travelers upon the streets.

~~1.~~ Subject to the authority of the traffic engineer to make adjustments and special requirements in particular cases, ~~no~~all fences, vegetation, and other features within the Clear View Triangle defined in SMC 17A.020.030 shall be maintained to keep a vertical clear view zone between three and eight feet from ground level~~exceeding a height of thirty-six inches~~ above the curb. ~~may be inside the:~~

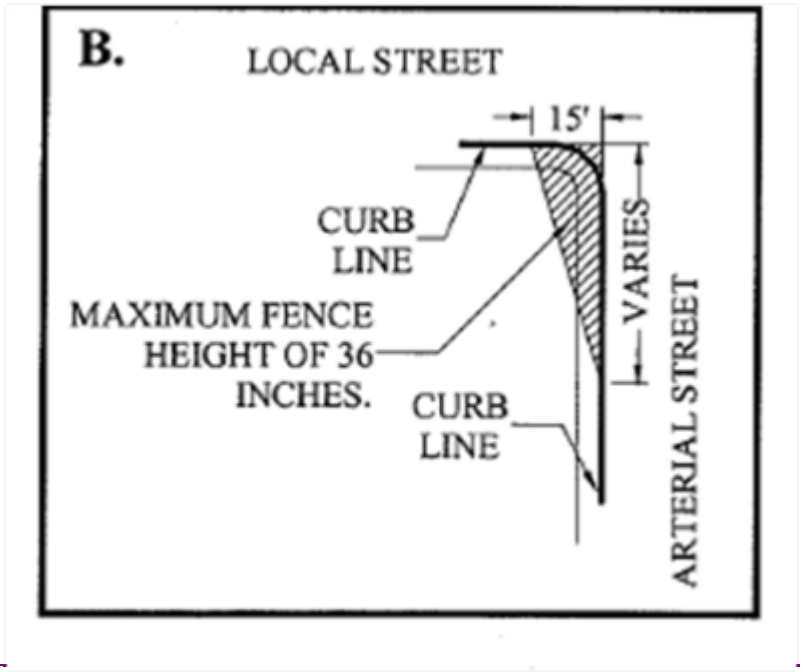
~~2. right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or~~



3. ~~right triangle having a fifteen-foot side measured along the curb line of the residential street and a seventy-five foot side along the curb line of the intersecting arterial street, except that~~

~~when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or~~

~~3.~~



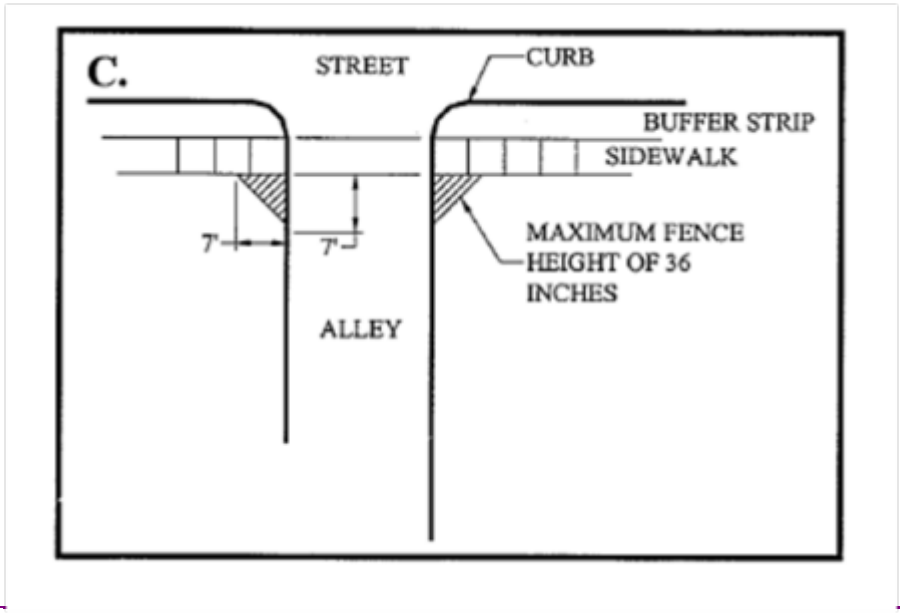
~~4.~~

~~5. right isosceles triangle having sides of seven feet measured along the right-of-way line of an alley and:~~

~~6. the inside line of the sidewalk; or~~

~~7. if there is no sidewalk, a line seven feet inside the curb line.~~

~~8.~~



~~9.~~

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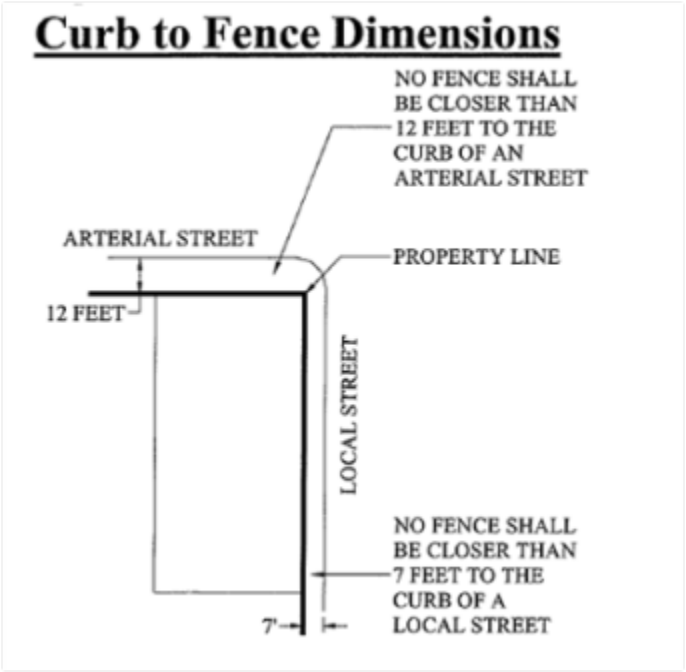


Section 17C.120.310 Fences (Commercial)

A. Purpose.
The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.

B. Types of Fences.
The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location, Height, and Design.

1. Street Setbacks.
No fence or other structure is allowed within twelve feet from the back of the curb, consistent with the required sidewalk width of SMC 17C.120.230.

    a. Measured from Front Lot Line.
    Fences up to three and one-half feet high are allowed in a required street setback that is measured from a front lot line.

    b. Measured from a Side Lot Line.
    Fences up to six feet high are allowed in a required setback that is measured from a side lot line.

2. Side and Rear Structure Setbacks.
Fences up to six feet high are allowed in required side or rear setbacks except when the side or rear setback abuts a pedestrian connection. When the side or rear setback abuts a pedestrian connection, fences are limited to three and one-half feet in height.

3. Not in Setbacks.
The height for fences that are not in required setbacks is the same as the regular height limits

of the zone.

4. Sight-obscuring Fences and Walls.
   Sight-obscuring fences, walls and other structures over three and one-half feet high, and within fifteen feet of a street lot line are subject to SMC 17C.120.570, Treating Blank Walls – Building Design.

D. Prohibited Fences.

1. No person may erect or maintain a fence or barrier consisting of or containing barbed, razor, concertina, or similar wire except that in a CB or GC zone up to three strands of barbed wire may be placed atop a lawful fence exceeding six feet in height above grade.
2. No person may maintain a fence or barrier charged with electricity.
3. A fence, wall or other structure shall not be placed within a public right-of-way without an approved covenant as provided in SMC 17G.010.160 and any such structure is subject to the height requirement for the adjoining setback.
4. No fence may be closer than twelve feet to the curb.

E. Visibility at Intersections.

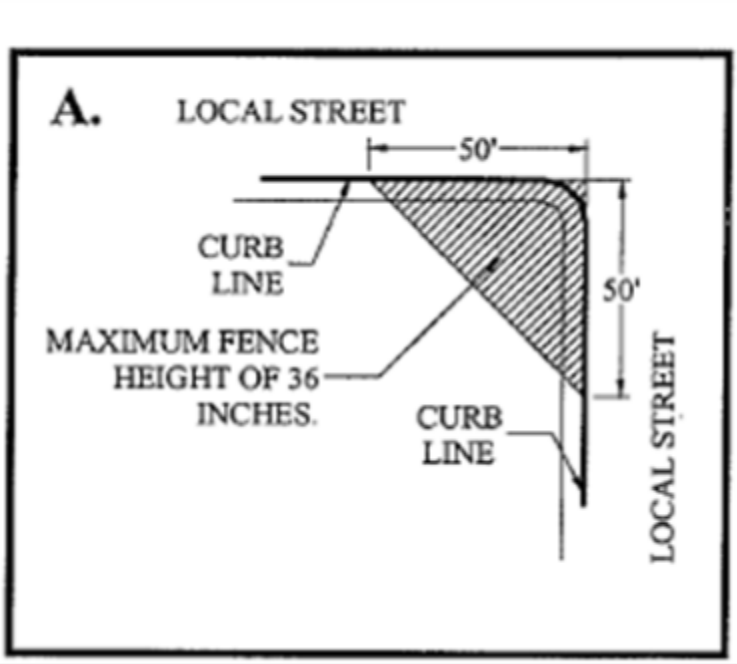
A fence, wall, hedge or other improvement may not be erected or maintained at the corner of a lot so as to obstruct the view of travelers upon the streets.

1. Subject to the authority of the traffic engineer to make adjustments and special requirements in particular cases, ~~no~~all fences, vegetation, and other features within the Clear View Triangle defined in SMC 17A.020.030 shall be maintained to keep a vertical clear view zone between three and eight feet from ground level ~~exceeding a height of thirty-six inches~~ above the curb.

~~2. may be inside the:~~

~~3. a. right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or~~

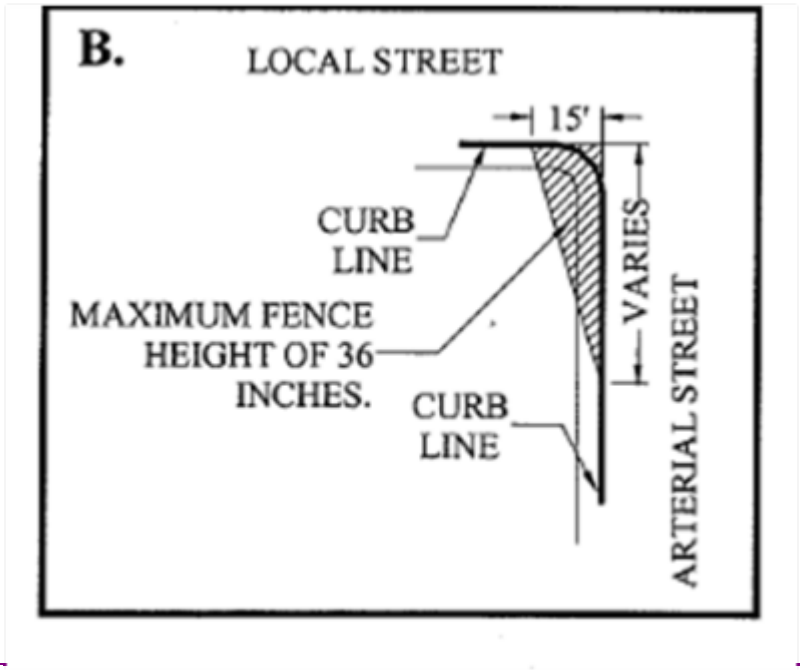
~~4.~~



~~5.~~

~~6. right triangle having a fifteen-foot side measured along the curb line of the residential street and a seventy-five foot side along the curb line of the intersecting arterial street, except that when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or~~

~~7.~~



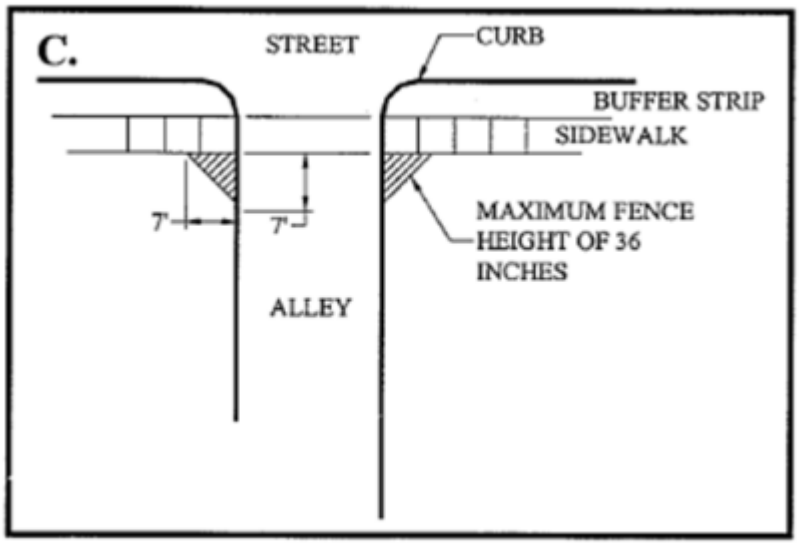
~~8.~~

~~9. right isosceles triangle having sides of seven feet measured along the right-of-way line of an alley and:~~

~~10. the inside line of the sidewalk; or~~

~~11. if there is no sidewalk, a line seven feet inside the curb line.~~

~~12.~~



~~13.~~

Section 17C.122.135 Fences (Centers and Corridors)

A. Purpose.
The fence standards promote the positive benefits of fences without adversely impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.

B. Type of Fences.
The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location, Height, and Design.

1. Street Setbacks.
No fence or other structure is allowed within twelve feet from the back of the curb, consistent with the required sidewalk width of SMC 17C.130.230.

   a. Measured From Front Lot Line.
   Fences up to three and one-half feet high are allowed in a required street setback that is measured from a front lot line.

   b. Measured From a Side Lot Line.
   Fences up to six feet high are allowed in required setback that is measured from a side lot line.

   c. Fences shall not reduce the required setback width of SMC 17C.130.210.

2. Side or Rear Structure Setbacks.
Fences up to six feet high are allowed in required side or rear setbacks except when the side or rear setback abuts a pedestrian connection. When the side or rear setback abuts a pedestrian connection, fences are limited to three and one-half feet in height.

3. Not In Setbacks.
The height for fences that are not in required setbacks is the same as the regular height limits

of the zone.

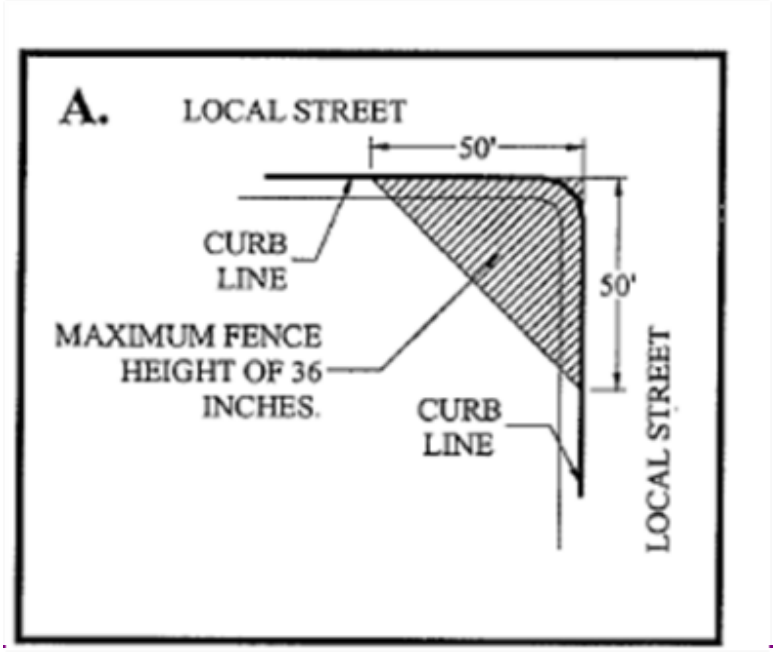
4. Sight-obscuring Fences and Walls.
   Any required or nonrequired sight-obscuring fences, walls, and other structures over three and one-half feet high, and within fifteen feet of a street lot line shall either be placed on the interior side of a L2 see-through buffer landscaping area at least five feet in depth (See chapter 17C.200 SMC, Landscaping and Screening), or meet the treatment of blank walls intent outlined in SMC 17C.122.060 – Initial Design Standards and Guidelines for Center and Corridors.

D. Prohibited Fences.

1. No person may erect or maintain a fence or barrier consisting of or containing barbed, razor, concertina, or similar wire except that up to three strands of barbed wire may be placed atop a lawful fence exceeding six feet in height above grade.
2. No person may maintain a fence or barrier charged with electricity.
3. A fence, wall, or other structure shall not be placed within a public right-of-way without an approved covenant as provided in SMC 17G.010.160 and any such structure is subject to the height requirement for the adjoining setback.
4. No fence may be closer than twelve feet to the curb.

E. Visibility at Intersections.

A fence, wall, hedge, or other improvement may not be erected or maintained at the corner of a lot so as to obstruct the view of travelers upon the streets.

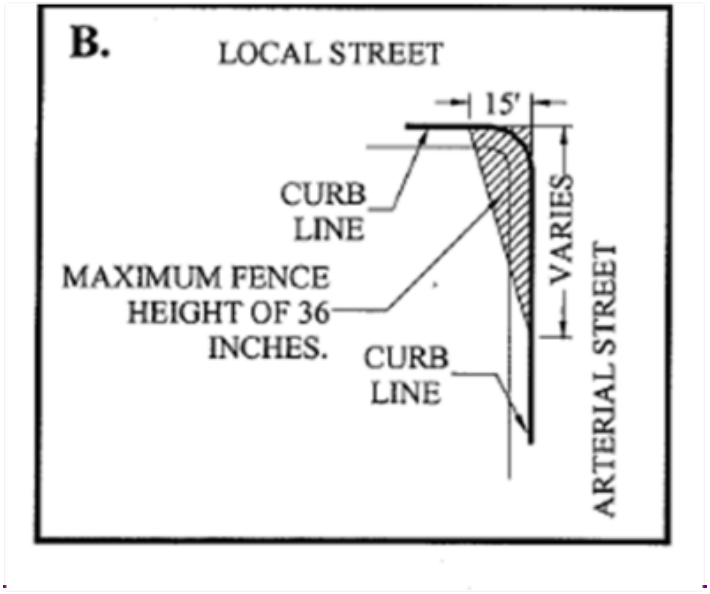


1. Subject to the authority of the traffic engineer to make adjustments and special requirements in

particular cases, ~~no~~all fences, vegetation, and other features within the Clear View Triangle defined in SMC 17A.020.030 shall be maintained to keep a vertical clear view zone between three and eight feet from ground level ~~exceeding a height of thirty-six inches~~ above the curb. ~~may be inside the:~~

a. ~~right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or~~

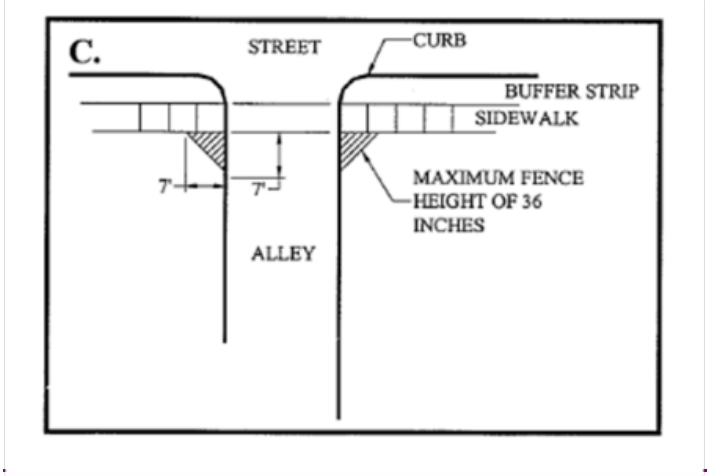
b. ~~right triangle having a fifteen-foot side measured along the curb line of the residential street and a seventy-five-foot side along the curb line of the intersecting arterial street, except that when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or~~



c. ~~right isosceles triangle having sides of seven feet measured along the right-of-way line of an alley and:~~

i. ~~the inside line of the sidewalk; or~~

ii. ~~if there is no sidewalk, a line seven feet inside the curb line.~~



Section 17C.124.310 Fences (Downtown)

A. Purpose.
The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists.

B. Types of Fences.
The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location, Height, and Design.
    1. Fencing along streets, alleys, and pedestrian connections. No fence over three and one-half feet in height is allowed within the right-of-way or the required sidewalk width of SMC 17C.124.230.
        a. Measured from the lot line or required sidewalk width, fencing up to six feet high is allowed within the first two feet behind the lot line or required sidewalk width. Greater than two feet back from the street lot line and the required sidewalk width; fencing is subject to the building heights for the zone.
        b. Within two feet of a pedestrian connection through the interior of a site or block, fences are limited to three and one-half feet in height.
    2. Fencing shall be behind any required parking lot or site perimeter landscaping.
    3. Fencing Material and Color.
    Colors shall complement the primary color of the development and shall not be so extreme in contrast or intensity that the color competes with the building for attention. Proposed fencing materials and colors that differ from these standards are subject to an administrative design review process.
        a. Fence color within the public right-of-way or visible from streets shall be a dark material, preferable black or dark matte finish earth tones. Dark earth tone colored fence materials are preferred. (P)
        b. Fencing shall be of a durable material. (P)
        c. Fence materials within the public right-of-way or within eight feet of a street lot line

may be wrought iron or similar in appearance, aluminum, metal, or other durable material that meets the objective. (P)

d. Walls visible from streets shall be masonry, stone, or brick construction. Masonry walls shall have a stucco finish or a textured manufactured finish such as “split face” or “fluted” block. (P)

e. Chain link fencing is not allowed that is visible from and/or adjacent to a public street. Chain link fencing must be painted or vinyl coated and all part must be a uniform dark matte color such as black or other dark color.

4. Sight-obscuring Fences and Walls.
Sight-obscuring fences, walls, and other structures over three and one-half feet high and visible from a street are subject to SMC 17C.124.570, Treating Blank Walls – Building Design.

D. Prohibited Fences.

1. No person may erect or maintain a fence or barrier consisting of or containing barbed, razor, concertina, or similar wire. Three strands of barbed wire may be placed atop a lawful fence if the fence is not visible from an adjacent street or is placed behind a sight-obscuring fence or wall. The fence must be placed upon private property.

2. No person may maintain a fence or barrier charged with electricity.

3. A fence, wall, or other structure shall not be placed within a public right-of-way without an approved covenant as provided in SMC 17G.010.160.

4. No permanent fence may reduce the required sidewalk width.

E. Visibility at Intersections.

A fence, wall, hedge, or other improvement may not be erected or maintained at the corner of a lot so as to obstruct the view of travelers upon the streets.

1. Subject to the authority of the traffic engineer to make adjustments and special requirements in particular cases, ~~no~~all fences, vegetation, and other features within the Clear View Triangle defined in SMC 17A.020.030 shall be maintained to keep a vertical clear view zone between three and eight feet from ground level ~~exceeding a height of thirty inches~~ above the curb ~~may be inside the:~~

~~a. right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or~~

~~b. right triangle having a fifteen-foot side measured along the curb line of the residential street and a seventy-five foot side along the curb line of the intersecting arterial street, except that when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or~~

~~c. right isosceles triangle having sides of seven feet measured along the right-of-way line of an alley and:~~

~~i. the inside line of the sidewalk; or~~

~~ii. if there is no sidewalk, a line seven feet inside the curb line.~~

Section 17C.130.310 Fences (Industrial)

A. Purpose

The fence standards promote the positive benefits of fences without adversely impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.

B. Type of Fences

The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location, Height, and Design

1. Street Setbacks.
   No fence or other structure is allowed within twelve feet from the back of the curb, consistent with the required sidewalk width of SMC 17C.130.230.
   a. Measured from Front Lot Line.
      Fences up to three and one-half feet high are allowed in a required street setback that is measured from a front lot line.
   b. Measured from a Side Lot Line.
      Fences up to six feet high are allowed in required setback that is measured from a side lot line.
   c. Fences shall not reduce the required setback width of SMC 17C.130.210.
2. Side or Rear Structure Setbacks.
   Fences up to six feet high are allowed in required side or rear setbacks except when the side or rear setback abuts a pedestrian connection. When the side or rear setback abuts a pedestrian connection, fences are limited to three and one-half feet in height.
3. Not in Setbacks.
   The height for fences that are not in required setbacks is the same as the regular height limits of the zone.
4. Sight-obscuring Fences and Walls.
   Any required or non-required sight-obscuring fences, walls, and other structures over three and one-half feet high, and within fifteen feet of a street lot line shall be placed on the interior side of a L2 see-through buffer landscaping area at least five feet in depth (See chapter 17C.200 SMC, Landscaping and Screening).

D. Prohibited Fences

1. No person may erect or maintain a fence or barrier consisting of or containing barbed, razor, concertina, or similar wire except that up to three strands of barbed wire may be placed atop a lawful fence exceeding six feet in height above grade.
2. No person may maintain a fence or barrier charged with electricity.
3. A fence, wall or other structure shall not be placed within a public right-of-way without an approved covenant as provided in SMC 17G.010.160 and any such structure is subject to the height requirement for the adjoining setback.
4. No fence may be closer than twelve feet to the curb.

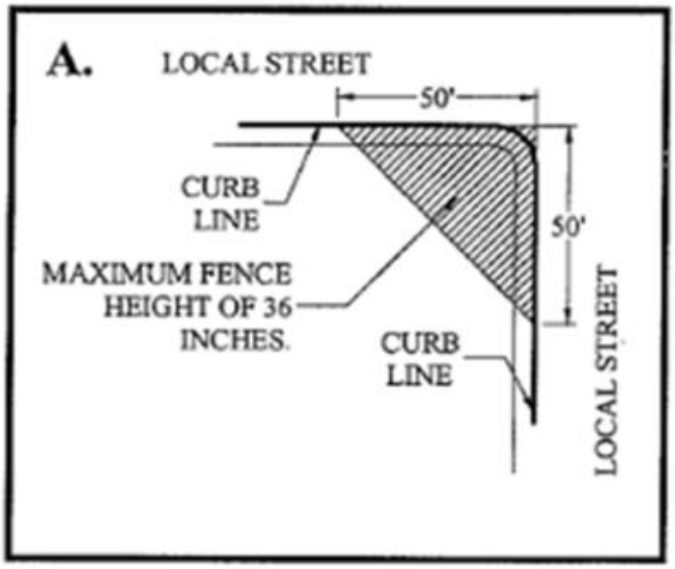
E. Visibility at Intersections

A fence, wall, hedge or other improvement may not be erected or maintained at the corner of a lot

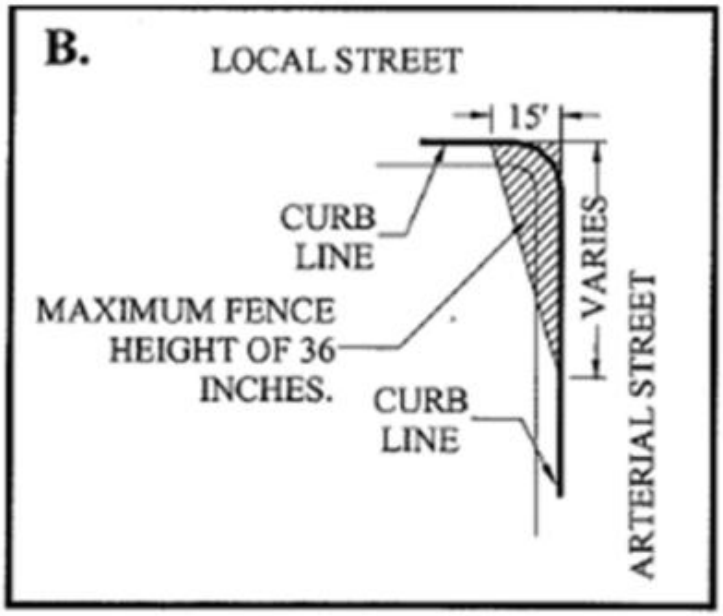
so as to obstruct the view of travelers upon the streets.

1. Subject to the authority of the traffic engineer to make adjustments and special requirements in particular cases, ~~no~~all fences, vegetation, and other features within the Clear View Triangle defined in SMC 17A.020.030 shall be maintained to keep a vertical clear view zone between three and eight feet from ground level ~~exceeding a height of thirty-six inches~~ above the curb. ~~may be inside the:~~

~~a. right isosceles triangle having sides of fifty feet measured along the curb line of each intersecting residential street; or~~



~~b. right triangle having a fifteen-foot side measured along the curb line of the residential street and a seventy-five foot side along the curb line of the intersecting arterial street, except that when the arterial street has a speed limit of thirty-five miles per hour, the triangle has a side along such arterial of one hundred twenty-two feet; or~~

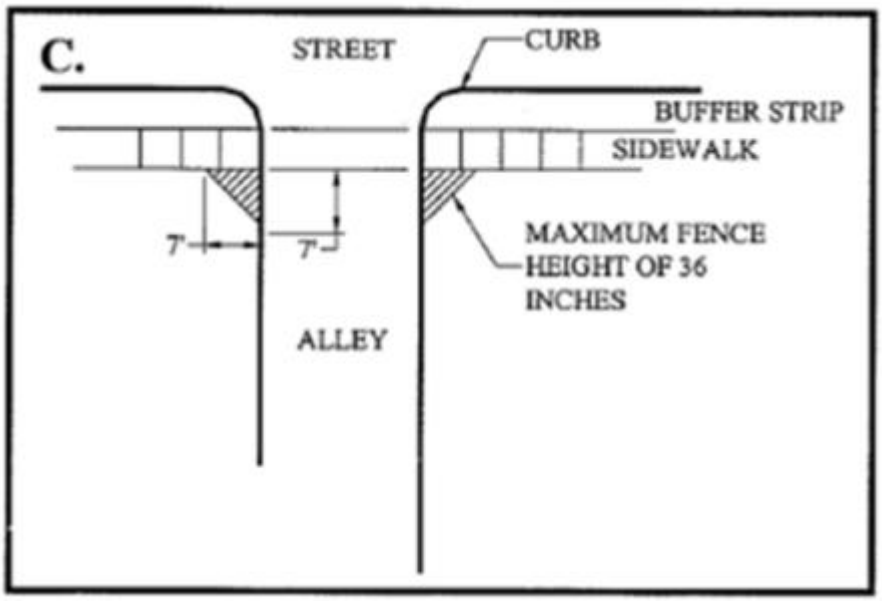


~~c. right isosceles triangle having sides of seven feet measured along the right-of-way line~~

~~of an alley and:~~

~~i. the inside line of the sidewalk; or~~

~~ii. if there is no sidewalk, a line seven feet inside the curb line.~~



Section 17C.200.040 Site Planting Standards

Sites shall be planted in accordance with the following standards:

A. Street Frontages.
   1. The type of plantings as specified below shall be provided inside the property lines:
      a. along all commercial, light industrial, and planned industrial zoned properties except where buildings are built with no setback from the property line: a six-foot wide planting area of L2 see-through buffer, including street trees as prescribed in SMC 17C.200.050. Remaining setback areas shall be planted in L3.
      b. along all downtown, CC1, CC2, CC4, and FBC zoned properties except where buildings are built with no setback from the property line, or along a Type 1 Street of the FBC: a five-foot wide planting area of L2 see-through buffer, including street trees as prescribed in SMC 17C.200.050, Street Tree Requirements. Remaining setback areas shall be planted in L3. Living ground cover shall be used, with non-living materials (gravel, river rock, etc.) as accent only. In addition, earthen berms, trellises, low decorative masonry walls, or raised masonry planters (overall height including any plantings shall not exceed three feet) may be used to screen parking lots from adjacent streets and walkways.
      c. in the heavy industrial zone, along a parking lot, outdoor sales, or
      d. outdoor display area that is across from a residential zone: a six-foot wide planting area of L2 see-through buffer, including street trees as prescribed in SMC 17C.200.050. Remaining setback areas shall be planted in L3.
      e. in industrial zones, all uses in the commercial categories (see chapter 17C.190 SMC, Use Category Descriptions, Article III, Commercial Categories) are subject to the standards for uses in the general commercial (GC) zone.
      f. along all RA, RSF, RTF, RMF, and RHD zones, except for single-family residences and duplexes: six feet of L3 open area landscaping, including street trees as prescribed in

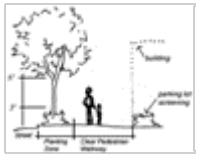
SMC 17C.200.050. For residential development along principal and minor arterials, a six-foot high fence with shrubs and trees may be used for screening along street frontages. The fence and landscaping shall comply with the standards of SMC 17C.120.310 for the clear view triangle and must be placed no closer than twelve feet from the curb line. A minimum of fifty percent of the fence line shall include shrubs and trees. The landscaping is required to be placed on the exterior (street side) of the fence.

2. ~~Except for attached and detached single-family residences and duplexes, p~~Plantings may not exceed thirty-six inches in height or hang lower than ninety-six inches within the clear view triangle at street intersections on corner lots and at driveway entries to public streets. The clear view triangle is defined in SMC 17A.020.030 ~~SMC 17C.120.310~~. The director of engineering services may further limit the height of plantings, landscaping structures, and other site development features within the clear view triangle or may expand the size of the clear view triangle as conditions warrant.

Section 17C.200.050 Street Tree Requirements

A. Purpose.
To provide consistent street frontage character within the street right-of-way. The street tree standards also maintain and add to Spokane's tree canopy and enhance the overall appearance of commercial and neighborhood development. Trees are an integral aspect of the Spokane landscape and add to the livability of Spokane. They provide aesthetic and economic value to property owners and the community at large.

B. Street Tree Implementation.
1. Street trees are required along all city streets in downtown, commercial, center and corridor, industrial zones, residential zones, and in FBC zones.
2. Street trees shall be planted between the curb and the walking path of the sidewalk.



3. Street trees and other landscaping shall be maintained and irrigated by the adjacent property owner.
4. If a street has a uniform planting of street trees or a distinctive species within the right-of-way, then new street trees should be of a similar form, character and planting pattern.
5. For a full list of approved trees in the city of Spokane, see the urban forestry program's approved street tree list. Species selection should be guided by individual site conditions including hydrology, soil, solar orientation, and physical constraints.

C. Planting Zones.
1. Provide continuous planting strips or individual planting areas per Table 17C.200.050-1, Tree Planting Dimensional Standards.

TABLE 17C.200.050-1

Tree Planting Dimensional Standards [1]		
ZONE	**CONTINUOUS PLANTING STRIP** (minimum width as measured from back of curb)	**INDIVIDUAL PLANTING AREA** (width as measured from back of curb)
Downtown	Individual Planting Areas (tree vaults) required [1]	4 ft. minimum 6 ft. maximum [2]
CC	5 ft.	4 ft. minimum 6 ft. maximum [2]
FBC	Individual Planting Areas (tree vaults) required [1]	5 ft [2]
Commercial	5 ft.	4 ft. minimum 6 ft. maximum [2]
Industrial	6 ft.	Continuous Planting Strip required [3]
RA, RSF, RTF	6 ft.	Continuous Planting Strip required [3]
RMF, RHD	6 ft.	Continuous Planting Strip required [3]
School/Church Loading Zone	Not Applicable	4 ft. minimum 6 ft. maximum [2, 4]

Notes:
[1] Individual Planting Areas (tree vaults) are the standard for the Downtown and FBC Zones. Proposals for Continuous Planting Strips may be evaluated on a case by case basis.
[2] Un-compacted soils are necessary for street trees. Individual planting areas (or tree vaults) must be of a size to accommodate a minimum of 100 cubic feet of un-compacted soils per tree at a maximum depth of three feet. Refer to the Engineering Design Standards for examples of potential options in individual planting areas.
[3] Continuous Planting Strips are the standard for Industrial and Residential Zones. However, individual planting areas meeting the CC standard may be proposed and evaluated on a case by case basis in Industrial, RMF and RHD Zones.
[4] In all zones, within a school/church loading zone, street tree location may vary from the standard as long as street trees are located within the right-of-way.
[5] In all zones, when a continuous planting strip will double as a stormwater swale, the minimum width shall be 6.5 feet.

2. Continuous Planting Strips.
    a. Continuous planting strips may be planted with living ground cover or low plantings that are maintained at a height less than three feet from ground level.
    b. When auto traffic is immediately adjacent to the curb, new street trees must be planted at least three feet from the edge of the automobile travel way.

3. Individual Planting Areas.
    a. When an individual planting area is not symmetrical, the longer dimension shall run

along the curb.

b. Tree grates or plantings are acceptable. However, when there is on-street parking, a tree grate or a paved walk eighteen inches wide behind the curb are encouraged to help avoid conflicts with car doors and foot traffic. The minimum clear pedestrian walking path as required for the zone shall be maintained.

Tree Grates

Street Trees with plantings up to 3 ft.

c. Where tree grates are used, they shall be ADA accessible and have a similar size and material as tree grates found in adjacent developments. Where tree grates are used, tree guards are encouraged for tree protection.

Tree Grate with Tree Guard

d. Un-compacted soils are necessary for street trees. A minimum of one hundred cubic feet per tree at a maximum depth of three feet is required. See Engineering Design Standards for examples of potential options in individual planting areas and for retrofitting sidewalks.

D. Size Requirements for New Street Trees.
   1. Street trees shall meet the most recent ANSI standards for a two-inch caliper tree at the time of planting
   2. Larger shade trees with spreading canopies or branches are desirable where possible. Species of street trees within the public rights-of-way shall be approved by the City urban forester and reviewed by the director of engineering services.
   3. If overhead power lines are present, street trees shall be limited to a mature height of twenty-five feet to avoid conflict with utility lines and maintenance crews.

E. Spacing Requirements for Street Tree Spacing.
   The objective is to create a continuous tree canopy over the sidewalk.

1. Continuous planting strips.
   Average spacing shall be twenty five feet for small and columnar trees and thirty feet for canopy trees. The planning director may allow increased spacing for exceptionally large trees or upon the recommendation of the urban forester.
2. Individual planting areas.
   Average spacing for all tree sizes and types shall be twenty-five feet. Trees planted adjacent to parallel parking stalls with meters may be spaced twenty feet apart.
3. Street tree plantings shall consider the location of existing utilities, lighting, driveways, business entrances and existing and proposed signs. See the Engineering Design Standards for required dimensions.

F. Clear View Zone.
Landscaped areas between the curb and sidewalk, as well as landscaped areas within the clear view triangle as defined in SMC 17A.020.030 ~~SMC 17C.120.310~~ shall be maintained or plant material chosen to maintain a vertical clear view zone between three and eight feet from ground level above the curb.

CODE SECTION	TYPE OF AMENDMENT	SUMMARY	COMMENTARY
17C.200.040(B) Table			
17C.200.040(B) Table	Minor	Wrong footnote number	

B. Other Property Perimeters.
A planting strip of five feet in width shall be provided along all other property lines except where buildings are built with no setback from the property line or where a parking lot adjoins another parking lot. The type of planting in this strip varies depending upon the zone designation of the properties sharing the property line (with or without an intervening alley) as indicated in the matrix below. Where properties with dissimilar zones share a common boundary, the property with the more intense zone shall determine the required type of planting. The owners of adjacent properties may agree to consolidate their perimeter plantings along shared boundaries. Therefore, instead of each property providing a five-foot wide planting strip, they together could provide one five-foot wide planting strip, so long as the required planting type, as indicated in the matrix, is provided. Types of landscaping to be provided in planting strips alongside and rear property lines:

	ADJACENT PROPERTY ZONE (horizontal)												
SUBJECT PROPERTY ZONE (vertical)	**RA**	**RSF**	**RTF**	**RMF**	**RHD**	**O, OR**	**NR, NMU**	**CB**	**GC**	**CC**	**LI, PI**	**HI**	**DT**
RA	-	--	--	--	--	--	--	-	-	-	--	-	-

	-							-	-	-		-	-
RSF	--	--	--	--	--	--	--	--	--	--	--	--	--
RTF	--	--	--	--	--	--	--	--	--	--	--	--	--
RMF	L2	L2	L2	L3	L2	L2	L2	L1	L1	L1	--	--	L1
RHD	L2	L2	L2	L2	L3	L2	L2	L2	L2	L2	--	--	L2
O, OR	L2	L2	L2	L2	L2	L3	L2	L2	L2	--	--	--	L2
NR, NMU	L2	L1	L2	L2	L2	L2	L3	L3	L2	--	--	--	L3
CB	L1	L1	L1	L1	L2	L2	L3	L3	L3	--	--	--	L3
GC	L1	L1	L1	L1	L2	L2	L2	L3	L3	--	--	--	L3
CC, FBC	L1	L1	L1	L1	L2	--	--	--	--	--	--	--	--
LI, PI [31]	L1	L1	L1	L1	L1	L1	L2	--	--	--	--	--	--
HI [31]	L1	L1	L1	L1	L1	L1	L1	--	--	--	--	--	--
DT	L1	L1	L1	L1	L1	L2	L2	L3	L3	--	--	--	--

Notes:
[1] In the industrial zones, all uses in the commercial categories (see chapter 17C.190 SMC, Use Category Descriptions, Article III, Commercial Categories) are subject to the standards for uses in the general commercial (GC) zone.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Section 17C.230.140 Development Standards			
Section 17C.230.140 Development Standards	Minor	Missing references and a comma.	

A. Parking Area Layout

1. Access to Parking Spaces.

All parking areas, except stacked parking areas, must be designed so that a vehicle may enter or

exit without having to move another vehicle.

2. Parking Space and Aisle Dimensions.
   a. Parking spaces and aisles in RA, RSF, RSF-C, RTF, RMF, RHD, FBC CA4, O, OR, NR, NMU, CB, GC, and industrial zones must meet the minimum dimensions contained in Table 17C.230-3.
   b. Parking spaces and aisles in Downtown, CC, and FBC CA1, CA2, CA3 zones must meet the minimum dimensions contained in Table 17C.230-4. In all zones, on dead end aisles, aisles shall extend five feet beyond the last stall to provide adequate turnaround.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17D City-wide Standards Chapter 17D.075 Transportation Impact Fees			
Section 17D.075.020 Definitions		The 9th Edition is the latest version of the Trip Generation Manual.	

Title 17D City-wide Standards

Chapter 17D.075 Transportation Impact Fees

Section 17D.075.020 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

A. "Accessory dwelling unit" means a dwelling unit that has been added onto, created within, or separated from a single-family detached dwelling for use as a complete independent living unit with provisions for cooking, eating, sanitation, and sleeping.

B. "Act" means the Growth Management Act, as codified in chapter 36.70A RCW, as now in existence or as hereafter amended.

C. "Applicant" means the owner of real property according to the records of the Spokane County, or the applicant's authorized agent.

D. "Baseline study" means the 2008 transportation baseline study that has been developed by HDR Engineering and Planning, City Project No. 2005155.

E. "Building permit" means the official document or certification that is issued by the building department and that authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, tenant improvement, demolition, moving or repair of a building or structure.

F. "Capital facilities" means the facilities or improvements included in the capital facilities plan.

G. “Capital facilities plan” means the capital facilities plan element of the City’s comprehensive plan adopted pursuant to chapter 36.70A RCW, as amended from time to time.

H. “Certificate of occupancy” means the term as defined in the International Building Code. In the case of a change in use or occupancy of an existing building or structure which may not require a building permit, the term shall specifically include certificate of occupancy and for residential development the final inspection, as those permits are defined or required by this code.

I. “City” means the City of Spokane.

J. “City council” means the city council of the City of Spokane.

K. “Comprehensive plan” means the City of Spokane comprehensive plan adopted pursuant to chapter 46.70A RCW, as amended from time to time.

L. “Complete street” means a landscaped, tree-lined street corridor designed for multiple modes of transportation, consistent with SMC 17C.124.035. Complete streets balance the various needs of pedestrian and vehicular use. Some include bicycle and transit improvements as well. Pedestrian amenities on Complete streets may include street furniture, decorative lighting, wide sidewalks with curb extensions (bulb-outs) at street corners, decorative crosswalks, public art, outdoor restaurants, plazas, and improved sidewalk-building interfaces (e.g., awnings, street-oriented retail activity).

M. “Concurrent” or “concurrency” means that the public facilities are in place at the time the impacts of development occur, or that the necessary financial commitments are in place, which shall include the impacts fees anticipated to be generated by the development, to complete the public facilities necessary to meet the specified standards of service defined in the comprehensive plan within six years of the time the impacts of development occur.

N. “Department” means the department of engineering services.

O. "Development activity" means any construction or expansion of a building, structure, or use, or any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.

P. “Development approval” means any written authorization from the City that authorizes the commencement of development activity.

Q. “Director” means the director of engineering services, or the director’s designee.

R. “Dwelling unit” means a single unit providing complete and independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking, and sanitation needs.

S. “Encumbered” means to have reserved, set aside or otherwise earmarked the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

T. “Feepayer” is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a

land development activity that creates the demand for additional public facilities, and which requires the issuance of a building permit. “Feepayer” includes an applicant for an impact fee credit.

U. “Gross floor area” is the total square footage of all floors in a structure as defined in chapter 17A.020 SMC.

V. “Hearing examiner” means the person who exercises the authority of chapter 17G.050 SMC.

W. "Impact fee” means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. “Impact fee” does not include a reasonable permit fee, an application fee, or the cost for reviewing independent fee calculations.

X. “Impact fee account” or “account” means the account(s) established for each service area for the system improvements for which impact fees are collected. The accounts shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070.

Y. “Independent fee calculation” means the impact fee calculation and or economic documentation prepared by a feepayer to support the assessment of an impact fee other than by the use of schedule set forth in SMC 17D.075.180, or the calculations prepared by the Director where none of the fee categories or fee amounts in the schedules in this chapter accurately describe or capture the impacts of the new development on public facilities.

Z. “Interest” means the interest rate earned by local jurisdictions in the State of Washington local government investment pool, if not otherwise defined.

AB. “Interlocal agreement” or “agreement” means a transportation interlocal agreement, authorized in this chapter, by and between the City and other government agencies concerning the collection and expenditure of impact fees, or any other interlocal agreement entered by and between the City and another municipality, public agency or governmental body to implement the provisions of this chapter.

AC. “ITE manual” means Institute of Transportation Engineers (ITE) Trip Generation Manual ~~(7th Edition)~~ (9th Edition), as amended from time to time.

AD. “Owner” means the owner of real property according to the records of the Spokane County department of records and elections, provided that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

AE. “Pass-by trip rates” means those rate study pass-by rates set forth in SMC 17D.075.200.

AF. “Proportionate share” means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

AG. “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility

included in the City's capital facilities plan shall be considered a project improvement.

AH. "Public facilities" means publicly owned streets and roads, including related sidewalk and streetscape improvements required by the City's comprehensive plan and related development regulations.

AI. "Rate study" means the 2007 transportation impact fee rate study, dated October 26, 2007, as updated and amended from time to time.

AJ. "Residential" means housing, such as single-family dwellings, accessory dwelling units, apartments, condominiums, mobile homes, and/or manufactured homes, intended for occupancy by one or more persons and not offering other services.

AK. "Square footage" means the square footage of the gross floor area of the development as defined chapter 17A.020 SMC.

AL. "Service area" means one of the four geographic areas defined by the City in which a defined set of public facilities provide service to development within each of the identified areas. The City has identified the service areas, based on sound planning and engineering principles. These service areas are generally referred to as the downtown service area, the northwest service area, the northeast service area, and the south service area. Maps depicting the service areas are set forth in SMC 17D.075.190 and shall also be maintained by the director in the offices of the engineering services department and shall be available for public inspection during regular business hours.

AM. "System improvements" means public facilities included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

AN. "Trip length adjustment factor" means the trip length adjustment factors identified in SMC 17D.075.200.

Date Passed: Monday, January 24, 2011
Effective Date: Saturday, March 12, 2011
ORD C34673 Section 2

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17G Administration and Procedures			
17G.010.070 (B) Eligibility of Applicants-Permits Issued Pursuant to the Land Use Codes	Clarification	This proposal makes it easier for property owners to obtain permits and eliminates redundancies between the Spokane Municipal	

		Code (SMC) and the Revised Codes of Washington (RCW) that govern contractor registration requirements.	

Title 17G Administration and Procedures

Chapter 17G.010 Building and Construction Permits

Section 17G.010.070 Eligibility of Applicants – Permits Issued Pursuant to the Land Use Codes

A. The laws of various jurisdictions impose requirements upon the persons doing some of the work and conducting some of the activities regulated by this title. Many of the acts regulated by this title affect real property interests. For these reasons applicants for the various permits, licenses, certificates, and other approvals are required to furnish varying data concerning their authority to make the application and perform the acts applied for. The City does not, however, assume responsibility for the accuracy of an applicant's representations concerning entitlement to the approval applied for. The issuance of a permit, license, certificate, or other approval to a person not otherwise authorized does not operate to confer such authority.

B. Building Permits.

To be eligible to obtain any of the various categories of "building" permits, one must be:

1. A contractor with a City of Spokane business license and an active contractor's license from the State of Washington Department of Labor and Industries that is appropriate for the work to be performed; or

2. The property owner as identified by the Spokane County Assessor records on condition that;
   a. the owner is able to claim exemption from the State of Washington contractor registration requirements; and

   b. all work is being performed by the owner and others as allowed by law, or by persons duly licensed or certified where required for the nature of the work.

   c. Exception: Mechanical and boiler permits for any work involving gas piping, equipment, or appliances that are natural gas, liquid propane gas, or oil fueled can only be issued to appropriately licensed contractors unless the property owner is currently licensed by the City of Spokane to install such piping, equipment, or appliances.

~~1. To be eligible for a building permit, a person must be either:~~

~~a. a contractor currently holding a valid license or certificate of registration in the appropriate category; or~~

~~b. able to claim under any exemption from the contractor registration act, other than that for occupants and owners of residential property, and be otherwise qualified; or~~

~~c. the resident owner of a single-family residence.~~

~~2. Exception.~~
~~Additionally, an electrical permit may be issued to the owner of a commercial or industrial building for:~~

~~a. the alteration, change, or extension of electrical wiring, apparatus, or fixtures in existing buildings; or~~

~~b. wiring of apparatus, special equipment, or fixtures;~~

~~on condition that all work, if not done by an electrical contractor, be done by a licensed electrician who is regularly employed full time in the maintenance of the electrical system of the premises.~~

~~Exception.~~
~~The owner of an existing residential building, of combustible-type construction, not exceeding twelve dwelling units nor three stories in height, may for the purpose of occupancy by the owner or a tenant or lessee of the owner, but not for the purpose of sale when the property has been owner-occupied less than twelve months, obtain a permit to repair or remodel the building (including such work as framing, roofing, and sheetrock) and its electrical and plumbing systems, but not any work requiring a mechanical permit, on condition that all work be done by the owner-permittee and others as allowed by law, or persons duly licensed or certificated where required by law for the nature of the work.~~

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17G Administration and Procedures Chapter 17G.010 Building and Construction Permits			
SMC 17G.010.160	Minor	These code changes are needed to: Update building code references from UBC to IBC. Update functions that have been reassigned from the director of engineering services to the development services center manager Update the name of the department which was changed from "building services" to "development services center".	

Title 17G Administration and Procedures

Chapter 17G.010 Building and Construction Permits

Section 17G.010.160 Application for Approval of Encroachment

A. When a structure or part thereof or appendage thereto, such as footings, balconies, marquees, awnings and architectural projections, is to project into, above, or below the right of way of any public way, the applicant shall conspicuously show the encroachment on the plans and specifications of the building permit application so as to demonstrate compliance with the requirements of chapter 32 UBC.(Kris Becker Comment: Update code reference)

B. Any person who proposes to install any opening in a public sidewalk, such as an elevator or other structure

with a door which opens vertically to the sidewalk, must make written application to the engineering services director. (Kris Becker Comment: Is there someone else who is more appropriate? Me? Mark? City Engineer?) The applicant shall furnish complete details of the construction and installation, including specifications for the door, hatch or other covering, and drawings showing the precise location of the opening with reference to the curbline, building line and existing utility lines and facilities.

C. A property owner proposing to use such portion of the right-of-way of a public street or alley as is not used or needed presently or in the foreseeable future for public travel, for the purposes of constructing, installing or planting fences, hedges or similar improvements, shall make application to the ~~department of building services~~ Development Services Center in the form of an acknowledged agreement whereby the property owner covenants to remove the encroachment and restore the property to its former condition upon thirty days' notice by the City. ~~The department of building services seeks the approval or disapproval of the application by the director of engineering services.~~ Any department reviewing the application may require the applicant to furnish a plot plan, plans and specifications, or other data required to properly evaluate the proposal.

Date Passed: Monday, November 26, 2007

Effective Date: Wednesday, January 2, 2008

ORD C34135 Section 20

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Section 17G.025.010 Text Amendments to the Unified Development Code			
Section 17G.025.010 Text Amendments to the Unified Development Code	Clarification	Clarification of intent	

A. Notice of Public Hearing.

Amendments to ~~this~~ Title 17 ~~code~~ require a public hearing before the plan commission.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Section 17G.060.240 Expiration of Permits			
Section 17G.060.240 Expiration of Permits	Minor	There is no longer an (N) in 17G.080.020.	

Section 17G.060.240 Expiration of Permits

A. Table 17G.060-3 indicates the expiration provisions for land use permits within the City of Spokane.

B. The term for a permit shall commence on the date of the hearing examiner or director's decision provided, that in the event the decision is appealed, the effective date shall be the date of decision on appeal. The term for a shoreline permit shall commence on the effective date of the permit as defined in WAC 173-27-090.

C. A permit under this chapter shall expire if, on the date the permit expires, the project sponsor has not submitted a complete application for building permit or the building permit has expired.

D. In accordance with WAC 173-27-090, the director may authorize a single extension before the end of the time limit for up to one year if a request for extension has been filed before the expiration date and notice of the proposed extension is given to the parties of record and to the department of ecology. The extension must be based on reasonable factors. Extensions of time for plats, short plats and binding site plan are subject to the extension provisions of SMC 17G.080.020(M) ~~and (N) .~~

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Section 17G.080.040 Short Subdivisions			
Section 17G.080.040 Short Subdivisions	Minor	We don't use silverslicks anymore.	

F. Final Short Plat Review Procedure

1. The subdivider shall submit to the director for review the following:
    a. A final short plat, prepared by a registered land surveyor licensed in the state of Washington, consistent with the approved preliminary short plat.
    b. A title report less than thirty days old confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.
    c. Covenants, conditions and restrictions, if applicable; and
    d. Fees pursuant to chapter 8.02 SMC.
2. Within thirty days, unless the applicant has consented to a longer period of time, of receipt of a proposed final short plat, the director shall review the plat for conformance with all conditions of the preliminary short plat approval, the requirements of this chapter and that arrangements have been made to insure the construction of required improvements. If all such conditions are met, the director shall approve the final short plat and authorize the recording of the plat. If all conditions are not met, the director shall provide the applicant in writing a statement of the necessary changes to bring the final short plat into conformance with the conditions.
    a. If the final short plat is required to be resubmitted, the subdivider is required to provide the following:
        i. A cover letter addressing the corrections, additions or modifications required.
        ii. Title report no older than thirty days from issuance of a title company conforming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication; and
        iii. The required number of copies of the corrected finals short plat map.
3. If the final short plat is approved, the surveyor causes the plat to be signed by the Spokane county treasurer and file of record with the Spokane county auditor. The surveyor is required to file the appropriate number of ~~silverslick~~ mylar and bond copies of the recorded short plat with the director.

Memo

City of Spokane Planning and Development

To: City Council President Ben Stuckart and City Council Members

From: Ken Pelton, Principal Planner

Date: **5/28/2014**

Re: UDC Maintenance Plan Commission Recommendations

Please see the attached document which contains the items that are included in the Unified Development Code Maintenance Project for 2013. The Plan Commission held a public hearing on December 11, 2013 and recommends approval of these amendments.

Please let me know if you have any questions. Thank you.

509 625-6063 or Kpelton@spokanecity.org

Unified Development Code Maintenance Project

Introduction:

The attached document represents the list of recommended amendments to the Spokane Municipal Code.

To help understand the types of changes that are recommended, the amendments are generally categorized under three types.

The three types are:

Minor: These include changes such as corrections to cross references or moving code sections directly from chapter 11.19 to Title 17 without changing their substance.

Clarification: These include changes such as fixing conflicting provisions within the code, or fixing code provisions that were either oversights or mistakes when the code was adopted.

Substantive: These include changes such as adjusting permitted uses, adjusting a development standard, or improving the practical application of the code.

TABLE OF CONTENTS

TOPICS, COMMENTARIES, PROPOSED AMENDMENTS

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 17A.020 Definitions			
17A.020.030 "C" Definitions	Minor	Update definition of Critical Areas	Refers to the definition in the RCW for critical areas so the definition in the SMC and the RCW are consistent, and aligns the critical area terminology with the RCW terminology.

Section 17A.020.030 "C" Definitions

TT. Critical Areas.
As defined under chapter 36.70A RCW, or as amended, ~~Any areas of~~ frequently ~~flooding~~ flooded areas, geologically hazardous areas, fish and wildlife habitat conservation areas, aquifer sensitive areas, or wetlands as ~~defined under~~ described in chapter 17E.010 SMC, chapter 17E.020 SMC, chapter 17E.030 SMC, chapter 17E.040 SMC, and chapter 17E.070.SMC.

17A.020.060 "F" Definitions	Minor	Update definition of Floodway	Refers to the definition in the RCW for floodway so the definition in the SMC and the RCW are consistent.

Section 17A.020.060 "F" Definitions

R. Floodway.
~~The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.~~
As defined under Section 90.58.030 RCW, or as amended.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17C Land Use Standards			
Table 17C.110-1 Residential Zone Primary Uses	Minor	Correction needed to align with previously adopted ordinance #C34717.	Table 17C.110-1 was amended by Ordinance #C34717 to change Daycare to an outright permitted use in the RMF and RHD zones. Table 17C.110-1 was incorrectly amended by Ordinance #C34911 to change Daycare from an outright permitted use to a limited use in the RMF and RHD zones. Table 17C.110-1 needs to be corrected to show that Daycare is an outright permitted use as amended by Ordinance #C34717.

Table 17C.110-1
RESIDENTIAL ZONE PRIMARY USES

Use is: **P** - Permitted **N** - Not Permitted **L** - Allowed, but special limitations **CU** - Conditional Use review required	**RA**	**RSF & RSF-C**	**RTF**	**RMF**	**RHD**
Institutional Categories					
Basic Utilities [3]	L	L	L	L	L
Colleges	CU	CU	CU	P	P
Community Service	L[4]/CU	L[4]/CU	L[4]/CU	P	P
Daycare [5]	L	L	L	~~L~~ P	~~L~~ P
Medical Center	CU	CU	CU	CU	CU
Parks and Open Areas	P	P	P	P	P
Religious Institutions	L[6]/CU	L[6]/CU	L[6]/CU	P	P
Schools	L[7]/CU	L[7]/CU	L[7]/CU	P	P

Notes:
• The use categories are described in chapter 17C.190 SMC.
• Standards that correspond to the bracketed numbers [ ] are stated in SMC 17C.110.110.
• Specific uses and development may be subject to the standards in SMC 17C.~~320.080.~~110.115 through 17C.110.575.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Table 17C.110-3 Development Standards			
Table 17C.110-3 Development Standards – "Notes"	Minor	Correction needed to align with previously adopted ordinances.	Footnote 6 was amended by Ordinance #C34717 to change allowed structure height in a rear yard from seventeen feet to twenty feet. Table 17C.110-3 was incorrectly amended by Ordinance #C34911 to change renumbered footnote 6 (renumbered to footnote 4) to permit a maximum structure height of seventeen feet rather than twenty feet as was previously amended by Ordinance #C34717. Footnote13 was amended by Ordinance #C34717 to change the setback requirement for a covered accessory structure. Table 17C.110-3 was incorrectly amended by Ordinance #C34911 to change renumbered footnote 13 (renumbered to footnote 11) by not including the underlined text below: Setback for a detached accessory structure and a covered accessory structure may be reduced to zero feet with a signed waiver from the neighboring property owner, except, as specified in SMC 17C.110.225(C)(5)(b).

TABLE 17C.110-3
DEVELOPMENT STANDARDS [1]

Notes:

-- No requirement

[1] Plan district overlay zone or SMC 17C.110.300, Alternative Residential Development, may supersede these standards.

[2] Lots created through subdivision in the RA, RSF and the RSF-C zones are subject to the lot size transition requirements of SMC 17C.110.200(C)(1).

[3] FAR may be increased to 0.65 for attached housing development only.

[4] No structure located in the rear yard may exceed ~~seventeen~~ twenty feet in height.

[5] Base zone height may be modified according to SMC 17C.110.215, Height.

[6] Attached garage or carport entrance on a street is required to be setback twenty feet from the property line.

[7] See SMC 17C.110.220(D)(1), setbacks regarding the use of front yard averaging.

[8] See SMC 17C.110.220(D)(2), setbacks regarding reduction in the rear yard setback.

[9] Attached garages may be built to five feet from the rear property line except, as specified in SMC 17C.110.225(C)(6)(b), but cannot contain any living space.

[10] Maximum site coverage for accessory structures is counted as part of the maximum site coverage of the base zone.

[11] Setback for a detached accessory structure and a covered accessory structure may be reduced to

zero feet with a signed waiver from the neighboring property owner, except, as specified in SMC 17C.110.225(C)(5)(b).
[12] The setback for a covered accessory structure may be reduced to five feet from the property line.

17C.120.110 Limited Use Standards	Minor	Add reference to additional standards for "Drive-through Facility"	

Section 17C.120.110 Limited Use Standards

The paragraphs listed below contain the limitations and correspond with the bracketed [ ] footnote numbers from Table 17C.120-1.

4. Drive-through Facility.
   This regulation applies to all parts of Table 17C.120-1 that have a [4]. In the O and OR zones, a drive-through facility is permitted only when associated with a drive-through bank. In addition, in the OR zone, for a florist use approved by a special permit, sales of non-alcoholic beverages, and sale of food items not prepared on site, including drive-through sales of such items are allowed as an accessory use at locations situated on principal arterials or a designated state route. Drive-through facilities are subject to the additional standards of SMC 17C.120.290 and SMC 17C.325.

Table 17C.124-2 Development Standards	Substantive	Remove minimum lot size and lot depth, and reduce minimum front lot line in downtown zones.	Removing lot size and lot depth standards allows more flexibility in the creation of lots for dense urban development. None of the other commercial zoning categories have minimum lot size or minimum lot depth standards. It is important to maintain the requirement for a minimum front lot line so lots have street access.

Table 17C.124-2 Development Standards [1]				
Standard	**DTC (Downtown Core)**	**DTG (Downtown General)**	**DTU (Downtown University)**	**DTS (Downtown South)**
Maximum FAR [2]	No Limit	6	6	4
Maximum height [3]	No Limit	12 Stories [3]	12 Stories [3]	12 Stories [3]
Minimum setback from street lot line [4,5]	0 ft.	0 ft.	0 ft.	0 ft.
Minimum setback from R-zoned lots [5]	10 ft.	10 ft.	10 ft.	10 ft.
Minimum setback from lot lines [5]	0 ft.	0 ft.	0 ft.	0 ft.
~~Minimum lot size~~	~~2,500 sq.ft.~~	~~2,500 sq.ft.~~	~~2,500 sq.ft.~~	~~2,500 sq.ft.~~
Minimum front lot line	10 ~~25~~ ft.	10 ~~25~~ ft.	10 ~~25~~ ft.	10 ~~25~~ ft.
~~Minimum lot depth~~	~~80 ft.~~	~~80 ft.~~	~~80 ft.~~	~~80 ft.~~
Landscaping required [6]	[6]	[6]	[6]	[6]
Parking required [7]	[7]	[7]	[7]	[7]

17C.200.020 Plan Submittal Requirements	Minor	Require landscaping plan for higher density housing projects.	The suggested revision clarifies the uses which require preparation of a landscape plan for submittal along with a building permit application. Landscape plans are not usually necessary for a house, an attached house or a duplex on an individual lot. However, a landscaping plan is needed for higher density housing projects as well as multiple houses, attached houses, and more than one duplex on a single lot.

Section 17C.200.020 Plan Submittal Requirements

Landscape plans are not required for a house~~s~~, an attached house~~s~~ ~~and~~ or a duplex~~es~~ on a lot. For all other types of development on sites, including planned unit developments, of more than seven thousand square feet of lot area, landscape plans shall:

A. be prepared and stamped by a licensed landscape architect, registered in the state of Washington;
B. be submitted at the time of application for a development permit; and
C. include the following elements:
    1. The footprint of all structures.
    2. The final site grading.
    3. All parking areas and driveways.
    4. All sidewalks, pedestrian walkways and other pedestrian areas.
    5. The location, height and materials for all fences and walls.
    6. The common and scientific names of all plant materials used, along with their size at time of planting.
    7. The location of all existing and proposed plant materials on the site.
    8. A proposed irrigation plan; and
    9. Location of all overhead utility and communication lines, location of all driveways and street signs.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Chapter 17E.060 Shoreline Master Program			
17E.060.280 Physical and Visual Public Access	Minor	Fix incorrect references	

Section 17E.060.280 Physical and Visual Public Access

D. Except as provided in SMC 17E.060.28~~9~~0(U) and (V), and subject to the limitations set forth in SMC 17E.060.28~~9~~0(A), public access shall be provided for any new development activity that requires a shoreline substantial development permit, conditional use permit, and/or variance permit where any of the following conditions are present:

1. Where a new development activity will create increased demand for public access to the shoreline, the development shall provide public access proportional to the degree of impact as mitigation.
2. Where a new development will interfere with an existing public access way, the development shall provide public access to mitigate this impact. Such interference may be caused by blocking access or by discouraging use of existing on-site or nearby accesses; or
3. Where a new development will interfere with a public use of lands or waters waterward of the ordinary-high-water-mark, the development shall provide public access.
4.

Table 17E.060-4 Shoreline Primary Uses	Minor	Correct a conflict between "Boating Facilities" and "Water Enjoyment Recreational Facilities" for launch ramps in the WWTP Shoreline Environment.	"Water enjoyment recreation" includes boat ramps. Therefore, the two categories were in conflict in the WWTP Environment. The change will treat both "Launch ramps for small non-motorized water-craft" and "Water-enjoyment recreation" as a conditional use (CU).

Table 17E.060-4
Shoreline Primary Uses

Use is: **P:** Permitted (with shoreline substantial development permit or exemption) **N:** Not permitted **L:** Allowed, but special limitations **CU:** Conditional use review required	**Shoreline Environments**					
	NE	*UCE*	*SRE*	*LUE*	*IUE*	*WTPE*
Boating Facilities						
Marinas	N	N	N	N	N	N
Launch ramps for small non-motorized water-craft	CU	CU	CU	CU	N	CU
Recreational Development						
Water-dependent recreation	CU	CU	CU	CU	CU	N
Water-related recreation	CU	CU	CU	CU	CU	N
Water-enjoyment recreation	L[7]/CU	CU	CU	CU	CU	~~N~~ CU
Non-water oriented recreation	N	CU	CU	CU	CU	N

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17G Administration and Procedures			
17G.050.310 Right of Appeal	Minor	Provide clearer procedures for the appeal of land use decisions.	The changes remove confusing appeal references and provide a direct link to the SMC section that specifies the appropriate appeal body.

Section 17G.050.310 Right of Appeal

A. The applicant ~~of~~ or a person with standing as defined in chapter 17A.020 SMC may appeal to the hearing examiner a decision of the director of planning services, engineering services, the building official, the responsible official under SEPA as provided in SMC 17G.060.210 and the landmarks commission related to applications for certificate of appropriateness and determination of eligibility under SMC 17D.040.230 by filing with the permit application department a written appeal within fourteen days of the date of the written decision.

B. The applicant, a person with standing, or a City department may appeal ~~to the city council any decision of the~~ decisions of the hearing examiner~~, except as provided in~~ as provided in SMC 17G.060.210~~, by filing with the permit application department a written appeal within fourteen days of the date of the written decision of the hearing examiner~~.

17G.060.075 Shoreline Substantial Development Permit Letter of Exemption	Minor	Fix incorrect references	

Section 17G.060.075 Shoreline Substantial Development Permit Letter of Exemption Procedure

A. State law and the shoreline master program specifically exempt certain types of development from the requirement of obtaining a shoreline substantial development permit. The types of development that are exempted are listed in SMC 17E.060.3~~2~~00 and WAC 173-27-040. No exempt development, use or activity shall be undertaken within the jurisdiction of the Shoreline Management Act (chapter 90.58 RCW or its successor) and the shoreline master program unless a statement of exemption has been obtained from the director. Burden of proof that a development or use is exempt from the permit process is on the applicant.

B. Application procedure for a letter of exemption from a shoreline substantial development permit is the same as for any shoreline permit as defined in SMC 17G.060.070 with these additional application materials:

   1. Written explanation of exemption type as defined in SMC 17E.060.3~~2~~00 and WAC 173-27-040.
   2. A contractor's bid to verify the total cost or fair market value of the proposal including labor and material, if the proposed exemption category is below the dollar threshold defined in WAC 173-27-040.

3. A statement from a structural engineer licensed by the State of Washington to verify the need for immediate action, in order to address the imminent threat to public health and safety on the property, if proposed exemption category is for emergency construction as defined in WAC 173-27-040.

C. All development within the shoreline, even when an exemption from the requirement of a substantial development permit is granted, must be consistent with the policies of the Shoreline Management Act and the shoreline master program. Conditions may be attached to the approval of a shoreline exemption in order to assure consistency of the project with the Shoreline Management Act and the shoreline master program (WAC 173-27-040).

D. A letter of exemption from a shoreline substantial development permit is not always an exemption from a shoreline conditional use permit or a shoreline variance. A development or use that is listed as a conditional use pursuant to the SMP regulations or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance (WAC 173-27-040).

E. In the case of shoreline projects with federal permit review and upon completion of a letter of exemption, the director must submit to ecology:

1. Letter of exemption.
2. Site plan.
3. What is being approved; and
4. Conditions of approval.

It must also state the specific exemption provision from WAC 173-27-040 and SMC 17E.060.3~~2~~00 and provide a summary of analysis of the consistency of the project with the SMP and the SMA. It shall contain any SEPA determination made and include the permit data sheet and transmittal letter form (WAC 173-27-990 Appendix A).

F. The director shall review watershed restoration projects as defined in WAC 173-27-040 for consistency with the SMP and shall issue a decision along with any conditions within forty-five days of receiving from the applicant all materials necessary to review the request for exemption. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as defined in WAC 173-27-040.

17G.060.210 Appeals	Minor	Provide clearer procedures for the appeal of land use decisions and clean up state mandated shoreline language.	

Section 17G.060.210 Appeals

A. The provisions of this section shall apply to any written order, requirement, permit, decision, or determination made under the land use codes~~. The hearing examiner shall consider the appeal in accordance with procedures set forth in chapter 17G.050 SMC and the hearing examiner's rules of procedure.~~

B. Appeal ~~or request for reconsideration~~ of a director's decision on a ~~Type I and Type II~~ project permit application is to the hearing examiner as an open record appeal, except appeals of building permits that are not related to the land use codes shall go before the building construction review board pursuant to chapter 4.06 SMC and appeals related to the fire code shall be heard by the fire code advisory board pursuant to chapter 4.08 SMC. . The hearing examiner shall consider the appeal in accordance with procedures set forth in chapter 17G.050 SMC and the hearing examiner's rules of procedure.

C. Appeal of ~~the~~ a hearing examiner's decisions ~~on a Type III project permit application are~~ is to superior court, except rezones, PUDs, preliminary long plats, and skywalk permits are appealable to city council as a closed record appeal hearing and are subject to the procedures in chapter 17G.050 SMC.

D. Shoreline substantial development permits decisions, after final decision by the City, may be appealed within twenty-one days from the "date of filing" or the date of actual receipt by the Department of Ecology ~~date the department of ecology receives the final decision~~; appeal is made to the shorelines hearings board.

E. Shoreline conditional use permits and shoreline variance permits may be appealed to the shorelines hearings board within twenty-one days from the "date of filing" or the date the decision of the Department of Ecology is transmitted to the City of Spokane ~~date of transmittal by the department of ecology of the final decision to the City~~. If, as a result of the appeal process, the project has been modified, the director must reissue the permit according to WAC chapter 173-27-130 and submit a copy of the reissued permit to the department of ecology.

F. Except as otherwise provided, ~~A~~appeals or requests for reconsideration from decisions ~~or rulings~~ shall be ~~made~~ filed within fourteen calendar days of the date of the ~~written order~~ decision~~, or within seven days of the date of issuance of the decision on a request for reconsideration~~. If the last day for filing an appeal falls on a weekend day or a holiday, the last day for filing shall be the next working day. The appeal or request for reconsideration is filed in the department that is responsible for the permit application, except an appeal to superior court must be filed as a land use petition to the court within twenty-one days of the date of the written decision is ~~signed~~ issued.

G. An appeal or request for reconsideration ~~of the director or hearing examiner~~ shall take the form of a written statement of the alleged reason(s) the decision was in error, or specifying the grounds for appeal or reconsideration. The following information, accompanied by an appeal fee as specified in chapter 8.02 SMC, shall be submitted. All fees including transcript deposit fees must be paid by the appellant no later than the last day to file the appeal. The appellant shall pay the cost of a written transcript within five days of the receipt of the hearing examiner's statement for the cost. An appeal application is not considered complete until all required fees are paid. Failure to timely pay all fees results in dismissal of the appeal with prejudice. The appeal or request for reconsideration application shall contain:

    a. file number of the decision;

b. an indication of facts that establish the appellant's right to ~~appeal or request reconsideration~~ the relief requested;

c. an identification of exceptions and objections to the decision being appealed or reconsidered, or an identification of errors in fact or conclusion;

d. the requested relief from the decision being appealed or reconsidered;

e. any other information reasonably necessary to make a decision on the appeal or reconsideration;

f. failure to set forth specific errors or grounds for appeal shall result in summary dismissal of the appeal or reconsideration request.

H. The appeal or request for reconsideration is rejected if:

a. it is filed by a person without standing as specified in chapter 17A.020 SMC;

b. an appeal decision is being sought from a decision-maker not authorized by this chapter to make such a decision;

c. it is not timely filed;

d. the appeal fees have not been paid; or

e. it is not filed in accordance with the procedures of this chapter.

I. An appeal or request for reconsideration stays the underlying decision pending final disposal of the appeal ~~or other requests for relief~~, unless the action ordered in the decision is necessary to protect the public health or safety, or unless the appeal is required to be filed in superior court. Filing a suit or action in court does not stay the final decision unless and until the court, pursuant to RCW 36.70C.100, issues an order.

J. Notice of Appeal.
Notice of a hearing by the hearing examiner on an ~~request for reconsideration or~~ appeal ~~of a Type I or Type II project permit~~ is given to the director, appellant, applicant, and any party of record. This notice is mailed through regular U.S. mail or personally served at least fourteen days prior to the hearing. The notice of appeal contains the following information:

a. Location of the property including a map sufficient to clearly locate the site.

b. Description of the proposed action.

c. Name of the applicant.

d. Application name and number.

e. Decision made on the application, including the environmental threshold determination.

f. Name of the appellant if other than the applicant.

g. Date, time, and place of hearing.

h. A statement of whether the appeal is on the record or if new information will be allowed; and

i. Name, address, and office telephone number of the City official from whom additional information may be obtained.

CODE SECTION	TYPE OF CODE AMENDMENT	SUMMARY	COMMENTARY
Title 17G Administration and Procedures			
Section 17G.080.020 General Provisions. C. Expiration of Approval.	Minor	Amend timelines for expiration of preliminary plats to bring them into alignment with state subdivision law	The purpose of the change is to bring the Subdivision Code into alignment with the state subdivision law related to expiration of preliminary plats, RCW 58.17.140. The proposed amendment points directly to the state law and would avoid the need to amend the Subdivision Code again when the state law changes. ***58.17.140*** ***Time limitation for approval or disapproval of plats — Extensions.*** *(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.* *(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ten years of the date of preliminary plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.* *(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.*

Section 17G.080.020

C. Expiration of Approval.

~~Approval of a preliminary subdivision, short subdivision or binding site plan shall automatically expire five years after preliminary approval is granted, except that a time extension may be granted.~~

A final plat, final short plat or final binding site plan meeting all requirements of Chapter 17G.080 Subdivisions shall be submitted to the director within the timelines of RCW 58.17.140. A time extension may be requested for a preliminary ~~subdivision~~ plat, short ~~subdivision~~ plat or preliminary binding site plan, as provided in subsection (~~M~~L) of this section.

17G.080.020 General Provisions. L. Extensions of Time.	Substantive	Fix terminology so the code is consistent. Also, allow extensions of time for an applicant to submit a final plat.	The purpose of the change is to make the terminology consistent between subsections C. and L. The second part allows additional time for filing a final plat beyond the current one-year.

L. Extensions of Time.

An approved preliminary ~~subdivision~~ plat, short plat and binding site plan may receive a ~~one-time, one-year~~ time extension for up to three years beyond the period provided in 17G.080.020.C.

1. The applicant shall comply with all of the following:
    a. The extension request shall be filed with the director at least thirty days prior to the expiration of the approval.
    b. The applicant must have finalized at least one phase.
    c. The application shall demonstrate that construction plans have been submitted and are under review for acceptance by the City prior to submission for extension or that the applicant is in the process of installing infrastructure for the development.
    d. The project shall be consistent with the comprehensive plan.
    e. The applicant shall demonstrate that there are no significant changes in conditions that would render approval of the extension contrary to the public health, safety or general welfare; and
    f. Valid concurrency certificate.
2. The director shall take one of the following actions upon receipt of a timely extension request:
    a. Approve the extension request if no significant issues are presented under the criteria set forth in this section.
    b. Conditionally approve the application if any significant issues presented are substantially mitigated by minor revisions to the original approval; or
    c. Deny the extension request if any significant issues presented cannot be substantially mitigated by minor revisions to the approved plan.
3. A request for extension approval shall be processed as a Type I action under chapter 17G.060 SMC.

17G.080.020 General Provisions. M. Sunset Provision.	Minor	Remove code provisions that are no longer applicable	The Sunset Provision was intended to address expiration of preliminary plats that were approved before the adoption of the Subdivision Code on March 30, 2005. Some of these preliminary plats dated back to the 1980's and had 100 or more lots. All of them had one or more phases that had final plats approved and recorded. It was the practice prior to 2005 to not expire preliminary plats in which a phase was final platted. The Sunset Provision recognized this practice and gave those plats additional time to be finalized. All of the deadlines contained in this section have expired so this section is no longer applicable to any existing preliminary approval.

~~M. Sunset Provision.~~

1. ~~For subdivision applications with preliminary approval on or before the effective date of this ordinance, the time remaining to complete final plat approval for all lots is the remainder of the five years allowed by chapter 58.17 RCW. In this case, the applicant may receive a one-time extension of one year under the provisions of subsection (L) of this section.~~ Staff note (not part of amendment): Allowed up to 6 years (expired March 30, 2011)
2. ~~For subdivision applications with final plat approval for one or more phases on or before the effective date of this ordinance, the time remaining to complete final plat approval for all lots is the greater of either the remainder of the five years allowed by chapter 58.17 RCW or three years from the effective date of the ordinance codified in this chapter.~~ Staff note (not part of amendment): Allowed up to 3 years (expired March 30, 2008)
3. ~~Extensions of the Sunset Provision.~~
   ~~The director may grant five-year extensions to the time period under subsection (M)(2) of this section for preliminary subdivisions upon the following:~~ Staff note (not part of amendment): Allowed up to 8 years (expired March 30, 2013)
   a. ~~An application with supporting data for a time extension request must be submitted to the director no less than thirty days prior to the expiration of the preliminary subdivision.~~
   b. ~~The preliminary subdivision has a minimum of one hundred lots or dwelling units remaining to be finalized as of the effective date of the ordinance codified in this chapter.~~
   c. ~~The applicant must have finalized at least one phase including the installation of infrastructure and recording of lots, by the end of the three years granted under subsection (M)(2) of this section or since the last time extension.~~
   d. ~~The application shall demonstrate compliance with all of the following:~~
      i. ~~The project is consistent with the comprehensive plan.~~
      ii. ~~The project is consistent with current development standards; and~~
      iii. ~~The project has a valid concurrency certificate. This certificate may be based on a new review of the project or extension of an existing concurrency~~

~~certificate.~~

e. ~~Provided all of the conditions in subsections (M)(3)(a) through (d) of this section are met, the director may include additional or altered conditions and requirements to the preliminary plat approval. A time extension granted as a result of administration delays are not subject to additional or altered conditions.~~

f. ~~The director shall issue a written decision approving or denying the time extension request and provide copies to affected agencies, the applicant and those parties requesting a copy of the decision. Appeals of the time extension shall be filed consistent with the provisions of chapter 17G.050 SMC.~~

2. **For Text Amendments:**

   a. Please provide a detailed description and explanation of the proposed text amendment. Show proposed edits in "line in/line out" format, with text to be added indicated by underlining, and text to be deleted indicated with ~~strikeouts~~.

   b. Reference the name of the document as well as the title, chapter and number of the specific goal, policy or regulation proposed to be amended/added.

3. **For Map Change Proposals:**

   a. Attach a map of the proposed amendment site/area, showing all parcels and parcel numbers.

   b. What is the current land use designation?

   c. What is the requested land use designation?

   d. Describe the land uses surrounding the proposed amendment site (land use type, vacant/ occupied, etc.)

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NORME INTERNATIONALE
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60335-2-76

Edition 2.1

2006-04

Edition 2:2002 consolidée par l'amendement 1:2006
Edition 2:2002 consolidated with amendment 1:2006

Appareils électrodomestiques et analogues – Sécurité –

Partie 2-76: Règles particulières pour les électrificateurs de clôtures

Household and similar electrical appliances – Safety –

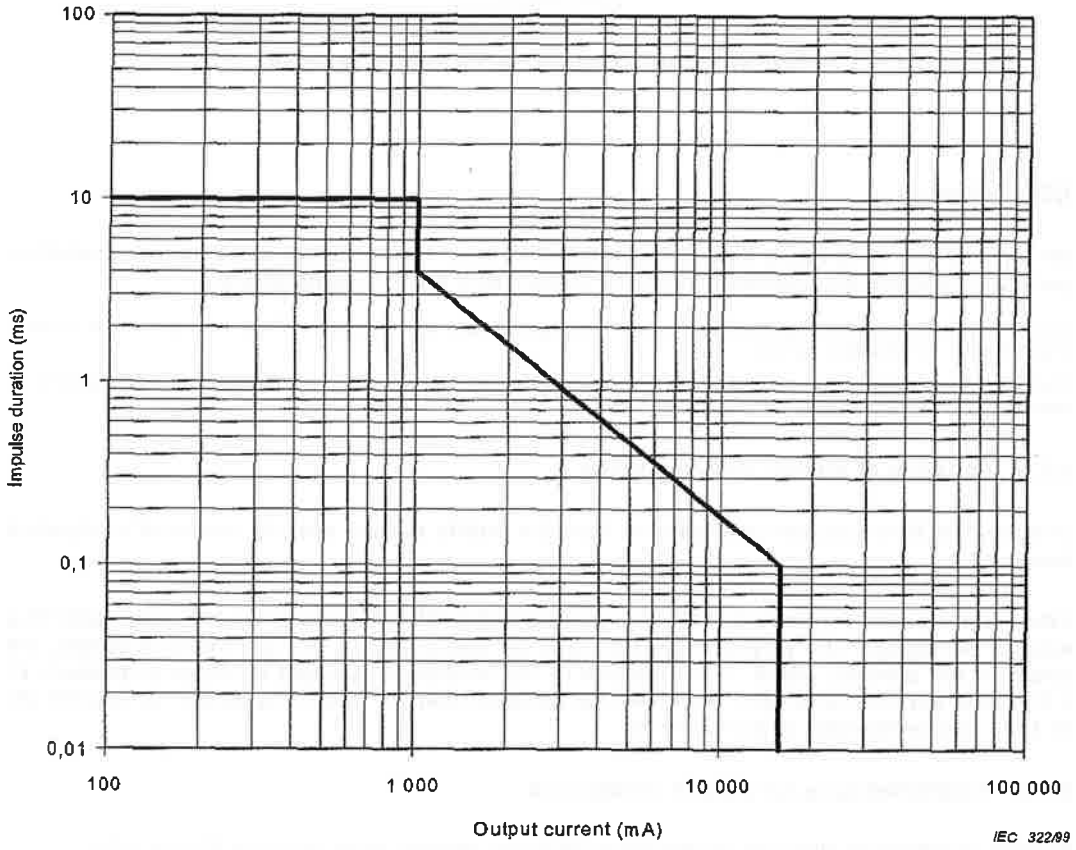
Part 2-76: Particular requirements for electric fence energizers

Numéro de référence
Reference number
CEI/IEC 60335-2-76:2002+A1:2006

60335-2-76 ∧ IEC:2002+A1:2006 – 49 –

22.108 Energizer output characteristics shall be such that
– the impulse repetition rate shall not exceed 1 Hz;
– the **impulse duration** of the impulse in the 500 ∧ component of the **standard load** shall not exceed 10 ms;
– for **energy limited energizers** the energy/impulse in the 500 ∧ component of the **standard load** shall not exceed 5 J;
NOTE The energy/impulse is the energy measured in the impulse over the **impulse duration**.
– for **current limited energizers** the **output current** in the 500 ∧ component of the **standard load** shall not exceed for
□ an **impulse duration** of greater than 0,1 ms, the value specified by the characteristic limit line detailed in Figure 102;
□ an **impulse duration** of not greater than 0,1 ms, 15 700 mA.
*Compliance is checked by measurement when the **energizer** is supplied with the voltage in 11.5, the **energizer** being operated under conditions of **normal operation** but with the **standard load** connected to its output terminals. When measuring the impulse repetition rate the **standard load** is not connected.*

60335-2-76 ∧ IEC:2002+A1:2006 – 51 –
The measurements are made using a measuring arrangement with an input impedance consisting of a non-inductive resistance of not less than 1 M∧ in parallel with a capacitance of not more than 100 pF.



NOTE The equation of the line relating **impulse duration** (ms) to **output current** (mA) for 1 000 mA < **output current** < 15 700 mA, is given by **impulse duration** = $41{,}885 \times 10^3 \times (\text{output current})^{-1{,}34}$

Figure 102 – Current limited energizer characteristic limit line

Annex CC
(informative)

Installation of electric security fences

CC.1 General

An **electric security fence** should be installed so that, under normal conditions of operation, persons are protected against inadvertent contact with **pulsed conductors**.

NOTE 1 This requirement is primarily intended to establish that a desirable level of safety is present or is being maintained in the **physical barrier**.

NOTE 2 When selecting the type of **physical barrier**, the likely presence of young children should be a factor in considering the size of openings.

CC.2 Location of electric security fence

The **electric fence** should be separated from the **public access area** by means of a **physical barrier**.

Where an **electric fence** is installed in an elevated position, such as on the inner side of a window or skylight, the **physical barrier** may be less than 1,5 m high where it covers the whole of the **electric fence**. If the bottom of the window or skylight is within a distance of 1,5 m from the floor or access level then the **physical barrier** need only extend up to a height of 1,5 m above the floor or access level.

CC.3 Prohibited zone for pulsed conductors

Pulsed conductors shall not be installed within the shaded zone shown in Figure CC1.

NOTE 1 Where an **electric security fence** is planned to run close to a site boundary, the relevant government authority should be consulted before installation begins.

NOTE 2 Typical **electric security fence** installations are shown in Figure CC2 and Figure CC3.

CC.4 Separation between electric fence and physical barrier

Where a **physical barrier** is installed in compliance with CC.3 at least one dimension in any opening should be not greater than 130 mm and the separation between the **electric fence** and the **physical barrier** should be

- within the range of 100 mm to 200 mm or greater than 1 000 mm where at least one dimension in each opening in the **physical barrier** is not greater than 130 mm;
- greater than 1 000 mm where any opening in the **physical barrier** has all dimensions greater than 50 mm;
- less than 200 mm or greater than 1 000 mm where the **physical barrier** does not have any openings.

NOTE 1 These restrictions are intended to reduce the possibility of persons making inadvertent contact with the **pulsed conductors** and to prevent them from becoming wedged between the **electric fence** and the **physical barrier**, thereby being exposed to multiple shocks from the **energizer**.

NOTE 2 The separation is the perpendicular distance between the **electric fence** and the **physical barrier**.

CC.5 Prohibited mounting

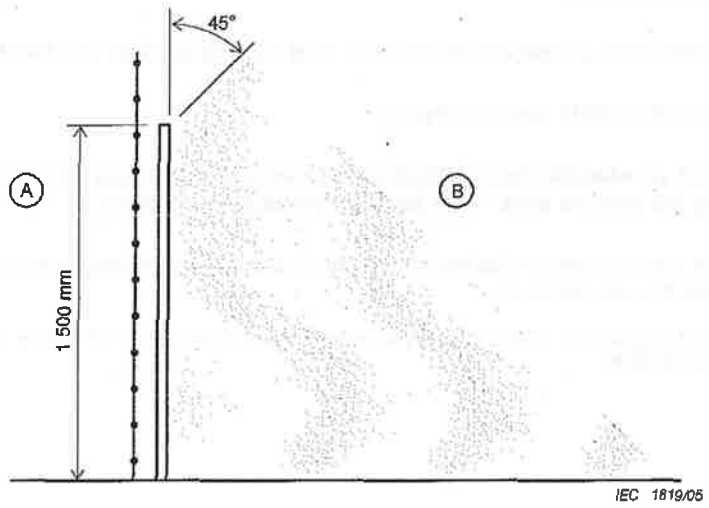
Electric fence conductors should not be mounted on a support used for any overhead power line.

CC.6 Operation of electric security fence

The conductors of an **electric fence** should not be energized unless all authorized persons, within or entering the **secure area**, have been informed of its location.

Where there is a risk of persons being injured by a secondary cause, appropriate additional safety precautions should be taken.

NOTE An example of a secondary cause is where a person may be expected to fall from a surface if contact is made with **pulsed conductors**.



Key

A = **Secure area**

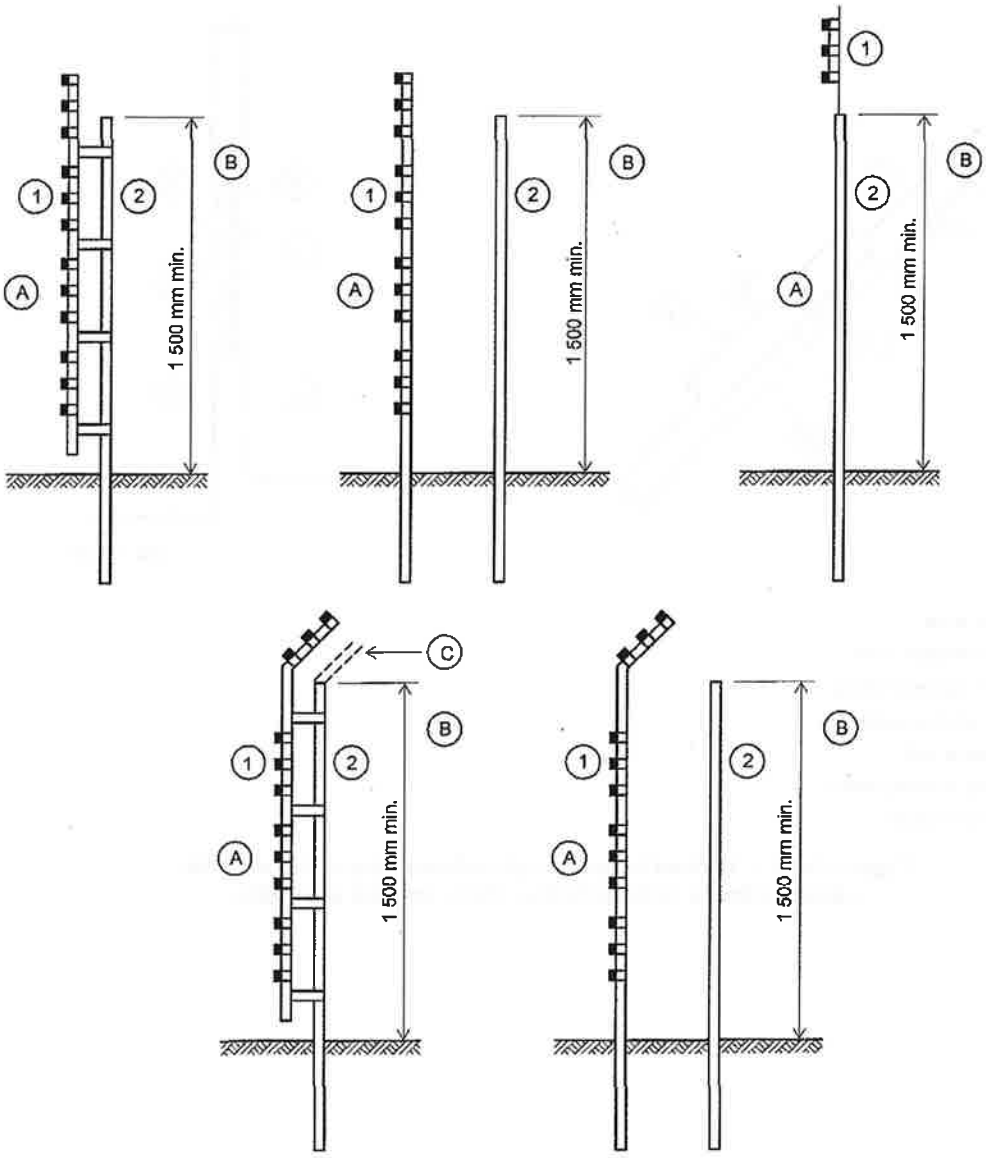
B = **Public access area**

Physical barrier

Prohibited area

Electric security fence

Figure CC.1 – Prohibited area for pulse conductors



Key

A = **Secure area**

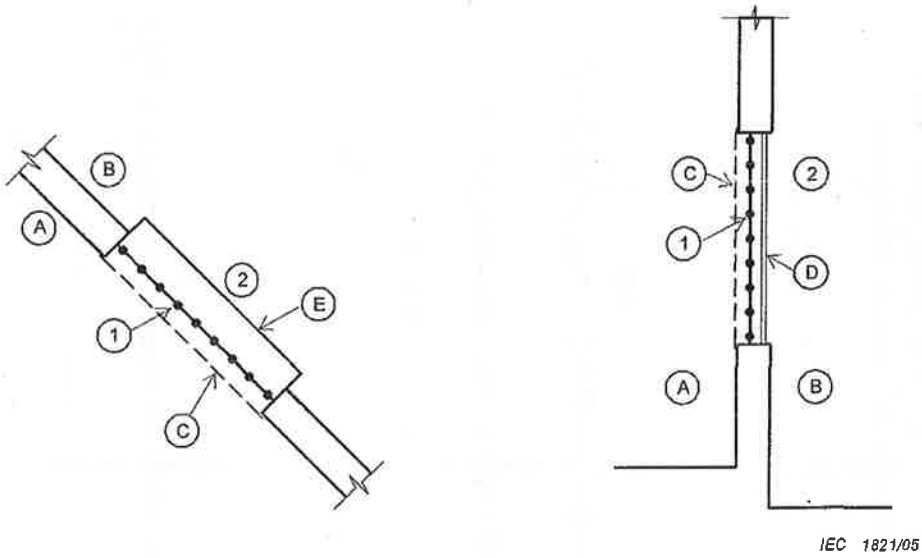
B = **Public access area**

C = Barrier where required

1 = **Electric security fence**

2 = **Physical barrier**

Figure CC.2 – Typical constructions where an electric security fence is exposed to the public



IEC 1821/05

Key

A = **Secure area**

B = **Public access area**

C = Barrier where required

D = Glass window pane

E = Skylight in roof

1 = **Electric security fence**

2 = **Physical barrier**

Figure CC.3 – Typical fence constructions where the electric security fence is installed in windows and skylights

Bibliography

The bibliography of Part 1 is applicable except as follows.

Addition:

IEC 60335-2-86, *Household and similar electrical appliances – Safety – Part 2-86: Particular requirements for electric fishing machines*

IEC 60335-2-87, *Household and similar electrical appliances – Safety – Part 2-87: Particular requirements for electric animal stunning equipment*

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August 19, 2015

TO: City Plan Commission

FROM: Planning & Development Department

RE: Comprehensive Plan Text Amendment Application, File Z1400065-COMP
Mobile/Manufactured Home Park Preservation
Preliminary Supplemental Background Report and Attachments
for the Plan Commission's August 26, 2015 Workshop Agenda Item #5

Staff will request a public hearing on this and the other proposed Comprehensive Plan amendments following the Plan Commission workshop scheduled for August 26, 2015. This document and attachments are materials for discussion at the workshop.

Staff prepared relevant information gathered for the City of Spokane Comprehensive Plan text amendment application for mobile and manufactured home park preservation. This report provides this information and some answers to questions asked in discussions at the Plan Commission workshops, an open house and two stakeholder group meetings. It is meant to summarize preliminary research conducted during the first stages of the Plan Commission's consideration but is not meant to serve as an exhaustive investigation. A final staff report will be prepared separately prior to the Plan Commission public hearing on this item.

Contents

Attachments

Attachment 1: Washington State Law on Mobile Home Park Closures

Attachment 2: Manufactured Homes & Senior Tax Exemptions – City of Spokane

Attachment 3: 6/17/2015 Mobile/Manuf. Home Park Preservation Stakeholder Group Meeting Notes

Attachment 4: 7/9/2015 Mobile/Manuf. Home Park Preservation Stakeholder Group Meeting Notes

Attachment 5: Appendix

For additional information contact Nathan Gwinn, Planning & Development, 509-625-6893,
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Permit and Regulation History

Recent Manufactured Housing Land Use Regulations, Local Park Closures and Permitting			File/Ord.
1984	*	The City of Spokane developed standards for siting manufactured homes on individual lots in residential areas outside manufactured home parks.	
1985	**	Manufactured home parks were allowed in any zone except the agricultural and country residential zones, on a minimum area of ten acres and with a maximum density of seven units per gross acre, and subject to other requirements.	C28051
1989	**	The Springwood Mobile Home Park on West Cora Avenue between Post and Calispel streets closed. The park contained 114 leased spaces, built in 1973 for temporary use to house visitors to the 1974 world's fair. Over time, the infrastructure began to deteriorate. The needed repairs and zoning design upgrades to continue the park permanently were not pursued, and the land-use permit expired in 1990. Unrelated to the closure, a church was later built on the site in 1996.	
1995	*	Regulations were adopted to allow individual manufactured homes placed on lots outside mobile or manufactured home parks in three special overlay districts by special permit. Placement was subject to several conditions that would prevent groupings of such homes: no more than two would be allowed in any block on one side of the street, they could not adjoin each other on abutting lots, and the block frontage had to consist of at least 50 percent existing site-built, habitable residences. A ten-year maximum unit age requirement was also imposed on such homes placed outside mobile or manufactured home parks.	C31338
1996	*	The City reviewed and amended regulations for manufactured homes to allow their placement on individual lots outside a mobile or manufactured home parks in any zone that allows single-family dwellings (except historic districts), but continuing the maximum of two per block and other dispersal requirements. The changes reduced the maximum unit age requirement from ten to five years for placing such homes. Other new requirements included a design compatibility evaluation by staff to ensure compatibility with the character of the neighborhood surrounding the individual manufactured home.	C31762
	**	A manufactured home park consisting of about 250 spaces (never developed) was proposed as part of a rezone proposal associated with the Grayhawk development on a 44-acre site in the M1 zone, located approximately 1,600 feet northeast of the intersection of Lincoln Road and Nevada Street.	
1997	*	Following the request of a property owner of multiple separate lots who wished to place several manufactured homes on a block, changes to regulations removed the dispersal requirements, allowing neighboring manufactured homes in any zone that allows single-family dwellings (except historic districts).	C31969

Recent Manufactured Housing Land Use Regulations, Local Park Closures and Permitting			File/Ord.
1998	**	An interpretation was issued regarding establishing a manufactured home park in the M1 zone as part of the Grayhawk development. The project was not pursued.	Z9800028-AD Cameron
2000	**	The Charter Mobile Home Park on North Nevada Street between Rosewood and Lyons avenues closed after more than 40 years to make way for an Albertson's supermarket, constructed on the site in 2003. Kromer (1999) reported that the 72 units comprising the park were all pre-1977 mobile homes. All units were successfully relocated except one, which had extensive alterations.	
2003	**	A second phase of Sundance Meadows manufactured home park was approved, authorizing a total of 117 spaces for Phases 1 and 2. To date, 50 units have been placed. The units placed are newer homes, the oldest of which is a 2001 model according to Assessor's records. They feature attached garages and permanent foundations.	Z0300040
2004	*	The State of Washington passed a law that prevented local governments statewide from excluding manufactured homes by regulation from areas where site-built homes are allowed. The stated purpose was to protect consumer access to manufactured housing as a significant resource for affordable homeownership and rental housing. However, the law outlined several permissible regulations by local government for placing manufactured homes, such as requirements that manufactured homes placed be new at the time of placement, be a minimum size, be set upon a permanent foundation, and other possible requirements. RCW 35.21.684	
2006	*	Regulations change for manufactured homes, on individual lots outside of manufactured home parks, reducing the maximum age requirement from five years at the time they are placed to be new at the time they are placed.	C33830 (adopt ch. 17C.345), C33843 - repeal §11.19.300, and C33844 - repeal §11.19.355
	**	Regulations change for mobile/manufactured home parks to provide that they are permitted in the Residential Agricultural (RA) and Residential Single-Family (RSF) zones, subject to Type III review and approval. The density requirements change from seven units per gross acre to an allowed range with a minimum of four units per acre and a maximum of ten.	
2010	**	Medo Mist Mobile Home Park is granted final Planned Unit Development approval. The fully developed project would have 67 spaces. Although infrastructure has been built on site for the first phase, only one home has been placed so far.	C34570
2012	**	Finish Line Mobile Home Park closes to construct the Cheney Spokane Road interchange on Highway 195, eliminating 21 spaces.	
* Event related to manufactured homes on individual lots, outside a mobile or manufactured home park ** Event related to mobile/manufactured home parks			

Comments on Some Effects of Closures

Looking back at the most recent three decades, the number of spaces closed in the city of Spokane was 114 (Springwood, 1989), 72 (Charter, 2000) and 21 (Finish Line, 2012). However, a regulatory or incentive program, such as the types being explored in this Comprehensive Plan Text Amendment and discussed by the various parties who have provided comments, would not have affected the closure of either the Springwood or Finish Line parks, leaving only the 72 units at the Charter Manufactured Home Park to consider as a voluntary park closure that the proposal of manufactured home park preservation is meant to address.

As a basic comparison in terms of overall numbers, the loss of 72 units displaced at Charter Mobile Home Park has been offset by the placement since then of 80 units in Sundance Meadows and Spring Creek manufactured home parks, and the permitting since then of a total of 133 additional spaces in Sundance Meadows and Medo Mist manufactured home parks that have not yet been filled. The units displaced are physically different than the units placed, however.

The units placed in the city's parks after Charter Mobile Home Park closed are at least 20 years newer, with higher assessed property values, and most include attached garages. The units removed from Charter Mobile Home Park were older mobile homes (factory-built dwellings built prior to June 15, 1976 to standards other than the HUD code) destined mostly for the unincorporated area of Spokane County and other communities north of Spokane. Consultants hired to assist in relocation of the residences worked with the neighborhood council and Spokane Neighborhood Action Programs to qualify the homes for rehabilitation and for necessary alterations.

Today, it would not be financially feasible to relocate many of the residences like those in the Charter Mobile Home Park due to limited rehabilitation funding, increased costs associated with alterations and expenses such as contained asbestos abatement.

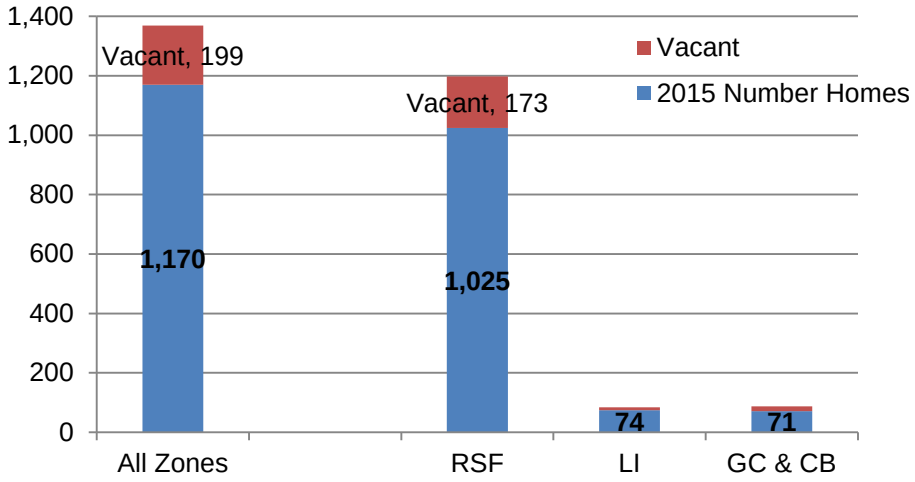
Closures in Communities near Spokane since 2007

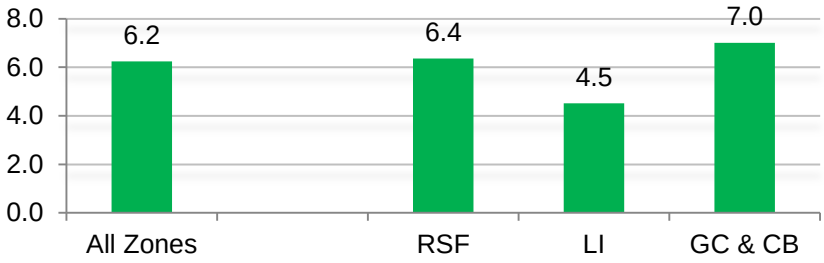
In other communities and the unincorporated area of Spokane County since the beginning of 2007, there were two voluntary mobile home park closures tracked by the Washington Department of Commerce (2015), both in the year 2008: one in the city of Cheney (44 spaces) and one on Silver Lake east of the city of Medical Lake (49 spaces), for a total of 93 spaces eliminated. (A third closed manufactured home park near Deer Lake, with a Loon Lake address attributed to Spokane County in the Commerce list, affecting two spaces, is actually located in Stevens County.) Additional research would be required to identify the amount and model years of units placed in other communities and areas in Spokane County over this period of time.

Mobile/Manufactured Home Parks in Spokane

Capacity and Density of Spokane Manufactured Home Parks by Zone

Zoning Districts:		All Zones	Residential Single Family (RSF)	Light Industrial (LI)	General Commercial/ Comm. Bus. (GC & CB)
Manufactured Home Park Site Capacity					
MANUF. HOME PARK SITES SURVEYED		19	12	4	3
TOTAL CAPACITY (spaces)		1,369	1,198	84	87
RANGE:	Site with most:	283	283	67	45
	Median:	38	55	6	36
	Site with least:	4	4	4	6
Overall Manufactured Home Park Density at Maximum Capacity (units per gross acre)					
RANGE:	Densest site:	15.1	8.1	11.5	15.1
	Median:	6.6	6.4	6.6	10.9
	Site with least density:	0.8	3.0	0.8	4.1



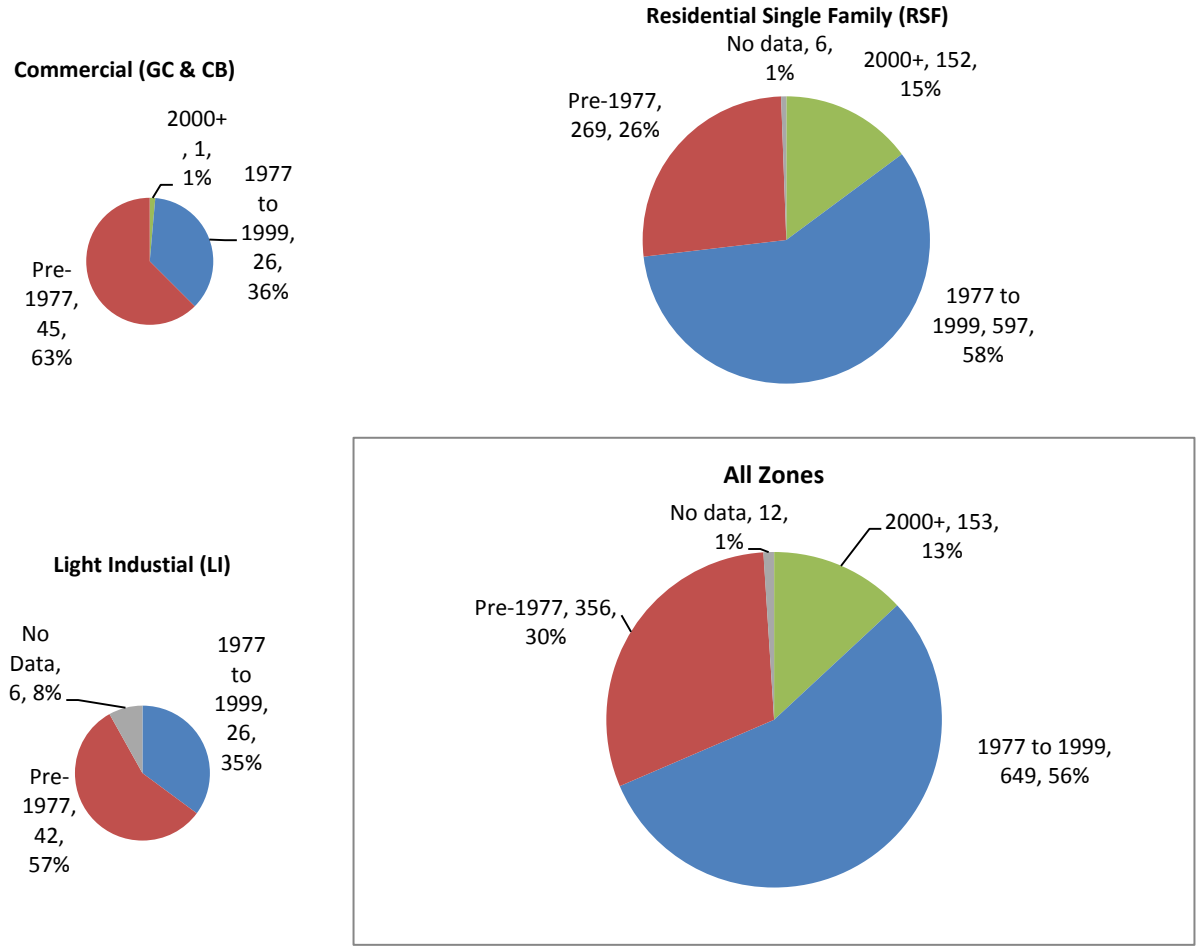


Note: Data represented are based on an annual survey, adjusted for additional vacancies, that excludes the following:

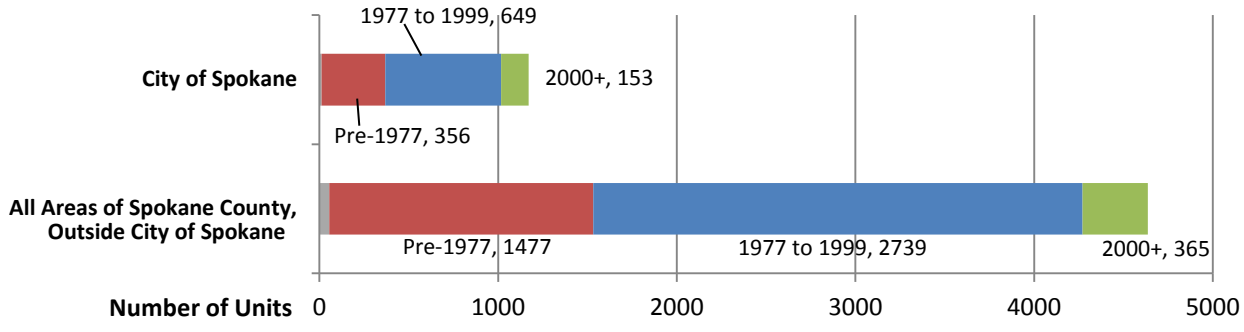
- Five manufactured home parks that each contain two units per site.
- One manufactured home park under development that contains only one unit.
- One mobile home park condominium containing 13 units.
- Between 230 and 400 manufactured homes located on individual lots outside manufactured home parks.

Sources: City of Spokane, Spokane County Assessor

Model years of units in mobile and manufactured home parks by zone in the city of Spokane, March 2015.



Model years of units in mobile and manufactured home parks in the city of Spokane and areas of Spokane County outside the city of Spokane, March 2015.



Model Year:	No Data	Pre-1977	1977 to 1999	2000+	Total
City of Spokane	13 (1% of total)	356 (30%)	649 (55%)	153 (13%)	1,170
Spokane Co. Outside City of Spokane	55 (1%)	1,477 (32%)	2,739 (59%)	365 (8%)	4,636

Sources: Spokane County Assessor, City of Spokane

Housing Condition Survey at Selected Manufactured Home Parks

Staff members conducted a windshield survey of homes in late May 2015 in four of Spokane's six largest manufactured home parks containing more than 50 units. The parks surveyed include 768 units, roughly equal to 65 percent of the 1,174 total units in parks in Spokane. The surveyed parks were all zoned Residential Single-Family, were comprised of a range of unit age representative of the units in the city, and were located in all three City Council districts in the city. Staff surveyed between 21 and 41 units in each district. The sample in the surveyed parks represented 12.7 percent of the units within those parks, and 8.2 percent of units in parks in Spokane overall. The survey included an assessment of both the structure of the dwelling unit and the condition of the yard and other areas of the site surrounding the unit.

The dwelling unit portion of the survey concerned several aspects of each structure's condition—the roofing, siding, windows/ doors, and porches (a copy of the survey appears on the next page). The survey of conditions resulted in finding 69 of the 97 surveyed units (71 percent) were rated with a score of zero, or excellent condition, with no deferred maintenance or other defect observable from the private access street. The worst rating was 11, or minor rehabilitation, occurring on only three units (three percent) of the units surveyed. The foundation portion of the survey did not apply to the surveyed units, since the parks visited did not require permanent foundations, and skirting obscured views of the footings beneath the units in all cases.

Extending these results to the other units in the surveyed parks and elsewhere in Spokane, the survey infers that at least 70 percent of the units located within manufactured home parks in the city show no sign of exterior damage or deferred maintenance on the portion visible from the access street. Conversely, at least three percent of units in parks are in need of minor structural repair or maintenance.

The lot condition, or the condition of the yard and other areas of the site surrounding each surveyed unit, was assessed by rating the condition of detached structures, yard, fencing, and degree of graffiti present at each unit. Nearly 89 percent of the units surveyed had good lot conditions. The worst rating given was 6, or fair condition, with only three occurrences (three percent). No graffiti was found at any of the visited sites. The survey demonstrates that a comfortable majority of homes in manufactured home parks have well-kept and maintained yards. Meanwhile, at least three percent of unit spaces have a component in need of minor maintenance, such as minor landscaping or fence repainting. In the rare cases present, typical lot condition issues included detached structures that need repainting or fence repairs.

MANUFACTURED HOME PARK SURVEY NUMBERS

97

HOMES SURVEYED, MORE THAN EIGHT PERCENT OF ALL UNITS IN PARKS IN SPOKANE

71%

HOMES WITH NO VISIBLE DEFECTS

25%

REQUIRE MINOR MAINTENANCE

3%

REQUIRE MINOR REHABILITATION OR STRUCTURAL REPAIR

89%

OF YARDS SURROUNDING UNITS ARE WELL MAINTAINED

Housing Condition Survey Methodology

The housing condition survey of selected manufactured home parks used methods and terms adapted from the City of Oakland (2009) and staff from Community Frameworks in Spokane. Similar studies were conducted in 2010 for mobile/manufactured home parks in the city of Airway Heights, and in 2003 and 2009 for all types of homes in the East Central Neighborhood. Additional definitions of housing conditions developed under this method are listed by the City of Oakland (2014, p. 361).

The definitions of housing conditions found in the Spokane manufactured home park survey results are as follows:

Dwelling Unit Condition Definitions

Excellent:	These units scored from 0 to 2. The dwelling unit is new or well maintained. It is structurally sound with a foundation that appears structurally undamaged and a straight roofline. Windows, doors, and siding are in good repair. The porch is structurally sound. Exterior paint is in good condition.
Sound:	These units scored from 3 to 9. The dwelling unit requires minor deferred maintenance, such as repainting, window repairs, the replacement of a few shingles on the roof, the repair of minor sections of the porch, or other small repairs.
Minor Rehabilitation:	With a score between 10 and 19, the dwelling unit shows signs of deferred maintenance of multiple items, or that requires the repair of one major component.

Lot Condition Definitions

Good:	These sites scored from 0 to 2. The lot is well maintained. Yard is clean and not overgrown, detached structures, such as garages or sheds are structurally sound, fencing is in good repair, and no graffiti is present on the property.
Fair:	With a score between 3 and 9, one or more components of the lot needs minor maintenance.

[2015] Housing Windshield Survey

Surveyor Name:	Survey Date:
Parcel ID No.:	Census Tract No.:
Block Group:	Block No:
Street No:	Street Name:
Photo ID No.:	Age:
Structure Type:	
No. of Units:	

Abandoned Type:

N- Not Abandoned/Vacant	*Building appears occupied.*
V- Vacant Land	*No structure is located on lot.*
A- Vacant Structure	*Structure/Main Dwelling on lot appears to be vacant.*
B- Burned/Vacant	*Structure appears vacant w/ visible fire damage*
D- Boarded/Vacant	*Structure appears vacant w/ windows boarded*

Under Construction: Y or N

Portion Under Construction:

Lot Condition:

Condition of Detached Structures

Good Condition	*0*
Needs Repainting	*3*
Major Repairs Needed	*5*
Dilapidated	*10*
No Existing Structures on Property	*0*

Yard Condition

Good Condition	*0*
Needs minor landscaping or yard clean-up	*3*
Lot Neglected, Major Landscaping Needed	*5*

Fencing

Good Condition	*0*
Needs Minor Maintenance- (e.g. painting)	*3*
Dilapidated- Needs to be replaced or removed	*5*
No Existing Fencing on Property	*0*

Graffiti

Good Condition- No Graffiti	0
Minor Graffiti	3
Major Graffiti	5

Dwelling Unit Condition Rating	
Excellent	*0-2*
Sound	*3 - 9*
Minor Rehabilitation	*10-19*
Moderate Rehabilitation	*20-39*
Substantial Rehabilitation	*40-55*
Delapidated	*56+*

Lot Condition Rating	
Good	*0*
Fair	*3 - 9*
Poor	*10-15*
Dilapidated	*16+*

Comments:

Dwelling Unit Condition

Roofing

Good Condition	*0*
Cracked/Broken/curled shingles/shakes (incl. broken downspouts & rain gutters)	*5*
Needs Partial Re-roofing	*10*
Needs Complete Re-roofing	*20*
Roof structure needs replacement (roofline is bowed, wavy or uneven)	*25*

Type of Roof:

Foundation

Good Condition	*0*
Cracked/broken, but reparable	*5*
Needs partial replacement	*10*
Needs complete replacement	*20*
No Foundation	*25*
Not visible from street	*0*

Type of Foundation:

Siding (incl. fascia boards & gables)

Good Condition	*0*
Needs repainting, peeling paint	*3*
Cracked/broken in spots, but reparable	*5*
Needs replacement (siding is too deteriorated for repair)	*10*
Not visible	*0*

Type of Siding:

Windows/Doors (incl. jambs/frames)

Good Condition	*0*
Needs repairing	*3*
Cracked/broken, but reparable	*5*
Needs complete replacement	*10*
Single Pane Windows	*5*

Porches

Good Condition	*0*
Minor repair/repainting	*3*
Deteriorated/worn components (decking, ballusters, etc), but reparable	*5*
Major repair/replacement of components	*10*

Requirements for Relocating Mobile and Manufactured Homes

Moving a home may require a permit, depending on what rules apply at the location to which the home is moved. All homes placed on individual lots and in manufactured home parks require a building permit if the new location of the home is within the city of Spokane. As noted above, only new manufactured homes are permitted outside manufactured home parks within the city. Obtaining a City of Spokane building permit for placing a manufactured home involves a one-page application form to provide information about the type of structure and whether it will be set in a mobile or manufactured home park. Homes have either a red label, denoting a mobile home built before June 15, 1976, or a gold label, if built to the post-June 15, 1976 HUD code.

Removal of a home may involve altering the structure, which requires alteration insignia issued by the Washington Department of Labor and Industries to ensure compliance with federal law governing alterations of manufactured homes. Under rules developed under RCW 43.22.340, if a mobile home will be structurally altered during its relocation from an existing site to another approved site, then a fire safety certificate is required, involving necessary alterations to the wiring system, fire protection, emergency egress and other requirements, outlined in WAC 296-150M-0550. However, units that are forced to be removed because of a mobile home park closure or conversion are exempted from these requirements under RCW 59.21.105, although requirements related to funding sources may trigger these or other necessary alterations for eligibility.

A number of other factors, besides fire safety alterations, influence whether a home of any age is relocated or demolished, including the cost of other necessary alterations to obtain permits, such as greater snow-load requirements for areas north of Spokane; the value of the home; cost of relocation; and, as mentioned above, asbestos surveying and possibly abatement. In 2014, the Spokane Regional Clean Air Agency amended its definition of the term "demolition" to exclude structures moved which are mobile homes that remain intact (Regulation I, Article IV, Section 9.02.M). The change means that moving a mobile home no longer requires a notification permit (with a fee of $250, covering review of as many as five structures), but a limited asbestos survey must still be conducted and can be expensive if multiple materials samples are required due to post-construction alterations or due to the structure's complexity.

Number of City of Spokane Manufactured Building Permits, 2007 - 2014

Status	Mobile or Manufactured Homes		Non-Residential Buildings
	Within a mobile or manufactured home park	Individual lot outside a mobile or manufactured home park	
Final Inspection Done, Issued, or Final	39	12	30
Expired	17	4	15
Withdrawn, Canceled, or Closed	8	3	2

The relationship between successfully completed permits and those that expire or are withdrawn indicate the success of home placement in the city and difficulties encountered. Common on-site inspections consist of checking tie-downs and the blocking pad, and that connections to utilities were performed by certified installation personnel. The high number of expired permits typically is caused by a failure to request a final inspection; these structures will technically require a new permit and fee.

Contractors may have a 30-day permit that is issued month-to-month from the Washington State Department of Transportation to transport structures between sites, based on a monthly or annual manufactured housing permit through that agency, and the contractor additionally may need oversize/overweight movement approvals for superloads that they can apply to WSDOT for on a case-by-case basis.

Mobile and Manufactured Housing in Other Communities

This section discusses some noteworthy examples of manufactured housing and policies in the context of manufactured home park preservation. The unit estimates displayed below are for all mobile and manufactured homes, including those located within and outside manufactured home parks.

Mobile/manufactured housing in selected cities in the state of Washington.

City	2013 Population Estimate	Estimated Housing Units, All Types, 2013	Mobile Homes (includes Manufactured Homes)	
			Estimated Units, 2013	2013 Percent of All Types
Seattle	626600	309205	1234	0.4%
Spokane**	211300	94793	1512	1.6%
Tacoma	200400	86195	245	0.3%
Vancouver	164500	70006	1705	2.4%
Bellevue	132100	56433	182	0.3%
Kent	120500	42763	1519	3.6%
Everett	104200	44770	1350	3.0%
Renton	95540	39006	928	2.4%
Yakima	92620	35085	2069	5.9%
Spokane Valley**	91490	38973	2641	6.8%
Federal Way**	89720	36321	1406	3.9%
Bellingham**	82310	36015	1128	3.1%
Kirkland	81730	33701	128	0.4%
Kennewick	76410	28915	2479	8.6%
Auburn	73235	29085	2720	9.4%
Pasco	65600	19296	1623	8.4%
Marysville*	62100	22846	1342	5.9%
Lakewood	58310	27023	1596	5.9%
Redmond	55840	24874	392	1.6%

City	2013 Population Estimate	Estimated Housing Units, All Types, 2013	Mobile Homes (includes Manufactured Homes)	
			Estimated Units, 2013	2013 Percent of All Types
Shoreline	53670	22135	81	0.4%
Richland	51150	21277	682	3.2%
Lacey	44350	18007	871	4.8%
Lynnwood*	35960	14713	494	3.4%
Bothell*	34460	14218	1444	10.2%
Port Angeles	19120	9382	269	2.9%
Mill Creek	18600	8074	29	0.4%
Ellensburg	18370	7740	135	1.7%
Tumwater*	18300	8384	636	7.6%

* Cities with a mobile/manufactured home park comprehensive plan designation
** Cities with recent proposed mobile/manufactured home park comprehensive plan policies or designations
Source: American Community Survey 2009-2013 estimates.

Bothell
Policy HHS-P11 of the Imagine Bothell…Comprehensive Plan's (2015) Housing and Human Services Element links retaining existing mobile/manufactured home parks throughout the city to affordable housing, and provides a Mobile Home Park Overlay zone as a means to achieve the objective. A Mobile Home Park Overlay zoning classification is described in Bothell Municipal Code section 12.04.100. Like Spokane, the development standards in Bothell for mobile/manufactured home parks (Chapter 12.08 of the Bothell Municipal Code) require a minimum park size of ten acres.

Lynnwood
Policy LU-28 of the Land Use Element provides for land use regulations for mobile and manufactured home parks that "shall allow for the continued viability, maintenance and upgrading of existing parks" (2015, p. 2.17). The Housing Element describes a regulation and incentive approach to reduce "redevelopment pressures" (2015, pp. 7.9-7.10). Policies H-9, H-26 and H-31 discuss the role of manufactured home parks in providing affordable housing and the City's efforts to encourage their long-term preservation.

Accordingly, the Lynnwood Municipal Code contains a Mobile Home Park Zone (Chapter 21.71), with eight listed permitted uses as well as several conditional and accessory uses. The Code also provides a minimum site size of three acres and a maximum density of six units per net acre (Lynnwood Municipal Code 21.70.500). Prior to adopting current zoning regulations, the City tried an incentive program to allow landowners the option of reduced property taxes if they agreed not to close a manufactured home park for five years, but it is not clear that there was any interest in the program.

Marysville
The City's draft Housing Element cites a "dramatically lower" local average sale price as a reason manufactured homes there are most likely to be affordable compared to other housing types (2015, p. 5-40). Policy HO-5 provides support for development and preservation of mobile home parks. The draft

Land Use Element describes twelve locations for a mobile home park overlay designation (out of 17 parks) and lists the overlay zone and incentives as reasonable measures to increase residential capacity. Policy LU-28 specifies "land use regulations shall allow for the continued viability, maintenance and upgrading of existing parks" (2015, p. 2.17).
Section 22C. 230.030 of the Marysville Municipal Code provides a mobile/manufactured home park zone and lists five types of permitted uses. Marysville's development standards require a minimum of three acres for a manufactured home park, with a maximum density of eight units per gross acre (MMC section 22C.230.050).

Other Communities
Snohomish County and the City of Tumwater have similar provisions in their comprehensive plans and codes as the cities of Bothell, Lynnwood and Marysville. The City of Seattle requires a relocation report and plan in provisions dating from the year 1990, detailed in Seattle Municipal Code section 22.904.420. The relocation report and plan are also components of the City of Tumwater's regulations. Other communities that may be considered in future research are other county jurisdictions and those communities within Spokane's regional housing market in Kootenai County, Idaho.

Manufactured Home Park Zoning and Case Law Consideration of Its Effect on Private Property
If the City Council were to adopt the proposed Comprehensive Plan text amendment, one possible implementation measure would involve the possible creation in Spokane of a manufactured home park zoning district which could be applied to existing manufactured home parks in order to increase the stability of the continuation of the current land use, or extend the period of time required for its conversion to another land use that would displace residents.

In the year 2012, the U.S. Ninth Circuit Court of Appeals upheld development regulations that established a manufactured home park zone in Tumwater, Washington. *Laurel Park Community v. City of Tumwater*, No. 11-35466 (9th Cir., Oct. 29, 2012). A copy of the case is included in the Appendix. The case involved the city of Tumwater's zoning district, applied to six of its manufactured home parks and equipped with a "safety valve" for the zoning to revert to its previous zoning upon the property owner's demonstration to the city council either that (1) the landowner has no reasonable use of their property under the zoning, or that (2) uses authorized by the zoning are not economically viable at that location (Tumwater Municipal Code Chapter 18.49, section 18.49.070).

Although the plaintiffs in the *Tumwater* case raised a number of theories before the district court, they limited their appeal to the 9th Circuit to three claims: a federal takings claim, a state takings claim, and a state substantive due process claim. Plaintiffs failed to establish that Tumwater's ordinances, on their face, effected a taking or constituted undue oppression. The most fundamental reason why that was so was that the plaintiffs offered very little evidence of economic effect resulting from enactment of the ordinances. They could continue to use the properties just as they had chosen to do for years; and the new zoning ordinances contained a safety valve pursuant to which plaintiffs could pursue other uses if the authorized uses were not economically viable. The court also considered a challenge that the regulations of individual parks amounted to illegal spot zoning, and found the regulations did not constitute spot zoning because they bore a substantial relation to the general welfare of the community.

For an opposing legal analysis on establishing mandatory manufactured housing zoning, the Appendix includes a copy of an article titled "Manufactured Housing Community Zoning: A Legal Analysis," prepared for Manufactured Housing Communities of Washington by Bill Clarke, Attorney at Law. This article was prepared before the 9th Circuit's decision on the Tumwater ordinances, but it provides an informative analysis of the various theories that would be raised in a facial or as applied of a mandatory manufactured home park zoning in Spokane. Also included in the Appendix is a copy of a document titled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property," dated December 2006 and prepared by the Washington State Attorney General's Office.

Formerly Enacted Protections Overturned: Park Owner Provision of Relocation Funds and Right of First Refusal

The implementation of the manufactured park zone as a response to mobile/manufactured home park closures arose in part because of the evolution of legislation that included two key prior failed attempts in Washington during preceding decades to protect residents in manufactured home parks. The Ninth Circuit U.S. Court of Appeals's (2012) *Tumwater* opinion gave the following summary of these events on pp.12963-12964:

> The Washington legislature responded to the large number of park closures by enacting, first, the Mobile Home Relocation Assistance Act, Wash. Rev. Code § 59.21, 1989 Wash. Sess. Laws, ch. 201. "When a mobile home park is closed, this law requires the park owner to contribute money toward the tenants' relocation costs." *Guimont v. Clarke*, 854 P.2d 1, 3 (Wash. 1993). The Washington Supreme Court held that "the Act is unduly oppressive and violates substantive due process." *Id.* at 16. The court invalidated the law in its entirety. *Id.* at 16-17.
>
> Next, the Washington legislature enacted a law that "gives mobile home park tenants a right of first refusal when the park owner decides to sell a mobile home park." Manufactured Hous., 13 P.3d at 185 (citing Wash. Rev. Code § 59.23.025 (2000)). The Washington Supreme Court invalidated that law, too, this time holding that "the statutory grant of a right of first refusal to tenants of mobile home parks[] amounts to a taking and transfer of private property." *Id*. at 196. Although some protections for owners of mobile homes remain on the books in Washington, they are mostly procedural, such as the requirement that, before closure of a mobile home park, the park's owner must give at least 12 months' notice to all residents of the park [RCW 59.21.030].

Household Income Terms and Housing Trends

The application for this Comprehensive Plan text amendment discusses the relationship between preservation of manufactured home parks and providing an affordable housing option to lower-income residents in the city of Spokane. The glossary of the City of Spokane Comprehensive Plan provides the following definitions for these terms:

> **Affordable Housing** Adequate, appropriate shelter (including basic utilities) costing no more than 30 percent of a household's gross monthly income or up to 2.5 times the annual income. Standard is used by federal and state governments and the majority of lending institutions. (Glossary, p. 1). (Note: Calculations for annual income times 2.5 apply

to the original principal amount for which there is a financial commitment, such as a mortgage, for an owned housing unit.)

Family For purposes of census tabulations, a family consists of a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption (U.S. Census Bureau) (Glossary, p. 3).

Household A household includes all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (U.S. Census Bureau).

Household Income The total of all the incomes of all the people living in a household.

Low-Income Housing Economically feasible housing for families whose income level is categorized as low, using the standards set by the Department of Housing and Urban Development (HUD). (Glossary, p. 5).

The area median income used for Fair Market Rents, Section 8 income limits, the Washington State Housing Trust Fund, and other programs uses a HUD calculation based partly on the American Community Survey 5-year estimates for median family income. The base year used for the current estimate is from the 2008-2012 American Community Survey, which provided the estimated median household income for the city of $42,274 and the median family income estimate of $54,500. However, these figures are both lower than the area median income, which is instead based on higher estimates for the entire county.

The U.S. Department of Housing and Urban Development (2015) calculates the median family income estimate for a family of four for FY 2015 at $64,500 for the Spokane, WA Metropolitan Statistical Area. For a household of one person living alone, the low (80% median) income limit is $36,150, and for a two-person family, it is $41,300.

Spokane County Senior Citizen Property Tax Relief in Manufactured Home Parks

The Washington Department of Revenue (2014) reported 10,229 total participants of senior citizen property tax relief on levies due in 2014 in Spokane County. The attached Manufactured Homes & Senior Tax Exemptions – City of Spokane document reports that 279 households within manufactured home parks in the city had a total annual household income less than $35,000, based on Spokane County Assessor data. Household types may be either family (comprised of related people) or nonfamily (with only one householder or unrelated roommates), but in either case, the households with Senior Citizen property tax relief are below the low-income limit, and are categorized as low using the HUD standards.

These data verify that low-income households exist in manufactured home parks in Spokane. Indeed, the correlation between low-income households and manufactured home parks is positive, because the rate of Senior Citizen exemptions in manufactured home parks (23.8%) is more than three times the rate on

individual parcels with single-family residences (7.1%), the latter of which is by far the most prevalent form of housing in the city. For the housing units to be considered "affordable" to low-income households (using the monthly calculation for the term provided in the Comprehensive Plan), the cost of housing must be less than $904 per month.

Local Trends in Affordable Housing

The Affordable Housing Advisory Board and other partners conducted a 2015 Housing Needs Assessment (Washington Department of Commerce, 2015), reporting on affordable housing availability in the state, with a forecast locally at the county and urbanized area levels. The report predicts slightly more affordable housing will become available by year 2019 to the zero-percent-to-30-percent and zero-percent-to-50-percent median family income populations by 2019, both in the Spokane Urbanized Area and in Spokane County overall. The report used federal, state and housing authority data on affordable housing.

The Washington Center for Real Estate Research (University of Washington) (reported in City of Spokane Consolidated Plan, 2015, p. 29) conducted surveys of multifamily residences larger than five units. The surveys indicated a general trend over a six-year period of rising rents (to an average of $749/month) and declining vacancies (to 3.4 percent) in these units in Spokane.

Mobile/Manufactured Home Park Preservation Stakeholder Group

Below are listings of the group members and the suggestions of the group members at meetings and some of the alternatives suggested by Plan Commission members who comprised a subcommittee in participation of the meeting. This report provides notes from the group meetings of stakeholders as Attachments 3 and 4.

Name	Organization	Meeting Attendance	
		June 17	July 9
Gary Griglak	Cascade Manufactured Home Community (Landowner)	X	
Stanley Schwartz	Attorney for Cascade Manufactured Home Community	X	X
Robert Cochran	Contempo Manufactured Home Community and Manufactured Housing Communities of WA (Landowner's Association)	X	X
Buck Buchanan	Shrine Park Association (Sans Souci West) (Landowner)	X	
Jay Smith	Shrine Park Association (Sans Souci West)		X
Nathan Smith	Attorney for Shrine Park Association (Sans Souci West)	X	X
Ishbel Dickens	National Manufactured Home Owners Association (NMHOA)	X	X
Kylin Parks	National Manufactured Home Owners Association (NMHOA)	X	
Randy Chapman	Association of Manufactured Home Owners (AMHO)	X	X
Brenda Bailey	Cascade Home Owners' Association	X	
Jerry Bailey	Cascade Home Owner	X	
Doug Saty	Bud and Doug's Mobile Home Service LLC	X	X

Suggested Alternatives Developed by Stakeholder Group and Subcommittee		Source
Original Proposal	LU 1.X Mobile Home Parks *Designate appropriate areas for the preservation of mobile and manufactured home parks.* **Discussion:** Manufactured and/or Mobile Home Parks provide affordable housing to many City residents. In many cases, they provide the opportunity of home ownership to households which cannot afford to purchase other types of housing. When existing manufactured home parks are redeveloped, many homeowners are unable to move their homes to other sites. Additionally, redeveloped mobile and manufactured home parks are generally not replaced by new parks within the City, resulting in a net loss of this type of housing.	Application
1. Proposed Policy Alternative 1:	H 1.X Mobile and Manufactured Home Park Incentives *Examine potential incentives for the maintenance and development of mobile and manufactured home parks.* **Discussion:** Mobile and manufactured homes provide an affordable housing option for some of the city's residents. The City should explore the feasibility of using incentives to encourage preservation of existing manufactured and/or mobile home parks and the development of new manufactured and/or mobile home parks.	N. Smith, 6/17/2015, discussion by staff
2. Proposed Policy Alternative 2:	H 1.X Housing in Mobile and Manufactured Home Parks *Adopt appropriate criteria for the maintenance and/or development of mobile and manufactured home parks as one means of ensuring an adequate stock of affordable housing.* **Discussion:** Manufactured and/or mobile home parks can provide affordable housing to many city residents. In many cases, they provide the opportunity of home ownership to households which cannot afford to purchase other types of housing. The City should develop a set of criteria to determine opportunities for preservation and development of manufactured and/or mobile home parks. Criteria to consider may be the occupancy rate of the park, the age and condition of the housing stock, the location of the park, whether the park serves seniors, and the demand for manufactured and/or mobile homes in the city of Spokane.	D. Burnett, 6/17/2015, discussion by staff
3. Proposed Policy Alternative 3:	H 1.X Housing in Mobile and Manufactured Home Parks *Encourage through incentives the development and maintenance of (manufactured/)mobile home parks as a type of affordable housing.* **Discussion:** Mobile and manufactured home parks provide diverse housing for a variety of income classes. To encourage the development and retention of affordable housing in these communities, the City should explore and consider the use of economic and land use incentives to encourage the preservation of existing and development of new mobile and manufactured home parks.	S. Schwartz, 7/9/2015
4. Alternative Action:	Reject proposed policy of LU 1.X as unneeded and unnecessary;	R.

Suggested Alternatives Developed by Stakeholder Group and Subcommittee		Source
	the application does not contain enough information to go forward and is not consistent with the City of Spokane Comprehensive Plan.	Cochran, 7/9/2015
5. Alternative Action:	Further develop policy for Manufactured Housing overall and potentially purchase a park that the City wants to protect.	Some stakeholder group members, 7/9/2015
6. Alternative Action:	Make an assessment, based on available metrics, of the condition of housing of all types in Spokane. Compare the results with the housing goals in the Comp Plan and make recommendations for remediating areas of deficiency. Areas for focus should include evaluations of the state of low income housing of all types, the state of in-fill housing toward the city center, the effectiveness of efforts to control of sprawl, an evaluation of the need for additional protections and preservation incentives for mobile and manufactured homes and other forms of housing that can meet affordable housing criteria, and an assessment of the need for changes to SMC 17C.345 regarding Manufactured Homes and Manufactured Home Parks (ie. 10 acre minimum park size, only new manufactured homes on individual lots).	Some stakeholder group members, 7/9/2015, summarized by J. Dietzman 7/15/2015
7. Voluntary Down Zoning Coupled with Incentives, M/MH Parks	<u>Example of Alternate LU 1.X Mobile and Manufactured Home Parks</u> *Establish a designation that would be available for M/MH Parks, and link this designation to incentives that will encourage the preservation of existing M/MH Parks and the establishment of new M/MH Parks.* <u>Example of Alternate H 1.X Housing in Mobile and Manufactured Home Parks</u> *Encourage through incentives the development and preservation of M/MH Parks as a type of affordable housing, with the incentives linked to a long term commitment to keep the land use as M/MH Parks.*	J. Dietzman, 7/24/2015

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Attachment 1: Washington State Law on Mobile Home Park Closures

Pursuant to the Revised Code of Washington (RCW) 59.20.080, a notice of closure must be given to the director and all tenants of a mobile home park in writing at least 12 months before the intended closure date. Notice must also be posted at all park entrances.

RCW 59.21.030 lists the following requirements in regards to these notices:

- The closure notice must be included with all month-to-month rental agreements signed after the park closure notice date.
- Notice to the director must include:
    - A "good faith estimate" for the removal of mobile homes.
    - The reason for the closure.
    - A list of names and mailing addresses of all current registered park tenants.
    - Notice to the director must be sent within ten business days of the notice sent to tenants.
- The notice must be recorded in the Auditor's Office where the park is located.

Park owners are not required to give tenants an opportunity to purchase the park before they can sell the land. Older mobile homes that are forced to relocate "may not be required by any city or county to comply with requirements of any applicable fire, safety or construction code for the sole reason of its relocation."[1]

Relocation Assistance

The Department of Commerce must mail every tenant an application and information on relocation assistance within ten business days of receipt of the park closure notice.[2]

Per RCW 59.21.021, low income tenants are eligible for relocation assistance on a first come, first serve basis. In the statute, low income is defined as a "single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the mobile or manufactured home is located."[3]

Assistance is provided on a reimbursement basis; meaning tenants pay the cost up-front and are reimbursed by the Department of Commerce once they have received a receipt of the costs.[4] The maximum that a person or family can receive for relocation assistance is $7,500 for a single-wide and $12,000 for a double-wide.[5]

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[1] RCW 59.21.105 (2).
If the mobile home has been "substantially remodeled or rehabilitate," or there is a change in the original occupancy classification of the home, then this code waiver does not apply.
[2] RCW 59.21.030 (2).
[3] RCW 59.21.021 (1).
[4] RCW 59.21.050.
[5] RCW 59.21.021 (3).

Attachment 2: Manufactured Homes & Senior Tax Exemptions – City of Spokane

Analysis by Blaine Stum, Legislative Assistant to City Council Member Jon Snyder

In the state of Washington, seniors and disabled people 61 years old and above who earn a certain amount of annual income can be exempt from real property taxes.[6] In order to qualify for an exemption, the following criteria must be met:

- Level 'A' Exemption: Total household income between $0-$25,000.
- Level 'B' Exemption: Total household income between $25,001-$30,000.
- Level 'C' Exemption: Total household income between $30,001-$35,000.

Current data from the Spokane County Assessor's Office show a total of 279 households in manufactured homes *within parks* receive this exemption.[7] The exemptions break down as follows:

- 198 Level 'A' Exemptions.
- 44 Level 'B' Exemptions.
- 37 Level 'C' Exemptions.

Our last annual survey shows 1,174 units in manufactured home parks in the city of Spokane. This means that at least 23.7 percent of all manufactured homes in the city of Spokane are occupied by people ages 61 and above with household incomes of $35,000 or less.[8] A vast majority of these exemptions (70.9%) are for households with an income between $0 and $25,000.

Data from the Spokane County Assessor's Office on non-manufactured homes in the city receiving an exemption break down as follows:

Housing Type	Parcels	With Exemption	% W/ Exemption
Single Family Residence	61,642	4,383	7.1%
Condos	2,206	150	6.8%
Duplex	3,358	66	1.9%
Other	No Data	8	N/A

Conclusion: *Individuals who occupy manufactured homes in the city of Spokane are more likely to be seniors/disabled and have lower household incomes than people within the general population of the city.*

[6] Chapter 84.36 RCW. The amount that one is exempt from depends on which "level" of exemption they qualify for.

[7] A total of 306 households in manufactured homes receive the exemption, but for purposes of this analysis the 27 units that are not within a manufactured home park are not being considered.

[8] The actual amount of households in manufactured homes who qualify for the exemption is likely higher than the number of people receiving the exemption.

ATTACHMENT 3
NOTES FROM MOBILE/MANUFACTURED HOME PARK PRESERVATION STAKEHOLDER GROUP
JUNE 17, 2015 - COUNCIL BRIEFING CENTER

INTRODUCTION

Purpose of Meeting: To obtain input from landowners, tenants and service providers on our comprehensive plan policy amendment. Discuss implementation alternatives of the proposed policy, alternative policy wording and implications, and supporting information for policy development.

Round Table Stakeholder Introductions:		
o **Brenda Bailey**, Cascade Homeowners Association President	o **Jerry Bailey**, Cascade Manufactured Home Community Resident	o **Blaine Stum**, City of Spokane
o **Doug Saty**, Bud & Doug's Transport, Bennett Trucking	o **Nathan Smith**, Witherspoon Kelley, for Shrine Park Assoc.	o **F.J. Dullanty, Jr.**, City Plan Commission
o **Buck Buchanan**, Shrine Park Association	o **Kylin Parks**, National Manuf. Home Owners Assoc.	o **Randy Chapman**, WA Assoc. of Manufactured Home Owners
o **Robert Cochran**, Contempo MHP and Manuf. Housing Communities of WA	o **Gary Griglak**, Cascade Manuf. Home Community	o **Stanley Schwartz**, Witherspoon Kelley, for Cascade Manuf. Home Community
o **Ishbel Dickens** (by phone), National Manuf. Home Owners Assoc.	o **Nathan Gwinn**, City of Spokane	o **Melora Sharts**, City of Spokane
o **Dave Burnett**, Community Assembly Liaison to City Plan Commission	o **Dennis Dellwo**, City Plan Commission	

Meeting Ground Rules were provided to the group on the reverse side of the agenda and reviewed.
Preferred date and time of second meeting, if needed: July 9 at 4:00 PM

REVIEW OF THE POLICY AND ITS INTENT

Comprehensive Plan Amendment Application to Adopt New Policy

B. Stum reviewed the proposed policy language. He explained that it the policy would add an extra layer of scrutiny to closures of parks to supplement inadequate State regulations. He made clear that the policy's intent isn't to say these mobile home parks can never be redeveloped. Instead, the intent is to provide that a comprehensive plan land-use plan map amendment would be required as opposed to sudden closure.

Following questions and comments from the group, B. Stum clarified that the text amendment does not create any prohibition to a future rezone, but that process is not yet defined. Other jurisdictions have imbedded in ordinance opportunity if landlord is losing money to come back and demonstrate to the City Council that the property is losing money.

However, the typical process for amending the City Comprehensive Plan can be uncertain and lengthy, as demonstrated by this subject application, tied to multiple other map amendments, which are simultaneously processed and considered by the City Council. The proposal came to council members from primarily local residents of manufactured homes. Part of a development code was shared by Association of Manufactured Home Owners but was not used by the applicant. Instead, it was decided

to do more legwork to look up how parks close and what State regulations are. The purpose of the stakeholder group meeting is to get input from park owners and home owners as well.

S. Schwartz remarked that we have a very extensive regulatory system that is unique in Washington: not a boilerplate state statute. Point to state law—this isn't good enough, what is the problem we're trying to fix?

F.J. Dullanty identified a need for a list of closures and new parks since adoption of current land use code and GMA comprehensive plan in the 1990s. When was the last MHP closed? Albertsons (2000). Before that park closed, what was the year the next previous park closed? Is it possible to have a new mobile home park in the city? Criteria is so difficult, requires so much land, zoning. Review and understand: if we're looking at affordable housing, how difficult is it to create a new manufactured home park? If it's not cost-effective, then we can never have affordable housing that way.

Implementation in Other Jurisdictions

N. Gwinn reviewed City of Bothell comprehensive plan policy from 2010, including policy HO-P11 special land-use designation, HO-P12, explore other strategies to maintain manufactured home parks. Change of use requires prior review and amendment to the comprehensive plan. He also reviewed the City of Seattle's regulations that date to the early 1990s, requiring an approved relocation report and plan before eviction notices go into effect—another approach to closing parks.

OVERVIEW OF REQUIREMENTS IN STATE LAW GOVERNING CLOSURE OF PARKS

B. Stum provided an overview of RCW 59.20.080 notice of closure to all the tenants if closing or redeveloping park for any purpose: it must be provided 12 months in advance. Notices must be included in several visible locations and there are several other requirements. Beyond these requirements, park owners aren't required to negotiate with tenants to let them buy the park. Older relocated homes get a waiver from complying with fire or other codes. The State Department of Commerce notifies tenants of the availability of relocation assistance, provided to only to low-income households (80 percent area median income) and maximum reimbursements of $7,000 for a single-wide home and $12,000 for a double-wide.

S. Schwartz-Only the relocation assistance relates to low-income households. The City does not assist.

D. Saty related his experience working with residents in two city park closures, and three closures in the county. At the time homes weren't required to be upgraded; the biggest problem now is finding parks in the city that will take them. The County has snow load requirements. There is a lack of family parks: most are 55 and older – problem with trying to get families established in the city.

I. Dickens remarked that a vast majority of home owners, 80 percent of manufactured homes are not moved or not movable. Meanwhile, money in the State Relocation Fund is not constantly available because it ebbs and flows. R. Cochran stated that the State Department of Commerce has confirmed with Manufactured Housing Communities of Washington that 60 percent do get relocated (not the vast majority that don't get moved). D. Saty said he has not had major problems with moving older homes in the 35 years he has been involved, leaving him to believe that the 80 percent number was incorrect.

N. Smith stated that the closure of a manufactured home park is extraordinarily important as the problem the City is trying to correct, and may help identify some other means we can address or correct the situation.

I. Dickens said that 18 states have closure notice laws – some are longer and others shorter than Washington, which is in the middle or slightly above the middle – not the best, some reasonable protections, some have more protections.

N. Smith said he is interested in the facts around this. Show some factual data from Commerce. Who takes relocation funds, who gets relocated to a different spot, how exactly do we approach this from an actual case-by-case basis, what were the funds used in the Albertson's mobile home park closure in 2000?

The Department of Commerce only tracks closures that go through this formal process, and do not know about Finish Line (located in the city of Spokane and closed for a highway interchange by the Department of Transportation) or another park located in the city of Cheney, because they didn't go through the process.

N. Smith: Voluntary park closures have different circumstances.

F. Dullanty said that at the Albertson's park, consultants Jack Geraghty and his wife (Kerry Lynch) were hired by the new property owner. Relocation program rolled out funds with Department of Community Development. Have good information – would be helpful. Get ahold of them. The system worked well, people didn't need as much money as they thought, use of consultant paid money when it was due, information for how much was needed to effectively relocate these units.

K. Parks shared her experience after being served a 12-month notice, where she waged a preservation effort and 98 homes were preserved: The reason was proving that it was more affordable to keep in place than to lose it. When an owner is responsible and puts out the relocation money ahead of time, and then state reimburses the owner, that is one possibility. However, a lot of community owners are not willing to do that. In the case of a park closure in Kirkland right now, the property owner is not willing to do that. It is hard for a homeowner to shell out $12,000 to either find place to move it or move to dump. They would probably be on government subsidy if they lose everything. That is how they were able to save her community: realizing savings of State social services, saving transportation and other intangible costs. County and the housing trust fund got involved, Housing Authority of Snohomish County, posted bond when entered into purchase and sale agreement with the property owner, who made a profit.

S. Schwartz: City of Spokane could put together such a program if people want to pay for it.

B. Stum reviewed data concerning a property tax exemption for Seniors in Spokane: addressed at 26 percent of households in manufactured home parks. So many incentives available to you.

D. Saty: Defend for individual homeowners and individual stress they go through to relocate. Folks in their 60s – especially in 55+ parks – relocating so stressful compared to relative ease of closing the park. Moving their homes, leaving their community.

R. Cochran shared thoughts about inverted statistics where majority of manufactured homes are in community in the city of Spokane. No one makes them live in a park. Why do they? City's policies have been so restrictive that brand new only are allowed outside of parks. City policies: if people want to live in a manufactured home, their only choice is to live in 55+ year older community. City has made this

problem itself. Why not a 2-acre, 3-acre requirement for a community? Rebuild community. It sounds like we're only talking about larger parks. And parks by law can't deny an older home based on its age.

I. Dickens shared information about a proposal by Manufactured Housing Communities of WA, two or more years ago, to amend the State Growth Management Act so that new manufactured home parks could be built outside areas outside of growth boundaries. At the time she offered three conditions to support the proposal: (1) that the land would be zoned as a mobile home park district when built, (2) that there be an opportunity for homeowners or nonprofit to purchase, and (3) if there was some kind of rent-fairness built into it. With these conditions in place, as the cities expand in the future, land could remain as manufactured housing communities. She did not know if anyone at Manufactured Housing Communities of WA would ever agree to the conditions. If areas could be found in the city of Spokane that could hold 10 to 20 homes and they could live there without fear of eviction, then I. Dickens would be right behind R. Cochran.

D. Burnett: Comments under review of existing comprehensive plan policy. From an economic perspective, doesn't seem that if this is really about affordable housing, doesn't make sense to freeze current supply without relaxing the restrictions on new supply. From a policy perspective, it doesn't make sense to go through all the hoops to amend the existing comprehensive policy on mobile home parks if we don't in fact have a comprehensive policy on mobile home parks. We'll go through the same amount of effort for this one small piece when we could have a much more comprehensive piece that really addresses affordable housing which is an issue at this time.

EXISTING MANUFACTURED HOME PARKS IN THE CITY OF SPOKANE

The inventory of existing manufactured home parks in the City of Spokane were reviewed, particularly the larger parks. Preliminary results of the housing conditions survey were shared. A comment was shared that the parks were located on the periphery of the city, also speaking to the preferential zoning to keep them out.

REVIEW OF EXISTING COMPREHENSIVE PLAN POLICY

The proposed policy and existing policies in the Comprehensive Plan were reviewed:

- Land Use Goal 1 Citywide Land Use
- Housing Goal 1 Affordable Housing
- Housing Goal 2 Housing Choice and Diversity
- Housing Goal 3 Housing Quality

There is a lot of overlap and support in the adopted policies (passed out) for the proposed policy.

- Policy H 3.3 Housing Preservation: the existing condition of manufactured housing is viable, for the most part. Housing destroyed cannot be replaced elsewhere at the same cost level. The policy may be interpreted in a number of ways.
    - Talk about homes being destroyed, but with MHP relocations only loss is in most cases (60 percent of homes can be moved) is the place where the home goes.
    - Disposal of units containing asbestos is costly, which could be addressed on a state level with regard to the Department of Ecology's requirements for disposal.
- Policy H 1.9 Low-Income Housing Development is not on the table. The proposed legislation is not support, as viewed from the private property owner's perspective.
- Policy H 1.16 Partnerships to Increase Housing Opportunities. Incentive programs authorized by law that City has not taken advantage of. Instead, zoning practices do not allow used manufactured homes on individual lots.

- Policy H 2.2 senior housing uses the word "encourage:" it doesn't say restrict or take.
- The proposed policy does not mirror the comprehensive approach by these policies presented in the Comprehensive Plan.
- H 3.5 Housing Goal Monitoring. Has annual report ever been prepared? The City should take a look at what housing looks like universally. Important to look at goal and ask whether this is a preferred alternative.

Could the proposed policy be dropped? At a series of meetings, Plan Commission could vote to recommend to approve, modify or reject the proposal. Report with the Commission's recommendation or, if a split vote, a minority report, could lead to a whole discussion on affordable housing generally in the city. These options are available to Plan Commission and ultimately City Council.

FACILITATED GROUP DISCUSSION OF PROPOSED POLICY

Alternative Policy Wording:

- The group could consider specifying areas for preservation in the policy language.
- Seven units/acre thought to be the minimum for a manufactured home park, and this is not an appropriate residential infill development density.
- The policy is isolated to preserving existing parks, and doesn't deal with new or prospective manufactured home parks.
- The policy does not deal with the issue of eminent domain, where the City may decide it needs a currently designated MHP property—it restricts private property and use only, leaving public needs unrestricted.
- Can the language be tweaked or is it frozen? The text might be shifted in a way that allows us to move forward.
- Staff could submit alternative language more in tune with current policies and GMA based on workshops like this.
- N. Smith: Suggestion for text change to proposed policy:

  ((~~Designate appropriate areas~~)) Develop incentives for the ((~~preservation~~)) maintenance and development of mobile and manufactured home parks.
- Shouldn't place restrictive burden on existing parks. What will the City do in terms of cooperation or encouragement if a developer wants to develop a manufactured home park?
- D. Burnett suggested:

  Designate appropriate ((~~areas~~)) criteria for the ((~~preservation~~)) maintenance and promotion of mobile and manufactured home parks as one means of ensuring an adequate stock of affordable housing.
- We came to this situation because cities failed to provide protections to prevent closures. It is positive to include other measures but not at the expense of it.

Policy Considerations:

- Use of a "carrot" approach rather than a "stick" approach to regulatory policy.
- Must consider holistically. Is it compliant with the Comprehensive Plan if policy H 3.5 annual progress report hasn't been complied with regard to the annual report on the quality of the existing housing stock?
- How difficult is it to move homes? If the structure has been altered, or if cost efficiency wasn't there, a demolition crew will be called instead of moving the home.

Incentive Ideas:

- The City of Lynwood tried an incentive program encouraging retention before adopting the mobile home park zone: under the program, landowners could volunteer to keep their parks for five years during which time they were given tax breaks in return. No one signed up to take advantage of the voluntary incentive program. Why?
- Utilities or loan funds might offer significant savings, or the five-year time period might be extended to a longer time period.
- A deterrent might be that at the end of the classification period, the property owner would have to pay back taxes for a defined period, similar to the current-use property tax exemption.
- There is potential in including other aspects or programs as part of a bucket full of options, in I. Dickens's opinion. A ten-year period without change in use is sufficient to stimulate homeowner investment, and there is real potential in other options. Pilot projects, aging in place projects at particular parks, social services, public-private partnerships.
- Consider the conditions that cause parks to close. Expendable communities, unprofitable communities, market demand for more intense uses available. Discussion should include what would precipitate a closure—it's not apparent for a large park such as Contempo. A wide range of reasons: crime, dilapidation, underlying land use, but why would you go through the heartache. What could City put together to facilitate a closure prevention – incentives to help avoid, reduced utilities for serving an affordable housing population. Homeowners borrow from to fix problems, zero-interest loan.
- A program similar to the CDBG-funded single family rehab program using city funds. (Federal funds are already overprescribed and are getting smaller—there is a lot more need than funds available. Cannot be counted on to receive funds readily.)

WRAP UP

ATTACHMENT 4
NOTES FROM MOBILE/MANUFACTURED HOME PARK PRESERVATION STAKEHOLDER GROUP
JULY 9, 2015 - CITY HALL CONFERENCE ROOM 3B

Attendees:		
o **Robert Cochran**, Contempo MHP and Manuf. Housing Communities of WA	o **John Dietzman**, City Plan Commission	o **Gail Prosser**, City Plan Commission
o **Doug Saty**, Bud & Doug's Transport, Bennett Trucking	o **F.J. Dullanty, Jr.**, City Plan Commission	o **Stanley Schwartz**, Witherspoon Kelley, for Cascade Manuf. Home Community
o **Nathan Smith**, Witherspoon Kelley, for Shrine Park Assoc.	o **Jay Smith**, Shrine Park Association	o **Ishbel Dickens**, National Manuf. Home Owners Assoc. and WA Assoc. of Manufactured Home Owners
o **Randy Chapman**, WA Assoc. of Manufactured Home Owners	o **Nathan Gwinn**, City of Spokane	o **Melora Sharts**, City of Spokane
o **Blaine Stum**, City of Spokane		

ALTERNATIVE POLICY WORDING AND POTENTIAL IMPLEMENTATION METHODS: COMPARISON/DISCUSSION

Original Proposal

Proposed Policy LU 1.X Mobile Home Parks

Designate appropriate areas for the preservation of mobile and manufactured home parks. [discussion]

Suggested Alternatives

Proposed Policy Alternative 1:

H 1.X Mobile and Manufactured Home Park Incentives
Examine potential incentives for the maintenance and development of mobile and manufactured home parks.
Discussion: Mobile and manufactured homes provide an affordable housing option for some of the city's residents. The City should explore the feasibility of using incentives to encourage preservation of existing manufactured and/or mobile home parks and the development of new manufactured and/or mobile home parks.

This policy language was suggested by N. Smith at the June 17th meeting as a carrot approach to what the City is driving at with the initial draft of the policy. S. Schwartz pointed out that the first sentence of the discussion paragraph can be read to imply that all manufactured housing is affordable, which is false, which is why his proposed alternative (#3) restates it in a different way.

Proposed Policy Alternative 2:

H 1.X Housing in Mobile and Manufactured Home Parks

Adopt appropriate criteria for the maintenance and/or development of mobile and manufactured home parks as one means of ensuring an adequate stock of affordable housing.

A number of criteria were listed under proposed policy alternative number 2, such as considering the occupancy rate of the park, age and condition of housing stock and various other factors weighing into whether that park serves to assure an adequate stock of affordable housing, without programming a change to development regulations. Nothing in the second paragraph discusses the size of a manufactured home park, which is considered unrealistic to obtain under an existing minimum requirement of ten acres for a new manufactured home park; a change to the minimum might be added to the policy to direct a change to the code. A recommendation might be sufficient to change this minimum, rather than mention in the policy. The policy also does not indicate what to do next, once the criteria are adopted. N. Smith suggested the two ideas—criteria and incentives—might be linked and combined to decide which of the parks merit incentives. A reservation expressed was that the term criteria might be construed to include zoning. To avoid a one-sided implementing ordinance, the policy should not be effective until a well-vetted procedure for implementing it is developed. The process may lead to development in the meantime of a toolkit for addressing affordable housing.

R. Cochran linked the relatively small supply of manufactured housing in Spokane to the City's history of prejudice against that form of housing as a reason for a small number of individual manufactured homes located on lots outside mobile home parks. F.J. Dullanty posed the question of what percentage do other cities have? Mr. Cochran thought that about 9 percent of households statewide are manufactured homes. What restrictions are there for placing a manufactured home on a lot? Do we know why we have a policy limiting manufactured homes to new? Could we as an incentive take that prohibition out, and say manufactured homes after a defined date that meet all code requirements may be relocated to a different lot?

With regard to the percentage of housing stock, N. Smith suggested that a determination or decision should be addressed as to whether the city is deficient in manufactured housing: maybe this could be addressed through the annual housing monitoring report called for in Comprehensive Plan Policy H 3.5 Goal Monitoring. The report might identify targets for types of portions of the housing stock.

M. Sharts related that a local problem for housing developers is finding available land that is developable. Rather than dictate a housing type percentage, policies enabling incentives and ways to have it easier to be an option would be more productive. Might be helpful to talk about policy things. Other considerations beyond manufactured housing exist for achieving affordable housing goals. The report could guide the policy that's being proposed; we missed a step. Will decision makers consider the proportion of manufactured housing relative to the other types of housing sufficient to use City resources to address the problem?

The City changed requirements over time for moving homes from a manufactured home park to a single-family residential setting; at one time a manufactured home placed on an individual lot outside a mobile home park was required to be less than ten years old, then five years, then the person needed special approval, and now it is new. As it is now so restrictive, people have to seek 5- or 10-acre lots outside the city. When did the age requirement change?

Some group members felt the proposed policy alternatives #1 and #2 (and #3, listed below under Other Suggestions) may not be appropriately placed under Goal H1 Affordable Housing, but may more appropriately fit under goals H2 Housing Diversity or H3 Housing Quality.

Other Suggestions

Proposed Policy Alternative 3:

H 1.X Housing in Mobile and Manufactured Home Parks
Encourage through incentives the development and maintenance of (manufactured/)mobile home parks as a type of affordable housing.
Discussion: Mobile and manufactured home parks provide diverse housing for a variety of income classes. To encourage the development and retention of affordable housing in these communities, the City should explore and consider the use of economic and land use incentives to encourage the preservation of existing and development of new mobile and manufactured home parks.

I. Dickens outlined conditions to protect the homeowner tenants that would be necessary for encouraging development of new manufactured housing communities: (1) the new communities should be zoned as a manufactured home park, (2) homeowners should have option to purchase when the community is sold, and (3) there is some balancing of stabilization of rent. Testimony from landowners suggests that manufactured home parks are purchased with the hope that they will become more valuable as another land use, so the homeowners need these protections to assure a longer security of tenure for their investment in that location.

S. Schwartz stated that the use of the term "economic" and land use incentives, invokes statutes to help encourage more affordable development in the manufactured home park. Land use incentives include bonuses or non-cost options that could be enacted. In addition to creating incentives, disincentives could be identified if there is a shortage of places to provide manufactured housing. A section in the lease of lots at a manufactured home park in Cheney offers an option to purchase the lot if the tenant wants.

Protections for new buyers in a park include a required notification on a lease that must be signed by the community owner and tenant before anyone moves in. Not many communities in this state have been built with offering the buyer the option to purchase. The kind of security of tenure desired by those that the National Manufactured Homeowners Association is what Tumwater, Lynwood and others have already done; this would support the landlord to operate the business and sell it, while giving the tenant sufficient security of tenure. This includes the use exception if it is demonstrated to the city that there is no longer an economically viable use.

The policy alternative language would suggest incentives only if it's affordable housing, rather than for all manufactured home residents. It would be voluntary the owner to designate a portion of parks affordable and the city could create incentives, such as for energy saving retrofits. The incentives could be extended to other forms of housing that were designated affordable. R. Cochran mentioned that if an escalation clause was present in the landowner's park, any savings in utility assessments or taxes would be required to be passed onto the tenants, thereby not benefitting the landowner or serving to incentivize participation in the program. The degree of prevalence of such escalation clauses was disputed. There was some support for expanding the policy alternative language to include other forms

of housing, but to look at the remainder of the housing policy chapter to make sure these provisions aren't already existing adopted policy. It was also suggested to remember to incorporate manufactured housing on individual lots, outside of mobile/manufactured home parks, in an incentives policy.

> Alternative Action to Adopting the Proposed Policy:
>
> Reject proposed policy of LU 1.X as unneeded and unnecessary; the application does not contain enough information to go forward and is not consistent with the City of Spokane Comprehensive Plan.

R. Cochran suggested this alternative because there is not enough information and the original goal of the application states it wants to protect residents of manufactured home parks from potential relocation as a result of landowner sales. If that is a public policy issue and the landowner should be responsible for it, then a policy should be developed that the entire citizenry of Spokane deals with it. A policy could be developed to independently evaluate and encourage manufactured housing, but not with the program advanced by outside organizations. It appeared obvious to Mr. Cochran that larger parks were being studied for issues, while a smaller six-unit park on Crestline was closed without discussion.

> Alternative Action to Adopting the Proposed Policy:
>
> Further develop policy for Manufactured Housing overall and potentially purchase a park that the City wants to protect.

Other communities have preserved manufactured home parks from closure or conversion by buying them. This approach would be unprecedented for the City of Spokane.

Incentives and disincentives may be identified to encourage not only preservation of existing housing but use of manufactured housing by developers of new housing. State level incentives include real estate excise tax exemptions for manufactured home parks sales to nonprofit organizations or to homeowners' associations, and more incentives are being explored in this vein to continue to encourage preservation. State funds may be available to such nonprofits for parks that meet criteria such as an affordable housing requirement. The State Housing Trust Fund has diminished in value to less than half of what it was historically.

NEXT PROCESS STEPS: POSSIBLE SCENARIOS

The Plan Commission could decide at an upcoming workshop to take the proposal to public hearing. Additional options include placing the topic on a future work plan for further and broader study in the context of affordable housing, including studying the link between the proposal and affordable housing objectives. Another area of interest is data regarding trends in demand for manufactured housing.

A significant oversight mentioned was the annual housing report under City Comprehensive Plan Policy H 3.5, Housing Goal Monitoring.

WRAP UP: REQUEST CONSENSUS OR CALL FOR CONCERNS

The stakeholder group was unable to reach a consensus for recommendation to the Plan Commission for proceeding.

Attachment 5: Appendix

These three documents are contained within the following appendix to this report.

A. *Laurel Park Community v. City of Tumwater*, No. 11-35466 (9th Cir., Oct. 29, 2012)

B. "Manufactured Housing Community Zoning: A Legal Analysis," prepared for Manufactured Housing Communities of Washington by Bill Clarke, Attorney at Law.

C. "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property," prepared by the Washington State Attorney General's Office, December 2006.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAUREL PARK COMMUNITY, LLC, a Washington limited liability company; TUMWATER ESTATES INVESTORS, a California limited partnership; VELKOMMEN MOBILE PARK, LLC, a Washington limited liability company; and MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON, a Washington nonprofit corporation, *Plaintiffs-Appellants,* v. CITY OF TUMWATER, a municipal corporation, *Defendant-Appellee.*	No. 11-35466 D.C. No. 3:09-cv-05312-BHS OPINION

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted
August 8, 2012—Seattle, Washington

Filed October 29, 2012

Before: John T. Noonan, Susan P. Graber, and
Johnnie B. Rawlinson, Circuit Judges.

Opinion by Judge Graber

COUNSEL

Philip A. Talmadge, Talmadge/Fitzpatrick PLLC, Tukwila, Washington, for the plaintiffs-appellants.

Jeffrey S. Myers, Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., Olympia, Washington, for the defendant-appellee.

Daniel A. Himebaugh, Pacific Legal Foundation, Bellevue, Washington, for the amicus curiae.

OPINION

GRABER, Circuit Judge:

Defendant City of Tumwater enacted two ordinances that seek to preserve the existing stock of manufactured home

parks within the municipality by limiting the uses of certain properties. Plaintiffs are three of the affected property owners —Laurel Park Community, LLC; Tumwater Estates Investors; and Velkommen Mobile Park, LLC—and a nonprofit entity, Manufactured Housing Communities of Washington. Plaintiffs allege that the ordinances, on their face, violate various constitutional provisions. The district court held that the facial constitutional challenges fail and granted summary judgment to Defendant. On de novo review, *Strategic Diversity, Inc. v. Alchemix Corp.*, 666 F.3d 1197, 1205 (9th Cir. 2012), we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Manufactured Homes*

The term "manufactured homes" describes a type of housing that typically is not constructed at the installation site. *See generally* Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol*, 35 U.C.L.A. L. Rev. 399 (1988). Originally called "mobile homes," early versions were no more than travel trailers hitched to the back of a car. Mobile homes can be moved from one site to another, allowing the owner to change locations without changing housing.

Over time, however, the predominant use of this type of housing began to shift toward a more fixed use. Occupants installed a "mobile" home in a fixed location and lived in it year-round. In 1974, recognizing that these homes were more akin to permanent dwellings than to travel trailers, Congress enacted the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. No. 93-383, 1974 S. 3066, §§ 601-628 (now codified at 42 U.S.C. §§ 5401-5426). That statute authorized the Department of Housing and Urban Development to regulate the construction and safety of mobile homes. In 1980, Congress replaced nearly all references to

"mobile home" with "manufactured home." Pub. L. No. 96-399, § 308(c).

As the Supreme Court has noted, "[t]he term 'mobile home' is somewhat misleading." *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992).

> Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved.

Id.; *see also Manufactured Hous. Cmtys. of Wash. v. State*, 13 P.3d 183, 206 (Wash. 2000) (Talmadge, J., dissenting) ("Mobile homes are not mobile. The term is a vestige of earlier times when mobile homes were more like today's recreational vehicles. Today mobile homes are designed to be placed permanently on a pad and maintained there for life." (internal quotation marks omitted)).

The Supreme Court has described the typical arrangement between a mobile home's owner and a mobile home park's owner:

> A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping.

Yee, 503 U.S. at 523; *see also Manufactured Hous.*, 13 P.3d at 206 (Talmadge, J., dissenting) ("In most instances a mobile home owner in a park is required to remove the wheels and

anchor the home to the ground in order to facilitate connections with electricity, water and sewerage." (internal quotation marks omitted)).

Given the "site-specific improvements," *Yee*, 503 U.S. at 523, and the fact that "mobile homes are designed to be placed permanently on a pad and maintained there for life," *Manufactured Hous.*, 13 P.3d at 206 (Talmadge, J., dissenting), it is not surprising that the costs of relocating a mobile home are very high. "Once 'planted' and 'plugged in,' [mobile homes] are not easily relocated." *Id.* (internal quotation marks omitted). For example, "[p]hysically moving a double- or triple-wide mobile home involves unsealing; unroofing the roofed-over seams; mechanically separating the sections; disconnecting plumbing and other utilities; removing carports, porches, and similar fixtures; and lifting the home off its foundation or supports." *Id.* (internal quotation marks omitted).

Because they cost less than traditional homes (less even than rental housing in some circumstances), manufactured homes are an attractive option for lower-income and poorer residents. "Mobile home residents are typically poorer than the average rental household, with incomes lower by one-third." *Id.* at 207 (internal quotation marks omitted).

The combination of those factors—the "immobility of mobile homes," *id.* at 206, the resulting high costs of relocation, the fact that mobile home owners typically do not own their pads, and the limited financial resources of many owners of mobile homes—has led to a well-documented problem when the owner of a mobile home park wants to convert the property to a different use:

> The effects on mobile home owners . . . faced with moving because mobile home park owners . . . want to convert a mobile home park to another use can be devastating. A home owner owns the mobile home,

> but only rents the land on which it sits. Closure and conversion of a mobile home park force the owner either to move, or to abandon what may be his most valuable equity investment, a mobile home, to the developer's bulldozer. Displacement from a mobile home park can mean economic ruin for a mobile home owner.
>
> . . . .
>
> . . . [Moreover,] there is a major shortage of space for mobile homes. Thus the owner who needs to rent a lot for his mobile home has no choice but to enter the "park owner's market" in which the demand for space far exceeds the supply of available lots.

Id. at 206-07 (citations and internal quotation marks omitted).

As a result, many states and municipalities have enacted laws aimed at protecting owners of manufactured homes. Those actions, though, often impinge on the property rights of the owners of mobile home parks, sometimes to such a degree that the legislation amounts to a constitutional violation.

In the state of Washington, an average of 5.8 mobile home parks closed every year between 1989 and 2002. That average rose to 14 park closures per year between 2003 and 2008. The number of closures is not surprising, given the high level of residential development during those years. As some of the Plaintiffs here candidly admit, one investment strategy for mobile home parks is to purchase land located in the path of development. The rental income from the mobile home pads provides steady income and, if the land's value rises as development surrounds the park, the park's owner can sell the land or convert it to other, more profitable uses, such as multi-family housing.

The Washington legislature responded to the large number of park closures by enacting, first, the Mobile Home Reloca-

tion Assistance Act, Wash. Rev. Code § 59.21, 1989 Wash. Sess. Laws, ch. 201. "When a mobile home park is closed, this law requires the park owner to contribute money toward the tenants' relocation costs." *Guimont v. Clarke*, 854 P.2d 1, 3 (Wash. 1993). The Washington Supreme Court held that "the Act is unduly oppressive and violates substantive due process." *Id.* at 16. The court invalidated the law in its entirety. *Id.* at 16-17.

Next, the Washington legislature enacted a law that "gives mobile home park tenants a right of first refusal when the park owner decides to sell a mobile home park." *Manufactured Hous.*, 13 P.3d at 185 (citing Wash. Rev. Code § 59.23.025 (2000)). The Washington Supreme Court invalidated that law, too, this time holding that "the statutory grant of a right of first refusal to tenants of mobile home parks[ ] amounts to a taking and transfer of private property." *Id.* at 196. Although some protections for owners of mobile homes remain on the books in Washington, they are mostly procedural, such as the requirement that, before closure of a mobile home park, the park's owner must give at least 12 months' notice to all residents of the park. Wash. Rev. Code § 59.21.030.

B. *Tumwater's Ordinances*

Tumwater contains ten manufactured home parks. The parks are located throughout Tumwater, and none appears to border any other park. Three of the parks are very small and do not have a name apart from their respective addresses. The remaining seven are named Laurel Park, Tumwater Mobile Estates, Velkommen, Eagles Landing, Western Plaza, Thunderbird Villa, and Allimor Carriage Estates.

Against the backdrop of increasing closures of manufactured home parks in Washington and the limited constitutionally valid statutory protections, the Tumwater City Council began hearing concerns from residents that some of the own-

ers of Tumwater manufactured home parks had plans to close. Tumwater residents expressed their views at several public meetings. Mobile home owners tended to seek protection from park closures, while park owners tended to emphasize respect for private property and the legal limits on property restrictions.

The City Council ultimately enacted two ordinances. Ordinance No. O2008-027 amended the Tumwater Comprehensive Plan and the Tumwater Zoning Map. Ordinance No. O2008-009 amended the Tumwater City Code. The ordinances create a new Manufactured Home Park land use designation ("MHP") and a new Manufactured Home Park zone district.

The ordinances designate six of the ten existing Manufactured Home Parks—Laurel Park, Tumwater Mobile Estates, Velkommen, Eagles Landing, Western Plaza, and Thunderbird Villa—under the new land use designation and include those properties, and only those properties, as the new Manufactured Home Park zone district. Before the enactment of the ordinances, the zoning code permitted a wide range of uses on the properties, including multi-family residences and other dense types of development. The ordinances restrict those uses in the following relevant ways.

First, the ordinances specify certain "permitted uses," which are allowed as of right: manufactured home parks, one single-family dwelling per lot, parks, trails, open spaces, other recreational uses, family child care homes, and child mini-day care centers. Second, the ordinances specify 11 "conditional uses," which are allowed via a discretionary conditional use permit: churches, wireless communication facilities, cemeteries, child day care centers, schools, neighborhood community centers, neighborhood-oriented commercial centers, emergency communications towers, group foster homes, agriculture, and bed and breakfast establishments. Third, the ordinances permit still other uses if specified criteria are met:

"The City Council may approve the property owner's request for a use exception if the property owner demonstrates a. they do not have reasonable use of their property under the MHP zoning; or b. the uses authorized by the MHP zoning are not economically viable at the property's location."

The stated "intent" of the ordinances is: "The Manufactured Home Park (MHP) zone district is established to promote residential development that is high density, single family in character and developed to offer a choice in land tenancy. The MHP zone is intended to provide sufficient land for manufactured homes in manufactured home parks."

The ordinances include many explanations for the creation of the new land use designation and zone district and the inclusion of existing manufactured home parks in the district. Most relevant here, the ordinances state that applying the new designation and zone district to existing manufactured home parks is consistent with a wide range of goals and policies included in various documents, such as the Tumwater Comprehensive Plan. They also state that:

- "applying the Manufactured Home Park land use designation and zone district to existing manufactured/mobile home parks will help to ensure a sufficient supply of land for these types of uses in the future"

- "manufactured home parks are a source of affordable single family and senior housing in Tumwater," and "protecting manufactured home parks from the pressures of development will help to maintain the existing stock of manufactured housing provided by these 'parks.' "

- "the manufactured/mobile home parks known as Eagles Landing, Laural [sic] Park, Tumwater Mobile Estates, Thunderbird Villa, Velkommen,

and Western Plaza are located within residential neighborhoods and currently have residential zoning and are easily recognized as traditional manufactured housing communities."

- "applying the Manufactured Home Park zone to the six traditional mobile/manufactured home parks . . . is consistent with [a stated policy] to support healthy residential neighborhoods which continue to reflect a high degree of pride in ownership or residency" and "is consistent with [a stated policy] to support the stability of established residential neighborhoods"

The ordinances exclude the three small, unnamed parks, in part because "the small size of these three 'parks' does not foster a sense of community or neighborhood, and the owners of these three small 'parks' appear to own all of the dwellings located on the properties which contrasts sharply with the rest of the more traditional mobile/manufactured home parks in Tumwater where the majority of dwellings are not owned by the land owner." The ordinances excluded the seventh named park—Allimor Carriage Estates ("Allimor")—because it "is currently the only mobile/manufactured home park within Tumwater that is zoned General Commercial, the only 'park' that is almost completely surrounded by General Commercial zoning, and the only 'park' that abuts intensive commercial development in the form of commercial strip development and intensive large scale commercial retail including Albertsons, Costco, and Fred Meyer."

C. *Procedural History*

The owners of three of the six newly designated Manufactured Home Parks—Laurel Park, Tumwater Estates, and Velkommen—along with the nonprofit Manufactured Housing Communities of Washington, filed this action in federal

district court.[1] Plaintiffs allege that the enactment of the ordinances violated their constitutional rights under several theories. The district court granted summary judgment to Defendant on all claims and entered final judgment. Plaintiffs timely appeal.

DISCUSSION

Although Plaintiffs raised a number of theories before the district court, they have limited their appeal to three claims: (1) a federal takings claim, (2) a state takings claim, and (3) a state substantive due process claim.[2]

A. *Federal Takings Claim*

The Fifth Amendment provides, "nor shall private property be taken for public use, without just compensation." There are two types of "per se" takings: (1) permanent physical invasion of the property, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); and (2) a deprivation of all economically beneficial use of the property, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015-16 (1992). Plaintiffs do not contend that the ordinances constitute a "per se" taking. They argue, instead, that the ordinances constitute a regulatory taking because the ordinances go "too far." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

[1]Plaintiffs also filed a petition for review with the state administrative agency, alleging certain state-law violations. The agency found that Defendant had violated certain state-law provisions but declined to reach, for lack of jurisdiction, the constitutional issues. Those administrative proceedings are not part of this appeal.

[2]Plaintiffs also argue that the district court abused its discretion by granting a motion to quash certain notices of deposition filed by Plaintiffs. *See Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813 (9th Cir. 2003) (holding that we review for abuse of discretion a district court's decision on a motion to quash). We hold that the district court did not abuse its discretion. The evidence sought is either known to Plaintiffs or is irrelevant to the facial challenges.

[1] As a general rule, zoning laws do not constitute a taking, even though they affect real property interests: "[T]his Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests. Zoning laws are, of course, the classic example, which have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 125 (1978) (citations omitted); *see Pa. Coal*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *see also Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (holding that, in considering a regulatory taking case, "we must remain cognizant that 'government regulation—by definition—involves the adjustment of rights for the public good' " (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)).

[2] Nevertheless, as noted, regulations that go "too far" constitute a taking. Determining whether a regulation goes too far requires a court to engage in "essentially ad hoc, factual inquiries." *Penn Cent.*, 438 U.S. at 124. "[R]egulatory takings challenges are governed by the standards set forth in [*Penn Central*]." *Lingle*, 544 U.S. at 538. "Primary among [the relevant] factors are [1] the economic impact of the regulation on the claimant and, particularly, [2] the extent to which the regulation has interfered with distinct investment-backed expectations. In addition, [3] the character of the governmental action . . . may be relevant in discerning whether a taking has occurred." *Id.* at 538-39 (citation, internal quotation marks, and brackets omitted). "[T]hese three inquiries . . . share a common touchstone. Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Id.* at 539.

At the outset, we note that Plaintiffs bring a *facial* challenge. It is not clear that a facial challenge can be made under

Penn Central. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118 & n.32 (9th Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 2455 (2011). As we did in *Guggenheim*, we will "assume, without deciding, that a facial challenge can be made under *Penn Central*." *Id.* at 1118. We turn, then, to the three *Penn Central* factors.

1. *"Economic Impact of the Regulation on the Claimant"*

[3] Plaintiffs offer very little evidence of economic effect resulting from enactment of the ordinances. At best, Plaintiffs have presented information that reflects an economic loss of less than 15% with respect to one of the three Plaintiff properties and *no effect* on the other two Plaintiff properties or the properties of the remaining affected MHP parks.[3] Although there is no precise minimum threshold, Plaintiffs' evidence is of very little persuasive value in the context of a federal takings challenge. *See, e.g.*, *Cienega Gardens v. United States*, 331 F.3d 1319, 1343 (Fed. Cir. 2003) (holding that a taking occurred when a regulation effected a 96% loss of return on equity). A small decrease in value, for only one affected property, falls comfortably within the range of permissible land-use regulations that fall far short of a constitutional taking. *See Penn Cent.*, 438 U.S. at 125 ("[T]his Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests."). The Supreme Court cases "uniformly reject the proposition that diminution in property value, standing alone, can establish a 'taking,' see *Euclid v.*

[3]The one Plaintiff property that showed a decrease in value was Velkommen. Various reports and assessments—operating under different background assumptions—valued the park: One report assigned a pre-ordinance value of $2.7M and a post-ordinance value of $2.4M (11.1% decrease); one assessment assigned a pre-ordinance value of $1.8M and a post-ordinance value of $1.6M (11.1% decrease); and a final report assigned a pre-ordinance value of $1.675M and a post-ordinance value of $1.45M (13.4% decrease). The other two Plaintiff properties showed no change pre-ordinance and post-ordinance (with appraised values of $6.3M and $4.37M, respectively).

Ambler Realty Co., 272 U.S. 365 (1926) (75% diminution in value caused by zoning law); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (87 1/2% diminution in value)." *Penn Central*, 438 U.S. at 131.

[4] In sum, the minimal economic effect of the ordinances does not support a takings claim.

2. *"Distinct Investment-backed Expectations"*

[5] When Plaintiffs bought the properties, they had the expectation that, when they desired or when market conditions made it attractive, they could convert to a more profitable use, such as multi-family housing or housing developments. The zoning laws previously allowed such development, and the ordinances now foreclose that option (at least until Plaintiffs show that there are no economically viable options available under the other uses expressly permitted by the ordinances). But those facts are no different than the assertions that could be made by property owners adversely affected by any zoning law. As the Supreme Court wrote in *Penn Central*, "the submission that [the plaintiffs] may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable. Were this the rule, this Court would have erred [in many of its previous takings cases]." *Id.* at 130. Of most importance, Plaintiffs retain the ability to continue operating the properties as manufactured home parks. "So the law does not interfere with what must be regarded as [Plaintiffs'] primary expectation concerning the use of the parcel." *Id.* at 136. In other words, although the ordinances affected one of Plaintiffs' expectations—that at some indefinite time in the future they could convert their properties to some other specific uses—the ordinances did not affect Plaintiffs' "primary expectation."

In *Guggenheim*, we held that " '[d]istinct investment-backed expectations' implies reasonable probability, like

expecting rent to be paid, not starry eyed hope of winning the jackpot if the law changes." 638 F.3d at 1120. In our view, the ordinances at issue here fall between the two poles used in that example. Plaintiffs' expectation of converting their properties is speculative to a degree, because it depends on future events (chief among them, market forces making conversion economically attractive). But it is not as speculative as "winning the jackpot if the law changes," because it depends only on unknown future economic trends, not an outright change in law. Our clarification later in the same paragraph provides a means of assessing Plaintiffs' expectations here: "Speculative possibilities of windfalls do not amount to 'distinct investment-backed expectations,' unless they are shown to be probable enough materially to affect the price." *Id.* at 1120-21. As discussed above, the speculative possibility of converting the properties to another use had *little to no effect* on price.

[6] This factor, too, fails to support a takings claim.

3. *"The Character of the Governmental Action"*

"[T]he character of the governmental action—for instance whether it amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good—may be relevant in discerning whether a taking has occurred." *Lingle*, 544 U.S. at 539 (internal quotation marks omitted). The government generally cannot " 'forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' " *Id.* at 537 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

[7] Although it is a close call, we agree with Plaintiffs that the character of the governmental action here slightly favors their takings claim. The intent and effect of the ordinances are to require only Plaintiffs and the other affected owners of

manufactured home parks to continue to provide the public benefit (manufactured home parks), when the benefit could be distributed more widely (for example, by providing relocation assistance to owners of manufactured homes or a larger MHP zone district). The ordinances do allow many other uses but, at least at the moment, those other uses do not appear to provide truly economically attractive alternatives to the existing manufactured home parks. As a practical matter, Plaintiffs must continue to use their properties as manufactured home parks. Indeed, that was the intended effect of the ordinances.

[8] That analysis goes only so far, however. Unlike in other cases where the challenged law *required* continued operation of an existing use, *e.g.*, *Cienega Gardens*, 331 F.3d at 1338-39, the ordinances here do not *force* Plaintiffs to continue operating their properties as manufactured home parks. *See Lingle*, 544 U.S. at 537 (holding that the government cannot "forc[e] some people alone to bear public burdens"). As just a few examples, Plaintiffs could decide to close their parks, to convert their properties to other allowed uses, or to sell the properties, and the ordinances have no effect on those possibilities.

4. *Conclusion*

[9] Because the first two factors weigh strongly against a takings claim and the third factor weighs only slightly in favor of a takings claim, we conclude that, on their face, the ordinances do not constitute a taking under the Fifth and Fourteenth Amendments. *See also Guggenheim*, 638 F.3d at 1120 (holding that the first two factors are the "primary" factors to consider; the character of the governmental action is not on equal footing).

B. *State Takings Claim*

Plaintiffs next argue that, even if the ordinances do not constitute a taking under the Federal Constitution, the ordinances

nevertheless effect a taking under the state constitution.[4] Article I, section 16 of the Washington Constitution provides, in relevant part: "No private property shall be taken or damaged for public or private use without just compensation having been first made . . . ."

Commentators have asserted that the Washington Supreme Court cases that interpret that provision are confusing and that discerning the applicable analytical framework is difficult. Roger D. Wynne, *The Path Out of Washington's Takings Quagmire: The Case for Adopting the Federal Takings Analysis*, 86 Wash. L. Rev. 125 (2011); Jill M. Teutsch, Comment, *Taking Issue with Takings: Has the Washington State Supreme Court Gone Too Far?*, 66 Wash. L. Rev. 545 (1991); Richard L. Settle, *Regulatory Taking Doctrine in Washington: Now You See It, Now You Don't*, 12 U. Puget Sound L. Rev. 339 (1989); *see also Guimont v. City of Seattle*, 896 P.2d 70, 75-76 (Wash. Ct. App. 1995) (describing the doctrine as "the complex, confusing and often-ethereal realm of theoretical law that has developed in Washington under the taking clause"). Quagmire or not, we need not wade far into this area of Washington law, because Plaintiffs advance only two specific arguments—both leaning heavily on the Washington Supreme Court's decision in *Manufactured Housing*—concerning state takings law. We turn to that case.

[10] In *Manufactured Housing*, 13 P.3d at 185, the Washington Supreme Court considered the constitutionality of a state law that "g[ave] qualified tenants a right of first refusal to purchase a mobile home park."[5] The court held that "a right

[4]The district court did not analyze this issue. Because this is a pure issue of law that the parties have briefed fully, we decide it on the merits. *Bibeau v. Pac. Nw. Research Found. Inc.*, 188 F.3d 1105, 1111 n.5 (9th Cir. 1999).

[5]The court described the act as follows:

> To exercise a right of first refusal, the tenants must organize into a "qualified tenant organization" and give the park owner

of first refusal, even one created by statute, can create an interest in property." *Id.* at 192. The court reasoned that "[a] right of first refusal to purchase is a valuable prerogative, limiting the owner's right to freely dispose of his property by compelling him to offer it first to the party who has the first right to buy." *Id.* (internal quotation marks omitted). Citing a treatise, the court concluded that "the right to grant first refusal is a part of 'the bundle of sticks' which the *owner* enjoys as a vested incident of ownership." *Id.* at 193 (footnote omitted). "Property is not one single right, but is composed of several distinct rights, which each may be subject to regulation. The right of property includes four particulars: (1) right of occupation; (2) right of excluding others; (3) right of disposition, or the right of transfer in the integral right to other persons; (4) right of transmission." *Id.* (internal quotation marks and brackets omitted). Accordingly, "the statute deprives park owners of a fundamental attribute of ownership." *Id.* at 194; *see also id.* ("The instant case falls within the rule that would generally find a taking where a regulation deprives the owner of a fundamental attribute of property ownership.").

> written notice of "a present and continuing desire to purchase the mobile home park." Once the park owner has received such notice, the park owner must notify the tenants of any agreement to sell the park to a third party, as well as disclose the agreement's terms. If the park owner fails to properly notify the qualified tenant organization, a pending third party sale is voidable.
>
> Upon receiving proper notice, the tenants have 30 days in which to pay the park owner two percent of the third party's agreed purchase price and to tender a purchase and sale agreement as financially favorable as the agreement between the owner and the third party. If the tenants meet these requirements within the 30-day period, the park owner must sell them the park. If, however, the tenants fail to meet these requirements or if, in the case of seller financing, the owner determines selling the park to the tenants would create a greater financial risk than selling to the third party, the owner may proceed with the sale to the third party.

Manufactured Hous., 13 P.3d at 185 (citations and footnotes omitted).

[11] The court held, additionally, that "we are persuaded that a taking has occurred in this case not only because an owner is deprived of a fundamental attribute of ownership, but also because this property right is statutorily *transferred*" to the park residents, who can exercise the right of first refusal. *Id.* "[T]he actual effect of [the statute] is more closely akin to the exercise of eminent domain . . . because the property right is not only taken, but it is statutorily transferred to a private party for an alleged public use." *Id.*

[12] Plaintiffs first argue that the ordinances have destroyed one of the sticks in the bundle representing a fundamental property right, by depriving the parks' owners of the right to dispose of their property as they choose and effectively conferring control of that right on the tenants. We disagree. As an initial matter, the ordinances here do not at all limit the owners' ability freely to *dispose* of the property. Indeed, one owner appears to have sold his property.

[13] The ordinances restrict to some extent the owners' ability to *use* their properties, because they can no longer build multi-family housing, for example. But imposing *use* restrictions on property—as distinct from restrictions on alienation—is the essence of zoning. The Washington Supreme Court consistently has defined the fundamental attributes of property rights by reference to rights that do *not* include the free use of the property. *See id.* at 193 (identifying the fundamental rights of occupation, excluding others, disposition, and transmission); *see also Guimont*, 854 P.2d at 10 ("[T]he court must first ask whether the regulation destroys or derogates any fundamental attribute of property ownership: including the right to possess; to exclude others; or to dispose of property."); *Presbytery of Seattle v. King County*, 787 P.2d 907, 912 (Wash. 1990) ("[T]he court should ask whether the regulation destroys one or more of the fundamental attributes of ownership—the right to possess, to exclude others and to dispose of property."). Indeed, concerning *use*, the court has defined a fundamental attribute of property only with respect

to being able to make *some economically viable use* of the property. *See, e.g.*, *Guimont*, 854 P.2d at 10 ("[A]nother 'fundamental attribute of property' appears to be the right to make *some* economically viable use of the property."). Plaintiffs do not argue, of course, that the ordinances deprive them of all economically viable uses; they are instead being encouraged to continue the economically viable use that they freely chose. In sum, the ordinances do not destroy or limit any fundamental property right as defined by the Washington Supreme Court.

Plaintiffs' other argument is that a taking has occurred because some property right has been transferred to the parks' residents. As an initial matter, it is unclear whether this alternative argument is viable. The court's discussion of the statutory transfer issue in *Manufactured Housing* appears to be premised on its finding of a fundamental property right: "[W]e are persuaded that a taking has occurred in this case not only because an owner is deprived of a *fundamental* attribute of ownership, but also because *this* property right is statutorily *transferred*." 13 P.3d at 194 (first emphasis added). In any event, Plaintiffs' argument fails on its own terms.

In *Manufactured Housing*, the statute granted the right of first refusal *to the parks' residents*. Accordingly, the residents —and only the residents—could exercise that valuable property right. Here, the residents have no ability—now or in the future—to require the parks' owners to perform any act. Nothing prohibits the owners from converting their properties to one of the many permitted uses under the ordinances (such as a cemetery, bed and breakfast, day care center, recreational facility, or single-family dwelling) or from selling to a third party. If a park owner so chose, the residents would be powerless to affect that decision.

[14] We therefore hold that the ordinances do not constitute a taking under the Washington Constitution.

C. *State Substantive Due Process Claim*

[15] Finally, Plaintiffs argue that the ordinances violate their state substantive due process rights. Article I, section 3 of the Washington Constitution states: "No person shall be deprived of life, liberty, or property, without due process of law."

> To determine whether the regulation violates due process, the court should engage in the classic 3-prong due process test and ask: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the land owner. In other words, 1) there must be a public problem or "evil," 2) the regulation must tend to solve this problem, and 3) the regulation must not be unduly oppressive upon the person regulated. The third inquiry will usually be the difficult and determinative one.

Presbytery, 787 P.2d at 913 (footnotes and some internal quotation marks omitted).

The first prong is "whether the regulation is aimed at achieving a legitimate public purpose." *Id.* The stated "intent" of the ordinances is: "The Manufactured Home Park zone district is established to promote residential development that is high density, single family in character and developed to offer a choice in land tenancy. The MHP zone is intended to provide sufficient land for manufactured homes in manufactured home parks." That stated purpose is quintessentially legitimate: the organization of land uses to promote the public goals of "high density, single family" development and a "choice in land tenancy." This prong is easily met. *See, e.g.*, *Guimont*, 854 P.2d at 14 (concluding, with little discussion, that "aid[ing] mobile home owners with relocation expenses

when a mobile home park is closed" is a legitimate public purpose).

The second prong is "whether [the law] uses means that are reasonably necessary to achieve that purpose." *Presbytery*, 787 P.2d at 913. In *Guimont*, the Washington Supreme Court held:

> Certainly, providing mobile home owners with relocation assistance would be a reasonably necessary step in achieving the Act's purpose. The more difficult issue here is whether it is reasonably necessary to require the assistance to be paid by the closing park owner. To assist in determining whether these means used by the Act are reasonably necessary in all regards, we must turn to the third due process question, that of undue oppression.

854 P.2d at 14.

[16] A similar analysis applies here. The zoning changes encourage the continued provision of manufactured home parks, which is "[c]ertainly" a reasonably necessary step in achieving the ordinances' purpose. "The more difficult issue here is whether it is reasonably necessary to require" that development to be provided only by some of the present-day park owners. *Id.* Plaintiffs have a point that the provision of certain types of housing may be considered a burden that should be borne more generally by the public. As in *Guimont*, the answer to the reasonableness of the law depends on "the third due process question, that of undue oppression." *Id.*; *see also Presbytery*, 787 P.2d at 913 ("The third inquiry will usually be the difficult and determinative one.").

> We determine if a statute is unduly oppressive by examining a number of nonexclusive factors to weigh the fairness of the burden being placed on the property owner:

> On the public's side, the seriousness of the public problem, the extent to which the owner's land contributes to it, the degree to which the proposed regulation solves it and the feasibility of less oppressive solutions would all be relevant. On the owner's side, the amount and percentage of value loss, the extent of remaining uses, past, present and future uses, temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation and how feasible it is for the owner to alter present or currently planned uses.

Guimont, 854 P.2d at 14-15 (internal quotation marks omitted).

[17] Here, we conclude that the two most important factors are the fact that the present-day effect on Plaintiffs' property values is little to none and the fact that Plaintiffs may continue to use their properties as they have been used for decades. It is true that Tumwater's solution is not necessarily the most efficient and that it concentrates the economic burden on a relatively small number of property owners. It is also true that the regulation is permanent (at least until future speculative amendments). But, when all is said and done, the amount of harm is very small or nonexistent. In each case described by Plaintiffs in which the Washington Supreme Court has found a due process violation, the amount of measurable harm has been great. *See Guimont*, 854 P.2d at 15-16 (concluding that the relocation-assistance statute violated substantive due process because it imposed a fee of $7,500 per pad on a park owner who wished to close, which would amount to $750,000 for a park with 100 pads); *Sintra, Inc. v. City of Seattle*, 829 P.2d 765, 776-77 (Wash. 1992) (holding that imposition of a $218,000 fee to develop a $670,000 property was unduly oppressive).

[18] In this regard, we consider it important that Plaintiffs have chosen to raise a *facial* challenge. If a particular Plaintiff

could show a significant diminution in value of a particular parcel of property, then the weighing of the factors might be different. As it stands, however, the fact that Plaintiffs have presented no evidence of diminution of value, apart from one park that suffered a loss in value of less than 15%, severely undermines their claim that, *on their face*, the ordinances are unduly oppressive. It would be odd to conclude that an ordinance that had no economic effect on most properties was oppressive at all, let alone unduly oppressive. For those reasons, we hold that the ordinances do not violate Washington principles of substantive due process.

Under the heading of substantive due process, Plaintiffs also argue that the ordinance is illegal "spot zoning": "that an individual piece of property was singled out for zoning incompatible with neighboring property." *Buckles v. King County*, 191 F.3d 1127, 1137 (9th Cir. 1999).[6] As an initial matter, it is unclear whether a party can raise a "spot zoning" challenge in the context of a facial challenge to ordinances; we have found no Washington cases that involve a *facial* "spot zoning" challenge. We assume, without deciding, that a facial "spot zoning" challenge is viable.

[19] "Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan." *Save Our Rural Env't v. Snohomish County*, 662 P.2d 816, 819 (Wash. 1983). There is no "hard and fast rule that all spot zoning is illegal." *Id.* "[T]he main inquiry of the court is whether the zoning action bears a substantial rela-

[6]"Spot zoning" "is variously characterized as a substantive due process violation, a taking, or even an equal protection violation; spot zoning does not neatly fit into one category." *Buckles*, 191 F.3d at 1137. In the absence of any objection, we accept, for purposes of analysis, Plaintiffs' characterization of their spot zoning claim.

tionship to the general welfare of the affected community." *Id.* For all the reasons discussed above, there is little doubt that the ordinances bear a substantial relationship to the general welfare of the community. Other than the original Washington "spot zoning" decision in 1969, *Smith v. Skagit County*, 453 P.2d 832 (Wash. 1969), in which the court held that placing an aluminum processing plant on an island constituted illegal spot zoning, Plaintiffs cite no case in which the Washington courts have found illegal spot zoning. *See Save Our Rural Env't*, 662 P.2d at 819 (holding that no illegal spot zoning occurred where a new "business park zoning classification provides a flexible means to broaden the industrial base of the region and to produce energy and travel time savings for employees"); *Bassani v. Bd. of Cnty. Comm'rs*, 853 P.2d 945, 951 (Wash. Ct. App. 1993) (holding that there was no illegal spot zoning where the zoning was "generally consistent" with the relevant plans and was "good for the county, and good for one of the county's major employers"). We thus reject Plaintiffs' spot zoning challenge.

CONCLUSION

Plaintiffs cannot establish that the Tumwater ordinances, on their face, effect a taking or constitute undue oppression. The most fundamental reason why that is so is that the enactment of the ordinances had nearly no effect on the value of their properties. They can continue to use the properties just as they have chosen to do for years; the new zoning ordinances allow many alternative uses; and the new zoning ordinances contain a "safety valve" pursuant to which Plaintiffs may pursue other uses if the presently authorized uses are not economically viable.

AFFIRMED.

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Manufactured Housing Community Zoning: A Legal Analysis

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EXECUTIVE SUMMARY

I. Background - Washington Supreme Court Has Twice Found Statutes Establishing Obligations on Owners of MHCs Unconstitutional

In the past 15 years, the Washington State Supreme Court has twice invalidated statutes that imposed mandatory restrictions or obligations on the owners of Manufactured Housing Communities ("MHC") in order to preserve MHCs. These landmark cases were *Manufactured Housing Communities of Washington v. State of Washington*, 142 Wn.2d 347 (2000), and *Guimont v. Clarke*, 121 Wn.2d 586 (1993).

In *Manufactured Housing*, the Supreme Court invalidated a state statute granting MHC tenant organizations a right of first refusal to purchase a MHC that was being sold. The Court concluded that the property rights of the MHC owner include the right to sell the MHC, and that while preserving MHCs provided a public benefit of preserving a source of housing, that the "statute's design and its effect provide a beneficial use for private individuals only." *Manufactured Housing*, 142 Wn.2d at 362. The Court invalidated the statute based on its conclusion that Article 1 § 16 of the Washington State Constitution forbids the taking of private property for a private use.

In *Guimont*, the Washington Supreme Court invalidated a statutory requirement that MHC owners pay the relocation costs for residents of a MHC that will be closing. The Court found that this statute violated substantive due process requirements by placing the burden of addressing the societal concern of affordable housing solely on the owners of MHCs:

> "Likewise, in this case, the costs of relocating mobile home owners, like the related and more general problems of maintaining an adequate supply of low income housing, are more properly the burden of society as a whole than of individual park owners.
>
> . . .
>
> An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem.

Guimont, 121 Wn.2d at 611.

Guidance required by the Growth Management Act to be provided by the Washington State Attorney General's Office to local governments on avoiding unconstitutional takings of private property reaches the same conclusion:

> Because government actions are characterized in terms of overall fairness, a taking or violation of substantive due process is more likely to be found when it appears that a single property owner is being forced to bear the burden of addressing some societal concern, when in all fairness the cost ought to be shared across society.

Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property, Washington State Attorney General's Office, p. 15 (December 2006).

II. Other Legal Prohibitions to Mandatory MHC Zoning

In addition to the Washington Supreme Court's decisions in the *Manufactured Housing* and *Guimont* decisions, other legal considerations apply that would prohibit the adoption of mandatory Manufactured Housing Community Zoning ("MHC Zoning"). These include prohibitions against spot zoning, equal protection requirements, and provisions under the Growth Management Act.

III. Consideration of Mandatory MHC Zoning

In spite of these legal principles, several local governments have considered or are considering adopting mandatory MHC Zoning that would prohibit a MHC from converting to a different land use. To date, no local government in Washington State has in fact enacted a mandatory MHC zone. This is due to a number of considerations, including that the adoption of a mandatory MHC Zoning violates constitutional requirements under both regulatory takings and substantive due process doctrines.

IV. The Valid Alternative – Voluntary MHC Zoning

Because of the legal constraints against and unintended consequences of mandatory MHC Zoning, local governments should instead consider voluntary MHC Zoning. Recently, both Snohomish County and the City of Lynnwood have examined MHC Zoning issues and opted to adopt voluntary MHC Zoning. In Lynnwood, the City is proposing to offer financial incentives to MHC owners in exchange for a commitment to preserve an MHC for a defined period of time, such as 7 or 10 years. The City would agree to lower utility rates (sewer, water, stormwater) for a MHC that has agreed to remain an MHC for a specific duration. In addition, if the MHC owner opted to preserve the MHC for a minimum of ten years, the County Assessor has indicated it would be possible to value the MHC using an income-based rather than market-based method. In Snohomish County, the County adopted an ordinance in April 2007 to provide

an incentive for MHC owners to preserve MHCs by basing assessed values on the use of property as an MHC. Snohomish County established a new Mobile Home Park Zone, which the owner of an MHC could opt into for a minimum of five years in order to receive a decrease in assessed value and therefore property taxes.

This legal analysis provides an overview of why mandatory MHC Zoning is unlawful. MHCW has developed this legal analysis to provide guidance to MHC owners, MHC residents, and local governments as affordable housing issues are considered at the local level. MHCW was involved in the litigation that resulted in both the *Manufactured Housing* and *Guimont* decisions, and is committed to protecting the ability of MHC owners to convert MHCs to other land uses. Adopting mandatory MHC Zoning would result in litigation based on the principles in the Washington Supreme Court's *Guimont* and *Manufactured Housing* decisions, and will not further the cause of ensuring permanent, adequate supplies of affordable housing. This analysis should be read in concert with other information from MHCW that provides lawful and viable alternatives to mandatory MHC Zoning that will address affordable housing needs.

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LEGAL ANALYSIS

I. Background

A. Manufactured Housing Community Zoning ("MHC Zoning")

It is well-known that many areas of the Washington State have experienced significant increases in real estate values over the past decade. Recently, real estate values have continued to increase in many parts of Washington State, even while national real estate value trends have been flat or even shown declining values. Increasing real estate values will mean that lower value land uses will convert to higher value uses over time. This is especially true of MHCs in the Central Puget Sound area, where the location on existing MHC sites relative to job centers and urban commercial development makes conversion of MHCs to traditional single family and commercial development more likely. The Central Puget Sound area is expected to have population growth of over 1.5 million people by 2040, and this will continue to increase the pressures to convert MHC to more intense residential and commercial land uses.

The Manufactured Housing Communities of Washington (MHCW) represents the owners of the hundreds of MHCs in Washington State that provide affordable housing to thousands of Washington citizens. MHCW works throughout Washington State to promote both new and existing MHCs as an important source of affordable housing, and is well aware of the impacts of MHC closures on residents. While MHCs provide a source of affordable housing, the economic reality of the real estate market will result in the closure of some MHCs.

A number of local governments in Washington State have considered or are considering adopting mandatory MHC Zoning. Under MHC Zoning, the specific parcel or parcels of land being used for a MHC would be rezoned specifically and exclusively for MHC use. This means that the MHC would be forever locked in to its existing use as an MHC, and prevented from converting to a different use. Under MHC Zoning, the MHC would be singled out from the zoning in the surrounding area and assigned a zoning designation solely to benefit tenants of the MHC. Unlike the function of traditional zoning actions intended to prevent conflicting land uses and establish regulatory controls on structures to protect the public safety, health, and welfare, mandatory MHC Zoning would be solely for the purpose of benefiting private parties - the tenants of the MHC. In addition, in areas that have experienced residential and commercial development surrounding an existing MHC, mandatory MHC Zoning would be contrary to the zoning purpose of ensuring compatible land uses.

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B. Zoning, Generally

Local government zoning has two primary functions: First, to determine the allowable uses of a particular piece of property, and second, to regulate the dimensions of buildings and other improvements, such as the height, size, and setbacks. The fundamental purpose of zoning is ensure that adjacent land uses are compatible in nature, in order to protect homeowner concerns such as health, safety, community character, and property values. See J. Richard Aramburu and Jeffrey M. Eustis, *Zoning, Washington Real Property Deskbook*, Chapter 97, page 97-3.

The origin and legal basis for local government local to adopt zoning regulations is the local police power, which is the power to protect public health, safety, and general welfare. *McNaughton v. Boeing*, 68 Wn.2d 659 (1966). The Washington State Constitution, at Article 11, § 11, grants cities and counties the police power authority to protect the public health, safety and welfare. Pursuant to that authority, a city or county may regulate the use of property. They may regulate property for purposes such as abating nuisances, enforcing building and health codes, zoning and planning, and environmental protection. The police power and zoning authority of the state and local governments has been described as follows:

> It is the basis of the idea that the private individual must suffer without other compensation than the benefit to be received by the general public. It does not authorize the taking or damaging of private property in the sense used in the constitution with reference to taking such property for a public use.. Eminent domain takes private property for a public use, while the police power regulates its use and enjoyment, or if it takes or damages it, it is not a taking or damaging for the public use, but to conserve the safety, morals, health, and general welfare of the public.

Conger v. Pierce County, 116 Wn. 27, 36 (1921).

In addition to the traditional purposes for local governments to adopt zoning codes to protect health, safety, and welfare, Washington State's Growth Management Act requires the adoption of zoning and other development regulations to implement the local government's Growth Management Act Comprehensive Plan. *RCW 36.70A.120.* Local Comprehensive Plans, zoning, and development regulations must balance the fourteen goals of GMA, and be internally consistent. The Comprehensive Plan must include a housing element, which provides policies for all types of housing, including manufactured housing. RCW 36.70A.070(2). Once the Comprehensive Plan and housing element have been adopted, they become the basis for more detailed zoning and

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development regulations. In fact, MHC conversions generally bring the parcel of land into conformity with other surrounding uses. Establishing mandatory MHC Zoning would be inconsistent with many local government Comprehensive Plans, which would require reexamination and amendment of various Comprehensive Plan provisions. In addition, the Growth Management Act requires local governments to ensure that planning actions do not violate constitutional rights of private landowners. RCW 36.70A.370. The analysis prepared by the Washington State Office of the Attorney General, *Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property*, includes guidance consistent with this legal opinion, as will be described later.

II. Legal Analysis

A. Constitutional Issues

Under both the federal and Washington State Constitutions, government may not take private property unless the taking is for a public use, and just compensation is paid to the owner of the private property. Just compensation is considered to be the fair market value of the property at the time of the taking. Takings generally take one of two forms: (1) a physical taking of property, where the government seeks to actually use or occupy the property; or (2) regulating or limiting the use of property under the government's police power authority in such a way as to destroy one or more of the fundamental attributes of ownership (the rights to possess and use property, exclude others, and to dispose of property), deny all reasonable economic use of the property, or require the property owner to provide a public benefit rather than addressing some public impact caused by a proposed use.

For physical takings, the government may initiate eminent domain proceedings, through which public use and necessity and just compensation are determined. In a regulatory taking, the legal action is typically initiated by the property owner.

Both federal and state courts have recognized that government regulation of private property can go "too far" so as to have the same effect on a property owner as if the government had actually physically occupied the land. In Washington State, the courts have also used a "substantive due process" test to analyze the burdens imposed by land use regulations. In general, a land use regulation may be challenged on state and federal constitutional grounds either as an unconstitutional taking or as a violation of substantive due process. *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 329, cert. denied 498 U.S. 911, (1990).

Both the federal and state constitutions provide due process protections through the Fourteenth Amendment and Article 1, § 3 respectively. Substantive

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due process requires that a regulation be imposed reasonably and fairly. Under this test, a regulation must not only have a legitimate public purpose, but it must also use means to achieve that purpose that do not impose an unfair burden on affected property owners. A regulation is a taking if it violates the constitutional requirement of compensation when private property is taken for a public use, while a substantive due process violation occurs when a regulation exceeds the constitutionally permissible scope of the police power. While the remedy for a taking is compensation, the remedy for a substantive due process violation is invalidation of the regulation.

The Washington State Supreme Court has twice invalidated mandatory restrictions or obligations placed on the owners of MHCs. In *Guimont v. Clarke*, 121 Wn.2d 586 (1993), the Court invalidated on substantive due process grounds a state statute requiring MHC owners to provide monetary assistance for tenant relocation. In *Manufactured Housing Communities of Washington v. State of Washington*, 142 Wn.2d 347 (2000), the Court found that a state statute granting MHC residents a right of first refusal to purchase an MHC was an unconstitutional taking of private property for private use in violation of Article I, § 16 of the Washington State Constitution.

Both the *Guimont* and *Manufactured Housing Communities* decisions involve legal issues and analysis similar to that which would occur in an inevitable challenge against a local government's mandatory MHC Zoning ordinance. These two leading cases, as well as other supporting decisions, provide the necessary framework to understand why Washington State courts would ultimately determine that MHZ Zoning is unlawful in Washington State.

1. Regulatory Takings

The Washington Supreme Court's decisions in *Presbytery of Seattle v. King County*, 114 Wn.2d 320 (1990), and *Guimont*, 121 Wn.2d 586 (1993), established the threshold test to determine first whether a regulation constitutes a taking, and if it does not, whether the regulation violates due process. While the *Presbytery* decision was a seminal decision on this issue in Washington State, the U.S. Supreme Court issued a major regulatory takings decision shortly after the Washington Supreme Court issued *Presbytery*. See *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992). The *Lucas* decision created an inconsistency with the recent *Presbytery* opinion, which the Washington Supreme Court sought to resolve in *Guimont v. Clarke*, 121 Wn.2d 586 (1993). Thus, when the Washington Supreme Court issued the *Guimont* decision, it also provided a revised analytical framework for regulatory takings:

> Because the plaintiff must have the opportunity at the outset to prove a 'physical invasion' or 'total taking,' *Lucas* necessitates that we reorder the first two steps of our *Presbytery* threshold test. As

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> noted above, we previously asked under the threshold test whether a regulation implicated fundamental attributes of ownership *after* analyzing the purpose of the statute in preventing harm or conferring a benefit. According to *Lucas*, challenges implicating fundamental attributes of ownership, such as 'total takings' or 'physical invasions,' are subject to categorical treatment and do not require analysis of the purpose of the regulation or the legitimacy of the State's interest. [cites omitted] Therefore, based on *Lucas*, we must analyze at the outset of the *Presbytery* test whether fundamental attributes of ownership are impaired through 'physical invasions' or 'total takings,' without engaging in any harm-versus-benefit analysis or examining the legitimacy of the governmental interest.
>
> This requirement of *Lucas* can easily be squared with our *Presbytery* analysis by simply reordering the two questions of our threshold inquiry. Hereafter, the court will begin the threshold inquiry by asking whether the regulation denies the owner a fundamental attribute of ownership. Any analysis of 'physical invasions' or 'total takings,' including all facial challenges to land use regulations, will be analyzed at the outset under the first prong of the threshold test. If the plaintiff proves a 'physical invasion' or 'total taking' occurred, the plaintiff need not proceed with the remainder of the *Presbytery* analysis. . . .
>
> . . .
>
> Under the *Presbytery* threshold inquiry, as revised above, the court must first ask whether the regulation destroys or derogates any fundamental attribute of property ownership: including the right to possess, to exclude others; or to dispose of property. . .
>
> . . . If the landowner proves a 'total taking' or 'physical invasion' has occurred, and if the State fails to rebut that claim, the owner is entitled to categorical treatment under *Lucas*. [cites omitted]. In other words, the owner is entitled to just compensation without case-specific inquiry into the legitimacy of the public interest supporting the regulation.

Guimont, 121 Wn.2d at 600 – 603.

The Washington State Supreme Court then applied the revised Presbytery test to the issues in *Guimont*. *Guimont* concerned the constitutionality of the

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Mobile Home Relocation Assistance Act of 1990, Chapter 59.21 RCW. The law required MHC owners to pay a portion of their tenants' relocation costs when an MHC was converted to another use. The Washington Supreme Court determined that MHC owners were not subject to a physical taking through the statute, since under the *Lucas* case, such a physical taking "requires the landowner to submit to the physical occupation of [his or her] land." *Guimont*, 121 Wn.2d 586, at 607 (1993).

It is notable, however, than in determining that the tenant relocation assistant payments did not effect a physical taking, the Washington State Supreme Court relied on *Yee v. Escondido*, 503 U.S. 519 (1992), a prior U.S. Supreme Court decision concerning the City of Escondido's Mobile Home Residency Law, a local rent control ordinance. In determining that the relocation assistance payments did not amount to a physical taking, the Washington State Supreme Court emphasized that in the *Yee* opinion:

> ". . . the Mobile Home Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notice. Put bluntly, no government has required any physical invasion of [the park owners'] property. [The park owners'] tenants were invited by [the park owners], not forced upon them by the government. (emphasis added)
>
> In Yee, the park owners could still evict the tenants and change the use of their land. Thus, the Supreme Court held the rent control ordinance in that case was only a regulation of the park owners' use of the property, and did not amount to a per se taking because it did not authorize an unwanted physical occupation of the park owners' land. (emphasis added)
>
> Like Yee, the park owners' physical takings argument in this case lacks merit. The Act on its face does not force park owners to allow others to occupy their land. Rather, the park owners have voluntarily rented space to the mobile home owners, and the Act itself does not compel the park owners to continue this relationship. Indeed, the Act still allows the park owners to terminate their tenancies, close their parks, and sell their land.
>
> . . .
>
> Likewise, for the same reasons, the Act does not unconstitutionally infringe any other fundamental attribute of property ownership, such as the right to possess, exclude others, or dispose of property.

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Guimont, 121 Wn.2d at 607, citing *Yee*, 112 S.Ct at 1528. (emphasis added).

Thus, the distinction in *Yee* relied upon by the Washington Supreme Court in *Guimont* that prevented a physical taking from occurring was that in *Yee*, the owners of an MHC could in fact convert the park to a different use. Under the MHC Zoning being considered by some Washington local governments, MHC owners could not convert the MHCs to a different land use. Thus, the adoption of mandatory MHC Zoning would be a zoning action that is squarely within the takings considerations in the *Lucas*, *Yee*, and *Guimont* line of decisions.

Though the Washington Supreme Court did not find a physical taking in *Guimont*, it did in fact invalidate the tenant relocation assistance law under a substantive due process analysis that is discussed in more detail below. The takings analysis in *Guimont* is notable for the fact that it relies on the ability of MHC owners to convert a MHC to a different land use to in concluding that no takings occurred. In a challenge to MHC Zoning, the ability to convert a MHC to a different use would not exist, and thus the appeal would be squarely within the Washington Supreme Court's analysis of *Yee* in the *Guimont* case.

2. Washington Constitution, Article 1, § 16.

In addition to the standard regulatory takings analysis in *Lucas*, Article 1, § 16 of the Washington State Constitution provides a significant additional legal barrier against MHC Zoning. Article 1, § 16 states "Private property shall not be taken for private use . . . " and ". . . No private property shall be taken or damaged for public or private use without just compensation having been first made . . . " In its *Manufactured Housing Communities of Washington* decision in 2000, the Washington Supreme Court relied on Article 1 § 16 to invalidate a state law that granted residents of MHCs a right of first refusal in the sale of a MHC.

In 1993, the Washington State Legislature adopted Chapter 59.23 RCW, the Washington Mobile Home Parks Resident Ownership Act. The Legislature adopted the Act due to concerns about the loss of affordable housing provided by manufactured housing caused by "the pressure to convert mobile home parks to other uses . . . " *Former RCW 59.23.005.*

The Resident Ownership Act provided residents of MHCs the right of first refusal to buy the MHC from the MHC owner when the owner decided to sell. Under the Resident Ownership Act, tenants would first establish a "qualified tenant organization," and then would provide the community owner notice of the organization's "present and continuing desire to purchase the community." *Former RCW 59.23.015.* After a MHC owner received such a notice from a qualified tenant organization, the owner would have to notify the tenants of any agreement to sell the community, and must disclose the terms of the agreement

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to the qualified tenant organization. *Former RCW 59.23.030.* The Act established detailed requirements and deadlines for payment by tenants to the owner of the community, and that such purchase by tenants must be as financially favorable as the agreement between the owner and the third party. *Former RCW 59.23.025; See Manufactured Housing,* 142 Wn.2d at 351-352.

MHCW challenged the law on the basis that it unconstitutionally deprived owners of MHCs of fundamental property rights under the Washington State and U.S. Constitution. MHCW argued that the Act eliminated property rights, specifically the right to (1) freely dispose of their property; (2) to exclude others; and (3) to immediately close the sale of a community. Though the *Manufactured Housing* case also included federal constitutional claims, they were not addressed because the Act was invalided on state constitutional grounds. *Manufactured Housing,* 142 Wn.2d at 353.

Because the *Manufactured Housing* case focused on state constitutional issues, the Washington Supreme Court first applied the *Gunwall* analysis – the examination of six nonexclusive neutral criteria to determine whether the Washington State Constitution extends broader rights to citizens than does the U.S. Constitution. *State v. Gunwall,* 106 Wn.2d 54, 61 (1986). The Gunwall factors are:

(1) the textual language of the state constitutional provision at issue;

(2) differences in the parallel texts of the federal and state constitutions;

(3) An examination of Washington constitutional law and common law history;

(4) Preexisting state law;

(5) Structural differences between the federal and state constitutions; and

(6) Whether the issue deals with matters of particular state or local concern.

In reviewing the *Gunwall* factors, the Supreme Court determined that the "private use" under Article 1, § 16, is defined more literally than under the federal Fifth Amendment, and that Washington's interpretation of "public use" has been more restrictive. The Court then analyzed the meaning of "private use" and "public use" under the facts of the statutory right of first refusal granted to MHC residents in the Resident Ownership Act.

The Court interpreted Article 1, § 16 to establish "a complete restriction against taking private property for private use: 'private property shall not be

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taken for private use . . .'" The Court noted that under Chapter 59.23 RCW, "the statute's **design and its effect provide a beneficial use for private individuals only.**" *Manufactured Housing*, 142 Wn.2d at 362. (emphasis added)

Were a local government to adopt mandatory MHC Zoning, this zoning action would be invalidated under the same Article 1, § 16 analysis: the "design and effect" of the zoning action would "provide a beneficial use for private individuals only" – the residents of the MHC.

The Court then reinforced precedent that "property consists of a group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use, and dispose of it." *Manufactured Housing*, 142 Wn.2d at 365. In an earlier decision, the Washington Supreme Court concluded that "the substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right." *Ackerman v. Port of Seattle*, 55 Wn.2d 400, 409, (quoting *Spann v. City of Dallas*, 111 Tex. 350, 355, overruled on other grounds by *Highline School District No. 401 v. Port of Seattle*, 87 Wn.2d 6, (1976)).

In *Manufactured Housing*, the State of Washington argued that the Resident Ownership Act was a legitimate exercise of police power, and that the Act did not result in a taking under either the Washington State or federal constitution. *Manufactured Housing*, 142 Wn.2d at 354. One of the key holdings of the *Manufactured Housing* decision is that the inability of a community owner to dispose of the property as he or she saw fit was a taking under the Washington State Constitution. An equally important holding in the Court's decision was that restricting the use of manufactured housing communities to the existing use was not a "public use," but was in fact a private use prohibited by the state constitution. The State of Washington, in its argument to the Washington Supreme Court, argued that the preservation of the manufactured housing communities in order to ensure affordable housing was in fact a public use:

> "Assuming then that the chapter's right of first refusal is a taking or damaging, RCW 59.23 achieves a public use: maintaining a significant source of low income and elderly housing. Even though the right of first refusal benefits mobile home park tenants, a use may directly benefit a private party yet still be a 'public use.' [cites omitted]
>
> Here, the Legislature found that mobile home parks provide 'a significant but increasingly insecure source of homeownership for 'many Washington residents.' RCW 59.23.005 . . .
>
> In short, if this Court finds that the right of first refusal takes or damages the park owners' property, then the State has used its police power for the vital public use of preserving dwindling

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> hosing stocks for an important and particularly vulnerable segment of society.

Washington State Supreme Court Brief of Respondent, State of Washington, at 35-36; 38.

The Washington Supreme Court clearly rejected the State's argument that preserving a MHC was a 'public use':

> The State, apparently assuming 'public purpose' and 'public use' are always the same thing under the existing Washington law, argued that preserving a declining housing resource so greatly benefits the public that RCW 59.23 plainly converts the private use to a public use. It does not.
> . . .
> . . . [A]fter a mobile home park has been forcibly sold to a 'qualified tenant organization,' no member of the public can freely use the park. In fact, only the park tenants can freely use it. Although preserving dwindling housing stocks for a particularly vulnerable segment of society provides a 'public benefit,' this public benefit does not constitute a 'public use.'" [cites omitted]

Manufactured Housing, 142 Wn.2d at 371-372, 373.

Similarly, MHC Zoning would be subject to this same Article 1, § 16 analysis that occurred in the *Manufactured Housing* decision. Under the *Manufactured Housing* decision, preserving an existing MHC through mandatory MHC Zoning is not a public use, but rather is a private benefit conferred solely on the residents of the MHC. As a private benefit, restrictions on MHCs such as mandatory MHC Zoning fail to fit the overarching requirement for zoning under Article 11, § 11 of the Washington State Constitution that the benefit of a local government zoning action is "to be received by the general public." *Conger v. Pierce County*, 116 Wn. 27, 36 (1921). The local issues of concern surrounding the closure and conversion of MHCs are precisely those identified by the Washington Legislature in enacting Chapter 59.23 RCW. The Supreme Court has determined that preserving MHC residency by mandatory regulatory action, and to the detriment of MHC owners, is in fact a private use that is forbidden under Article 1, § 16 of the Washington State Constitution.

3. Substantive Due Process

In addition to the regulatory takings analysis, zoning ordinances are also subject to substantive due process requirements. The 14th Amendment of the U.S. Constitution prohibits states from "depriv[ing] any person of life, liberty, or

property, without due process of law . . . " U.S. Const. Amend. 14 § 1. The test for whether a regulation violates a property owner's substantive due process rights has three parts:

> (1) Whether the regulation is aimed at achieving a legitimate public purpose;
>
> (2) Whether the regulation uses means that are reasonably necessary to achieve the stated purpose; and
>
> (3) Whether the ordinance unduly oppresses the property owner.

Guimont, 121 Wn.2d 586, 609 (1993), *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, cert. denied, 498 U.S. 911 (1990).

If an ordinance fails to meet any of the three prongs of the substantive due process test, then the ordinance is invalid. *Brutsche v. City of Kent*, 78 Wn.App. 370, 374 (1995), citing *Robinson v. Seattle*, 119 Wn.2d 34, 55; *Presbytery*, 114 Wn.2d at 331-332. Due process violations may also give rise to claims for damages under 42 U.S.C. § 1983. See further, *Washington Lawyer's Practice Manual*, § 23.2.45.

In the *Guimont* decision, the Court did not find a regulatory taking. However, the Court proceeded to analyze the relocation assistance payment statute under substantive due process requirements. The application of the substantive due process test to validity of the relocation assistance payments at issue in *Guimont* is telling as to why the adoption of MHC Zoning would not withstand judicial scrutiny. First, the Court determined that making funds available to mobile home owners for relocation expenses met a legitimate state interest in addressing statewide problems with relocations. *Guimont*, 121 Wn.2d at 609-610. As to the second prong of the substantive due process test, whether the means are reasonable necessary, the Court found that question "debatable," and turned to the third prong of undue oppression. *Guimont*, 121 Wn.2d at 610.

To determine whether the regulation was unduly oppressive, the Court examined a number of nonexclusive factors to weigh the fairness of the burden being placed on the property owner. These factors are considered both from the public side in examining the state's interest, and from the property owner's side in examining the impact to the burdened individual. The Court's factors included the following:

On the public's side,

- the seriousness of the public problem,
- the extent to which the owner's land contributes to it,
- the degree to which the proposed regulation solves it and

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- the feasibility of less oppressive solution would all be relevant.

On the owner's side,

- the amount and percentage of value loss,
- the extent of remaining uses,
- past, present, and future uses,
- the temporary or permanent nature of the regulation,
- the extent to which the owner should have anticipated such regulation, and
- how feasible it is for the owner to alter present or currently planned uses.

Guimont, 121 Wn.2d at 610, citing *Presbytery*, 114 Wn.2d at 331, (citing Stoebuck, *San Diego Gas: Problems, Pitfalls and a Better Way*, 25 J.Urb. & Contemp.L. 3, 33 (1983)).

Analyzing the various factors on the public's side, the Court found that "by requiring the closing park owner to pay [relocation costs] which can amount to extremely high sums of money, the State is placing the burden of solving housing problems on the shoulders of a few. *Guimont*, 121 Wn.2d at 611. The Court continued that

> "Likewise, in this case, the costs of relocating mobile home owners, like the related and more general problems of maintaining an adequate supply of low income housing, are more properly the burden of society as a whole than of individual park owners.
>
> ...
>
> An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem.

Guimont, 121 Wn.2d at 611.

In considering whether the relocation assistance payment obligations were oppressive on the MHC owner, the Court reached a number of conclusions that would apply equally to MHC Zoning. For example, the Court found the financial obligation on the MHC owner to be "staggering," at up to $7,500 for each tenant in the MHC. In addition, the Court noted that a MHC owner would be obligated to pay relocation assistance to all MHC tenants, including MHC tenants who were not low income. The Court concluded that:

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> There is no indication the park owners could have anticipated the Act's requirements when they opened their parks; certainly the Act itself did not give them any grace period in allowing them to decide whether to continue to use their property as a mobile home park before the Act went into effect. Thus, park owners were given no opportunity to alter their present or planned uses without subjecting themselves to the Act's onerous obligations.
>
> In this regard, we deem it important that the increased costs imposed by the Act attach to the activity of leaving a business rather than of entering or conducting the business.

Guimont, 121 Wn.2d at 611-612.

Mandatory MHC Zoning has the identical substantive due process flaws found in *Guimont*, where the Washington Supreme Court ruled that the "more general problems of maintaining an adequate supply of low income housing, are more properly the burden of society as a whole than of individual park owners." *Guimont*, 121 Wn.2d at 611. In *Guimont*, the Washington Supreme Court provided six factors that must be considered from the property owner's perspective in a substantive due process analysis. Under any of these six factors, the impact of mandatory MHC Zoning would result in significant economic losses solely on MHC owners in order to preserve affordable housing - as the Washington Supreme Court said in *Guimont*, "placing the burden of solving housing problems on the shoulders of a few." *Guimont*, 121 Wn.2d at 611. These six factors are as follows:

> **1. The amount and percentage of value loss.** Under mandatory MHC Zoning, the economic losses to MHC owners would be significant both in terms of total value and percentage. This is especially true in situations where an MHC is surrounded by valuable commercial land, and the MHC may be less desirable for continuing residential use.
>
> **2. The extent of remaining uses.** Mandatory MHC Zoning would result in the MHC owner being left with only a single use that results in a significant loss of economic value, especially compared to surrounding property owners.
>
> **3. Past, present, and future uses.** MHC owners would be unable to use property for any other use, even if such use is authorized under the zoning code.
>
> **4. The temporary or permanent nature of the regulation.** While a permanent zoning change would clearly have a greater impact on the property owner, even a temporary zoning change or

moratorium will have economic impacts, and gives rise to takings and substantive due process claims.

5. **The extent to which the owner should have anticipated such regulation.** Because the conversion of MHCs to other residential or commercial uses is done based on existing zoning and Comprehensive Plan provisions, the owners of MHCs cannot have anticipated the imposition of mandatory MHC Zoning. In fact, under existing zoning provisions, MHCs may be nonconforming uses which are generally disfavored under zoning. While such a use may be continued without expansion, it is in fact expected that the use will at some point terminate.

6. **How feasible it is for the owner to alter present or currently planned uses.** In most cases, it is very feasible for the owner of the MHC to convert the MHC to change the use to a different residential or commercial use. Thus, the MHC owner is not seeking to protect the ability to change the use of the property to a use that is not likely to occur, but in fact, to a use that is likely to occur.

These six factors required in a substantive due process analysis from *Guimont* all result in a conclusion that mandatory MHC Zoning violates the substantive due process rights of MHC owners.

4. Equal Protection

Zoning decisions can also be subject to invalidation on equal protection grounds. Under a constitutional equal protection analysis, laws resulting in unequal treatment are reviewed under varying degrees of scrutiny, depending on classification of the parties. In the land use context, an equal protection claim would likely be based on a rational relationship test. In a rational relationship equal protection challenge, a court uses the following test:

1. Whether the classification applied to the claimant applies alike to all members within his designated class;

2. Whether some basis exists in reality for reasonably distinguishing those within and without the designated class; and

3. Whether the challenged classification has any rational relationship to the purpose of the challenged regulation.

See *Yakima County Deputy Sheriff's Ass'n v. Board of Comm'rs*, 92 Wn.2d 831 (1979), and see generally, Stoebuck & Weaver, *Planning and Zoning, Washington Practice* § 4.8.

The U.S. Supreme Court has concluded that a successful equal protection claim can be brought by a class of one when the plaintiff alleges that he or she

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'has been intentionally' treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

Mandatory MHC Zoning may raise a variety of equal protection issues, including the differing treatment and resulting economic impact on MHC owners compared to other categories of property owners. In addition, equal protection claims could arise from the differing treatment of individual MHC owners themselves based on the income status of MHC tenants, the location of particular MHCs, or the likelihood of MHC conversion.

The equal protection requirement that regulations have a rational relationship to the particular governmental interest concerns the same issues in the *Guimont* and *Manufactured Housing* decisions, in terms of the public interest in providing affordable housing. In those decisions, the Washington Supreme Court concluded that while affordable housing is in fact a legitimate public interest, that it was unreasonable to burden the owners of MHCs with providing affordable housing for MHC tenants, a private interest.

Equal protection violations may also be included in a spot zoning challenge against mandatory MHC Zoning. This is because owners of MHCs are being differentially treated than other landowners, and the result is that other landowners allowed to retain residential or commercial zoning are being granted an economic benefit not enjoyed the owners of MHCs. Equal protections claims against MHC Zoning are especially viable given the Washington Supreme Court's finding in *Guimont* that

> "an individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem.

Guimont, 121 Wn.2d at 611.

5. Inverse Condemnation

In the Manufactured Housing decision, the Court found that

> "the actual effect of chapter 59.23 RCW is more closely akin to the exercise of eminent domain, and not the police power, because the property right is not only taken, but it is statutorily transferred to a private party for an alleged public use. . . . While chapter 59.23 RCW says nothing about condemnation, its condemnatory effect is *necessarily implied*."

Manufactured Housing, 142 Wn.2d at 369. (emphasis in original).

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The State, in an attempt to prevent the invalidation of the statute, argued that even if the tenants' statutory right of first refusal resulted in the taking of the MHC owners' property rights, such taking was lawful if just compensation was paid to the MHC owner. The Washington Supreme Court rejected this argument, concluding that there could be no exercise of the state's eminent domain authority because the taking was not for a "public use," but rather was for the "private use" of the MHC tenants.

Inverse condemnation occurs when a governmental entity does not intend to acquire property through eminent domain, but in fact takes an action resulting in the taking of private property for a public purpose. If a court finds that inverse condemnation has occurred, it will award the property owner just compensation, as well as attorney costs and fees from litigating the inverse condemnation claim. However, the inverse condemnation remedy of just compensation is not available to a local government that adopted mandatory MHC Zoning, because under the Washington Supreme Court's analysis, there is no "public use" at issue, and therefore, the local government lacks the authority to use eminent domain. Like in the *Manufactured Housing* decision, the result of a challenge to mandatory MHC Zoning would not be a determination of "just compensation," but rather, invalidation of the zoning decision.

B. Growth Management Act

In addition to state and federal constitutional limitations, MHC Zoning actions may violate the Growth Management Act, or at the least would be subject to the GMA's procedural requirements for adoption. Under the GMA, local governments must adopt Comprehensive Plans, Zoning, and Development Regulations to balance the fourteen goals of the GMA. One of the GMA's planning goals is to encourage "the availability of affordable housing to all economic segments[,]" as well as "variety of residential densities and housing types, and [the] preservation of existing housing stock." *RCW 36.70A.020(4).* The Comprehensive Plan is a "generalized coordinated land use policy statement of the governing body of the county or city . . . " *RCW 36.70A.030(4).* The Comprehensive Plan serves as a general guide, while zoning and development regulations adopted based on the Comprehensive Plan provide the basis for land use permitting decisions. *Weyerhaeuser v. Pierce County,* 124 Wn.2d 26, 43 (1994).

A fundamental component of the Comprehensive Plan is the designation of Urban Growth Areas ("UGA") within which "urban growth shall be encouraged." *RCW 36.70A.110(1).* The size of and land use densities within the UGA must be sufficient to accommodate the population growth expected within twenty years. *RCW 36.70A.110(2).* UGAs should be located first in areas already characterized by urban growth that have adequate existing public facilities, such

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as water, sewer, and transportation, and then in urban areas that will be adequately served by public facilities. *RCW 36.70A.110(3).*

The Comprehensive Plan must also include specific elements, including a land use element and a housing element. *RCW 36.70A.070(1) and (2).* The Housing Element must include an inventory and analysis of housing needs, including the number of housing units needed for projected growth, and goals, policies, and objectives for preserving, improving, and developing housing, including manufactured housing. *RCW 36.70A.070(2)(i)(ii).*

RCW 36.70A.120 requires local government to "enact development regulations that are consistent with and implement the comprehensive plan." Such development regulations include zoning. *RCW 36.70A.030(7).* Thus, zoning designations must be consistent with the relevant provisions of the Comprehensive Plan, including the housing element, land use element, and UGA designation necessary to accommodate projected growth over 20 years. This relationship has been described as follows:

> "Within urban growth areas, a comprehensive plan will generally proscribe the location of various zoning classifications based on the residential capacity required to accommodate forecasted growth at urban density levels and the location of public facilities within the urban growth area. [cites omitted] Zoning ordinances that provide for densities or uses inconsistent with the land use designations in the comprehensive plan would be subject to legal challenge and could be rendered inoperative through invalidation."

Washington Lawyers Practice Manual, Chapter 23 – Growth Management Act (Brent Lloyd) § 23.1.29 (2006).

In practice, a local government's existing Comprehensive Plan, development regulations, and zoning may prevent the adoption of mandatory MHC Zoning. This is because the parcels that would be rezoned to the mandatory MHC Zoning have already been zoned as residential, commercial, or another zoning classification necessary to accommodate projected population growth or provide buildable land with existing urban services in order to implement the Comprehensive Plan. In many cases, the existing MHC land use is inconsistent with the underlying zoning and neighborhood character. Thus, mandatory MHC Zoning would make permanent an inconsistent and incompatible use, and be contrary to the purpose and effect of the original zoning designation as supported by the Comprehensive Plan. At the least, adoption of mandatory MHC Zoning would require a comprehensive reexamination of numerous other related parts of the Comprehensive Plan and development regulations.

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Comprehensive Plans may be amended in order to facilitate future zoning decisions. However, Comprehensive Plans may be amended no more than once per year, and all Comprehensive Plan amendment proposals "shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained." *RCW 36.70A.130(2)(a)-(b).* These limitations would be especially relevant in the consideration of mandatory MHC Zoning, which could result in the loss of significant amounts of previously buildable urban land. The elimination of land from a local government's buildable land inventory would have a ripple effect on how a local government intended to meet its 20-year population projection and other provisions under the housing and land use elements. While the extent of conflict with the Comprehensive Plan could be minimized by applying mandatory MHC Zoning to fewer than all MHCs within a jurisdiction, this type of action would clearly be spot zoning, and would also raise constitutional equal protection issues based on the unequal treatment of different MHCs within the same jurisdiction.

Amendments to development regulations, including zoning, are not subject to the once-per-year limitation on Comprehensive Plan amendments in *RCW 36.70A.130(2)(a)-(b).* However, such amendments are subject to GMA's public participation requirements. In the case of a site-specific action such as adoption of mandatory MHC Zoning, generalized public notice is likely insufficient. See *Holbrook v. Clark County*, 112 Wn.App 354 (2002)(Adoption of legislation action does not require notice to individual landowners). In contrast, mandatory MHC Zoning would likely trigger RCW 36.70A.035(1)(a), which requires public notice in the form of "posting the property for site-specific proposals."

Planning actions under the GMA must allow be undertaken consistent with one of the GMA's 14 fundamental policies that "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions." *RCW 36.70A.020(6).* The Washington State Supreme Court has found that preserving MHCs for the benefit of tenants is in fact a private use, not a public use. In addition, to ensure compliance with constitutional limits, the Legislature enacted RCW 36.70A.370, which requires the Attorney General's Office to establish a process to enable local governments "to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property." *RCW 36.70A.370(1).* Local governments planning under GMA are required to use the process established by the Attorney General's Office to ensure that all actions are constitutional. *RCW 36.70A.370(2).*

In December 2006, the Attorney General's Office released a revised *Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property.* This

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document includes a review of the variety of constitutional issues that must be considered by local governments, and provides a checklist for local governments to review on relevant takings issues. While the Advisory Memorandum does not include an exhaustive analysis of either the *Guimont* or *Manufactured Housing* cases, it does provide some useful summaries of the state of the law on takings and substantive due process:

> "[B]ecause government actions often are characterized in terms of overall fairness, a taking or violation of substantive due process is more likely to be found when it appears that a single property owner is being forced to bear the burden of addressing some societal concern, when in all fairness the cost ought to be shared across society."

Advisory Memorandum, at 15.

This conclusion in the Attorney General's Memorandum is consistent with the Washington Supreme Court's decisions in the *Guimont* and *Manufactured Housing* opinions, and provides authority that must be considered under GMA that mandatory MHC Zoning is unlawful.

C. Spot Zoning and Downzoning

Spot zoning is a zoning decision in which a smaller area, specific parcel, or parcel is singled out of a larger area or zone and given a use classification that is different from or inconsistent with general zoning of the surrounding land. As the Washington Supreme Court stated in *Narrowsview Preservation Association v. City of Tacoma*, 84 Wn.2d 416 (1974):

> We have recently stated that illegal spot zoning is arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for use classification totally different from and inconsistent with the classification of the surrounding land, not in accordance with a comprehensive plan.
>
> The reasons for invalidating a rezone as an illegal spot zone usually include one or more of the following: (1) the rezone primarily serves a private interest, (2) the rezone is inconsistent with a comprehensive plan or the surrounding territory, or (3) the rezone constitutes arbitrary and capricious action. Each situation must be determined on its own facts and it is not always easy to determine conclusively whether a rezone would constitute an illegal spot zone.

Claims of spot zoning may involve of number of inquiries, including whether the zoning action bears a substantial relationship to the general welfare

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of the affected community. *Save A Neighborhood Environment v. Seattle*, 101 Wn.2d 280, 286 (1984). Where a spot zoning action confers a discriminatory benefit to a group of owners or a single owner to the detriment of neighbors or the community at large without adequate public justification, the rezone will be overturned. *Bassani v. County Commissioners*, 70 Wn.App. 389 (1993); *Anderson v. Island County*, 81 Wn.2d 312, 325 (1972). See Charles E. Maduell, *Fundamental Zoning and Land Use Actions, Practical Guide to Zoning and Land Use Law*, National Business Institute (2005).

According to Richard Settle in *Washington Land Use and Environmental Law and Practice:*

> The vice of spot zoning is not the differential regulation of adjacent land but the lack of public interest justification for such discrimination. Where differential zoning merely accommodates some private interest and bears no rational relationship to promoting legitimate public interest, it is "arbitrary and capricious" and hence "spot zoning." . . . Thus, "spot zoning" is not really a distinct legal doctrine, but a misleading term for the application of the constitutional requirements of equal protection and substantive due process.

See Settle at § 2.11(c). Mandatory MHC Zoning has all of the hallmarks of spot zoning. As the Supreme Court determined in both the *Manufactured Housing* and *Guimont* decisions, an action that preserves MHC housing solely for the benefit of the MHC residents is not an action that protects in the public interest, but is in fact an action that benefits the private interests of the MHC residents.

In this sense, MHC Zoning falls squarely into the spot zoning trap as the zoning action "merely accommodates some private interest." Professor Settle's observation that spot zoning is not a distinct legal doctrine comports with the Washington Supreme Court's conclusion that while preserving affordable housing is a valid public objective, that the objective is "more properly the burden of society as a whole than of individual park owners." *Guimont*, 121 Wn.2d at 611.

The adoption of mandatory MHC Zoning would in most cases be a downzone, because the parcel would be relegated to only a single type of less intensive land use – an MHC – rather than the pre-existing more intense use, such as high density residential or commercial use. The Planning Association of Washington and Washington State Department of Community, Trade, and Economic Development's Short Course on Local Planning describes a number of barriers to downzoning that are not typically present in area-wide zoning decisions, including:

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- Parcel specific rezoning does not have the presumption of validity that legislative actions such as area-wide zoning carry, citing *Hayden v. Port Townsend*, 93 Wn.2d 870 (1980), overruled on other grounds, *SANE v. Seattle*, 101 Wn.2d 288 (1984);

- Rezones must be based on a change in circumstances or community needs, or must be necessary to implement the policies of an adopted comprehensive plan, citing *Parkridge v. Seattle*, 89 Wn.2d 454 (1978);

- Rezoning cannot be based exclusively on the desires of public interest groups, citing *Hayden v. Port Townsend*, 93 Wn. 2d at 870 (1980);

- Rezones contrary to the comprehensive plan are generally considered to be spot zones, and are unlawful because the rezone benefits private interests rather than the public, citing *Smith v. Skagit County*, 75 Wn.2d 715, 743 (1969);

- Downzones must be consistent with the comprehensive plan, must meet a public objective, and must permit reasonable use of the property after the downzone, citing *Parkridge v. Seattle*, 89 Wn.2d 454 (1978).

See *A Short Course on Local Planning*, Planning Association of Washington and Washington Department of Community, Trade, and Economic Development, at 5-9, 5-10 (March 2006). Thus, rezoning actions in general, and parcel specific zoning actions in particular have a much more difficult burden than area wide zoning decisions.

D. Moratorium Issues

In addition to considering adopting permanent MHC Zoning, some local governments have considered the use of moratoria to temporarily prevent MHCs from converting to different uses. The adoption of even temporary restriction on MHC can raise takings issues, and the power of local governments to do enact moratoria is limited.

The U.S. Supreme Court has concluded that even temporary takings are subject to the "categorical treatment" of regulations that deny property owners all use of property. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987). In that case, the Court stated that "Temporary" takings that deny a landowner all use of his or her property "are no different in kind from permanent takings, for which the Constitution clearly requires compensation." *Guimont*, 121 Wn.2d at 598, citing *First English*, 482 U.S. at 318.

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This discussion is of great relevance given the Washington Supreme Court's analysis that the prohibition against takings in Article 1, § 16 of the Washington Constitution is "a complete restriction against taking private property for private use." *Manufactured Housing*, 142 Wn.2d at 362. Since the takings prohibition under Article 1 § 16 is a "complete prohibition" it would clearly prohibit any type of taking, including a temporary one.

In addition, a moratorium-based taking claim would follow the same pattern as the two landmark constitutional cases regarding MHCs: both were as-applied challenges, meaning that the takings or due process violation existed upon adoption of the statute. It would not be necessary to establish damages particular to a specific MHC, nor sufficient to merely dismiss the impact of the moratorium as temporary.

In addition to the constitutional issues, the ability of local governments to adopt moratoria is limited specific types of situations that do not apply to the situation of MHC converting to a different use. Local government authority to adopt moratoria is provided at RCW 36.70A.390 of the GMA, and also at RCW 35.63.200 and 35.63A.220. These statutes both generally provide that a moratorium or interim zoning control may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. In addition, a moratorium or interim zoning control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

The authority of local governments to adopt moratoria or interim zoning is limited to emergency situations where the local government needs to protect the status quo until permanent development regulations can be adopted. In order to adopt a moratorium or other interim zoning control without the full public participation and other procedural requirements of the GMA, local governments must first determine that an emergency exists. *McVittie v. Snohomish County*, CPSGMHB No. 00-3-0016, (Final Decision and Order, 2001). The Central Puget Sound Growth Management Hearings Board has described a moratorium as "temporary, interim, or stopgap measures to managed development activity while appropriate analysis and planning can occur." *SHAG v. City of Lynnwood*, CPSGMHB No. 01-3-0014 (Order on Motions, August 3, 2001).

Professors Stoebuck and Weaver have characterized the case on the constitutionality of building moratoria as "in considerable disarray," but have recognized the following principles:

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(1) There must be some pressing and temporary situation that justifies a development moratorium while permanent solutions to the situation can be worked out;

(2) The local government must be developing a plan to work out those solutions;

(3) The moratorium must be 'temporary,' of a length of time that relates to the time necessary to work out the plan; and

(4) The moratorium does not violate constitutional guarantees of equal protection.

Stoebuck and Weaver, *Planning and Zoning*, Washington Practice § 4.15 (2004).

The conversion of MHCs to other uses cannot be considered a temporary or emergency situation, distinct from general issue of housing affordability. This is especially so when the conversion of MHCs is being done consistent with the local Comprehensive Plan and zoning. In fact, MHC conversion generally results in a more consistent and compatible land use pattern. The conversion of MHCs cannot be considered a temporary situation because over time, lower value land uses will in fact convert to higher value land uses. This is especially true inside Urban Growth Areas, where the lower intensity and lower value MHC use will at some point convert to a higher value, higher intensity land use as envisioned by the Comprehensive Plan.

Washington's Growth Management Hearings Boards have authority to review moratoria, as they have been considered as a development regulation under GMA. *Master Builders Association of King and Snohomish Counties v. City of Sammamish* (MBA/Camwest I), CPSGMHB No. 05-3-0030c, and Final Decision and Order in case no. 05-3-0027, at 10. In addition, because a moratorium is a "development regulation" under GMA, the moratorium must implement and be consistent with the Comprehensive Plan. *MBA/Camwest I*, at 13. A local government adopting a moratorium must also consider and make findings that the moratorium is consistent with the goals and policies of the GMA and the local comprehensive plan. *MBA/Camwest I*, at 14. Thus, it would be difficult for a local government to determine that the conversion of a MHC is an emergency, if such conversion is consistent with Comprehensive Plan and zoning. In this situation, the conversion of the MHC would be implementing the Comprehensive Plan and zoning, while a moratorium would act to prevent the Comprehensive Plan and zoning from being implemented.

The conversion of a MHC to a different residential use or commercial use, consistent with the Comprehensive Plan, is unlikely to provide the basis for a declaration of emergency. This is because under RCW 36.70A.070(2) (the

housing element), the local government Comprehensive Plan must include an inventory and analysis of housing needs, and identification of sufficient land for housing necessary to accommodate a jurisdiction's 20 year population growth. The adoption of development regulations and zoning then implement those Comprehensive Plan provisions. The ad hoc adoption of a moratorium to prevent a land use activity otherwise authorized under the Comprehensive Plan and zoning would defeat the purpose of the internal consistent requirements between the Comprehensive Plan and development regulations.

E. Limits on Exactions and Fees

As a component of mandatory MHC Zoning, local governments may also consider the use of mitigation fees or exactions to be paid by MHC owners or developers when a MHC is converted to a different use. There is no authority under Washington law that enables a local government to impose a fee or exaction for this purpose.

The Washington Supreme Court concluded that the both monetary mitigation fees and dedications of land are treated as "exactions" for the purpose of a constitutional takings analysis. *Benchmark v. City of Battle Ground,* 94 Wn.App. 537, 548 (1992). The Washington Legislature has expressly prohibited local governments from imposing fees or conditioning development upon payment of impact fees unless the fee is authorized under Chapter 82.02 RCW. RCW 82.02.050 through .090 limits the impact fee authority of local governments to only collect impact fees only for the following public facilities: streets and roads; parks, open space, and recreational facilities; schools; and fire protection facilities if the area is not within a fire protection district. *RCW 82.02.050.* This statute clearly prohibits local governments from assessing impact fees to preserve MHCs. The Legislature amended the GMA in 2006 to allow voluntary and incentive-based housing programs but did not explicitly authorize local governments to charge impact fees or exactions for this purpose. *RCW 36.70A.540.*

Local government impact fee authority is further constrained by the requirements for "nexus" and "rough proportionality." First, there must be a "nexus" between the impacts of a development and the dedication being proposed. *Nollan v. California Coastal Commission,* 483 U.S. 825 (1987). In addition, an exaction must be "roughly proportionate" to the impact caused by the development. *Dolan v. City of Tigard,* 512 U.S. 374 (1994). In Washington State, the test for nexus and rough proportionality includes the threshold question whether the exaction serves a legitimate police power purpose. *Burton v. Clark County,* 91 Wn.App 505, 521-24 (1998). Based on the Washington Supreme Court decisions in *Guimont* and *Manufactured Housing,* impact fees or exactions of property to preserve MHCs do not pass the threshold question of

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whether a legitimate police power is served, because these decision conclude that preserving a MHC is to the private benefit of the MHC, beyond the scope of the police power to regulate to protect public safety, health, and welfare.

In addition, Washington courts will review development conditions or exactions under substantive due process after the exactions withstand a takings analysis. *Isla Verde v. City of Camas*, 99 Wn.App. 127, 134, aff'd on other grounds, 146 Wn.2d 740 (2000). This would then lead to the same type of substantive due process analysis in the *Guimont* and *Manufactured Housing* decisions, where the Washington Supreme Court invalidated regulations that placed the burden of protecting existing housing supply on the owners of MHCs.

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Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property

December 2006

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STATE OF WASHINGTON
OFFICE OF THE ATTORNEY GENERAL

Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property

December 2006

Introduction

The Office of the Attorney General is directed under RCW 36.70A.370 to advise state agencies and local governments on an orderly, consistent process that better enables government to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property.

This process must be used by state agencies and local governments that plan under RCW 36.70A.040 – Washington's Growth Management Act. The recommended process may also be used for other state and local land use planning activities.[*] Ultimately, the statutory objective is that state agencies and local governments carefully consider the potential for land use activity to "take" private property, with a view toward avoiding that outcome.

> ***RCW 36.70A.370 Protection of Private Property.***
>
> *(1) The state attorney general shall establish … an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property….*
>
> *(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.*
>
> *…*

Purpose of This Document

This *Advisory Memorandum* was developed to provide state agencies and local governments with a tool to assist them in the process of evaluating whether proposed regulatory or administrative actions may result in an unconstitutional taking of private property or raise substantive due process concerns. Where state agencies or local governments exercise regulatory authority affecting the use of private property, they must be sensitive to the constitutional limits on their authority to regulate private property rights. The failure to fully

[*] The process used by state agencies and local governments to assess their activities is protected by attorney-client privilege. Further, a private party does not have a cause of action against a state agency or local government that does not use the recommended process. RCW 36.70A.370(4).

consider these constitutional limits may result in regulatory activity that has the effect of appropriating private property even though that outcome may not have been intended. If a court concludes that private property has been "taken" by regulatory activity, it will order the payment of just compensation equal to the fair market value of the property that has been taken, together with costs and attorneys fees. In other cases, a government regulation may be invalidated if it is found to violate constitutional substantive due process rights.

This *Advisory Memorandum* is intended as an internal management tool for agency decision makers. It is not a formal Attorney General's Opinion under RCW 43.10.030(7) and should not be construed as an opinion by the Attorney General on whether a specific action constitutes an unconstitutional taking or a violation of substantive due process. Legal counsel should be consulted for advice on whether any particular action may result in an unconstitutional taking of property requiring the payment of just compensation or may result in a due process violation requiring invalidation of the government action.

Where state agencies or local governments exercise regulatory authority affecting the use of private property, they must be sensitive to the constitutional limits on their authority to regulate private property rights.

Prior editions of this document were published in February 1992, April 1993, March 1995, and December 2003. Those editions are superseded by this document.[†]

Organization of This Document

This *Advisory Memorandum* contains four substantive parts. The first part outlines a ***Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*** utilizing the other substantive portions of the *Advisory Memorandum*.

The second part, ***General Constitutional Principles Governing Takings and Due Process***, presents an overview of the general constitutional principles that determine whether a government regulation may become so severe that it constitutes an unconstitutional taking of private property or violates substantive due process rights. This discussion is derived from cases that have interpreted these constitutional provisions in specific fact situations.

The third part is a list of ***Warning Signals***. This section provides examples of situations that may raise constitutional issues. The warning signals are useful as a general checklist to evaluate planning actions, specific permitting decisions, and proposed regulatory actions. The warning signals do not establish the existence of a problem, but they highlight specific instances in which actions should be further assessed by staff and legal counsel.

The fourth part is an ***Appendix***, which contains summaries of significant court cases addressing takings law.

[†] The Office of the Attorney General reviews the Memorandum on Takings on an annual basis and updates it when necessary to maintain consistency with changes in case law. No significant case law updates have been needed since the 2006 memorandum was issues. Accordingly, the 2006 Advisory Memorandum continues as the currently recommended basis for state and local government planners to evaluate proposed regulatory or administrative action so that unconstitutional takings of private property may be avoided.

Part One: Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property

1. Review and Distribute This *Advisory Memorandum*. Local governments and state agencies should review this ***Advisory Memorandum*** with their legal counsel and distribute it to all decision makers and key staff to ensure that agency decision makers at all levels of government have consistent, useful guidance on constitutional limitations relating to the regulation of private property. Legal counsel should supplement this document as appropriate to address specific circumstances and concerns of their client agency or governmental unit.

Recommended process:

1. *Review and distribute this Advisory Memorandum to legal counsel, decision makers, and key staff.*
2. *Use the "Warning Signals" to evaluate proposed regulatory actions.*
3. *Develop an internal process for assessing constitutional issues.*
4. *Incorporate constitutional assessments into the agency's review process.*
5. *Develop an internal process for responding to constitutional issues identified during the review process.*

2. Use the "Warning Signals" to Evaluate Proposed Regulatory Actions. Local governments and state agencies may use the ***Warning Signals*** in part three of this ***Advisory Memorandum*** as a checklist to determine whether a proposed regulatory action may violate a constitutional requirement. The warning signals are phrased as questions. If there are affirmative answers to any of these questions, the proposed regulatory action should be reviewed by staff and legal counsel.

3. Develop an Internal Process for Assessing Constitutional Issues. State agency and local government actions implementing the Growth Management Act should be assessed by both staff and legal counsel. Examples of these actions include the adoption of development regulations and designations for natural resource lands and critical areas, and the adoption of development regulations that implement the comprehensive plan or establish policies or guidelines for conditions, exactions, or impact fees incident to permit approval. A similar assessment, by both staff and legal counsel, should be used for the conditioning or denial of permits for land use development. Other regulatory or administrative actions proposed by state agencies or directed by the Legislature should be assessed by staff and legal counsel if the actions impact private property.

4. Incorporate Constitutional Assessments Into the Agency's Review Process. A constitutional assessment should be incorporated into the local government's or state agency's process for reviewing proposed regulatory or administrative actions. The nature and extent of the assessment necessarily will depend on the type of regulatory action and the specific impacts on private property. Consequently, each agency should have some discretion to determine the extent and the form of the constitutional assessment. For some types of actions, the assessment might focus on a specific piece of property. For others, it may be useful to consider the potential impacts on types of property or geographic areas. It may be necessary to coordinate the assessment with another jurisdiction where private property is subject to regulation by multiple jurisdictions. It is strongly suggested, however, that any government regulatory actions which

involve warning signals be carefully and thoroughly reviewed by legal counsel. The Legislature has specifically affirmed that this assessment process is protected by the normal attorney-client privilege. RCW 36.70A.370(4).

5. Develop an Internal Process for Responding to Constitutional Issues Identified During the Review Process. If the constitutional assessment indicates a proposed regulatory or administrative action could result in an unconstitutional taking of private property or a violation of substantive due process, the state agency or local government should have a process established through which it can evaluate options for less restrictive action or—if necessary, authorized, and appropriate—consider whether to initiate formal condemnation proceedings to appropriate the property and pay just compensation for the property acquired.

Part Two: General Constitutional Principles Governing Takings and Substantive Due Process

A. Overview

"Police Power." State governments have the authority and responsibility to protect the public health, safety, and welfare. This authority is an inherent attribute of state governmental sovereignty and is shared with local governments in Washington under the state constitution. Pursuant to that authority, which is called the "police power," the government has the ability to regulate or limit the use of property.

Government has the authority and responsibility to protect the public health, safety, and welfare.

Police power actions undertaken by the government may involve the abatement of public nuisances, the termination of illegal activities, and the establishment of building codes, safety standards, and sanitary requirements. Government does not have to wait to act until a problem has actually manifested itself. It may anticipate problems and establish conditions or requirements limiting uses of property that may have adverse impacts on public health, safety, and welfare.

Sometimes the exercise of government police powers takes the form of limitations on the use of private property. Those limitations may be imposed through general land use planning mechanisms such as zoning ordinances, development regulations, setback requirements, environmental regulations, and other similar regulatory limitations. Regulatory activity may also involve the use of permit conditions that dedicate a portion of the property to mitigate identifiable impacts associated with some proposed use of private property.

Regulatory Takings. Government regulation of property is a necessary and accepted aspect of modern society and the constitutional principles discussed in this ***Advisory Memorandum*** do not require compensation for every decline in the value of a piece of private property. Nevertheless, courts have recognized that if government regulations go "too far," they may constitute a taking of property. This does not necessarily mean that the regulatory activity is unlawful, but rather that the payment of just compensation may be required under the state or federal constitution. The rationale is based upon the notion that some regulations are so severe in their impact that they are the functional equivalent of an exercise of the government's power of eminent domain (i.e., the formal condemnation of property for a public purpose that requires the payment of "just compensation"). Courts often refer to this as an instance where regulation

goes so far as to acquire a public benefit (rather than preventing some harm) in circumstances where fairness and justice require the public as a whole to bear that cost rather than the individual property owner.

A government regulation that is so severe in its impact that it is the functional equivalent of condemnation requires the payment of just compensation.

When evaluating whether government action has gone too far, resulting in a taking of specific private property, courts typically engage in a detailed factual inquiry that evaluates and balances the government's intended purpose, the means the government used to accomplish that purpose, and the financial impact on the property. Severe financial impacts, unclear government purposes, or less intrusive means for accomplishing the identified purpose are factors that can tip the scale in favor of a determination that the government has taken property. The mere presence of these factors does not necessarily establish a taking of property, but may support a taking claim if they are significant enough, either individually or collectively. They should be carefully considered and evaluated, along with the ***Warning Signals*** in part three of this ***Advisory Memorandum***, to determine if another course of action would achieve the government's purpose without raising the same concerns.

In some limited cases, courts may find that a taking has occurred without engaging in the detailed factual inquiry and balancing of interests discussed above. For example, where government regulation results in some permanent or recurring physical occupation of property, a taking probably exists, requiring the payment of just compensation. In addition, where government regulation permanently deprives an entire piece of property of all economic utility, and where there is no long-standing legal principle such as a nuisance law that supports the government regulation, then a taking probably has occurred, requiring the payment of just compensation.

Substantive Due Process. Washington courts have applied principles of substantive due process as an alternate inquiry where government action has an appreciable impact on property. A land use regulation that does not have the effect of taking private property may nonetheless be unconstitutional if it violates principles of substantive due process. Substantive due process is the constitutional doctrine that legislation must be fair and reasonable in content and designed so that it furthers a legitimate governmental objective. The doctrine of substantive due process is based on the recognition that the social compact upon which our government is founded provides protections beyond those that are expressly stated in the U.S. Constitution against the flagrant abuse of government power. *Calder v. Bull*, 3 U.S. 386 (1798).

Courts have determined that substantive due process is violated when a government action lacks any reasonable justification or fails to advance a legitimate governmental objective. To withstand a claim that principles of substantive due process have been violated, a government action must (1) serve a legitimate governmental objective, (2) use means that are reasonably necessary to achieve that objective, and (3) not be unduly oppressive. Violation of substantive due process requires invalidation of the violating government action rather than the payment of just compensation.

B. Constitutional Principles Relating to the Regulation of Private Property

Courts have used a number of constitutional principles to determine whether a given government regulation effects a "taking" under the federal or state constitutions and whether it violates principles of substantive due process. The following paragraphs summarize the key legal and procedural principles.

1. Constitutional Provisions

United States Constitution — Takings Clause and Due Process Clauses. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without the payment of just compensation. Accordingly, the government may not take property except for public purposes within its constitutional authority and must provide just compensation for the property that has been taken. The Fifth and Fourteenth Amendments also provide that no person shall be deprived of property without due process of law.

Washington State Constitution, Article 1, Section 16. Article 1, section 16 of the Washington State Constitution provides, in part, that "[n]o private property shall be taken or damaged for public or private use without just compensation." In other words, the government may take private property, but must pay just compensation for the private property that is taken.

The Washington Constitution provides that "[n]o private property shall be taken or damaged for public or private use without just compensation."

Article 1, Section 16 also expressly prohibits state and local governments from taking private property for a private use with a few limited exceptions: private ways of necessity and drainage for agricultural, domestic or sanitary purposes. This provision goes beyond the U.S. Constitution, which does not have a separate provision expressly prohibiting the taking of private property for private use. As discussed below, this clause has been interpreted to prevent the condemnation of property as part of a government redevelopment plan where the property is to be transferred to a private entity.

2. The Exercise of Eminent Domain - Condemnation Proceedings.

Through the exercise of eminent domain, government has the power to condemn private property for public use, as long as it pays just compensation for the property it acquires. Taking land to build a public road is a classic example of when the government must provide just compensation to a private property owner for its exercise of the power of eminent domain.

Government historically acquires property and compensates landowners through a condemnation proceeding in which the appropriate amount of compensation is determined and paid before the land is taken and used by government. The property generally may be condemned only for public use. Washington's Constitution has been interpreted narrowly in this regard and prohibits condemnation actions that are part of a plan to transfer property to private developers for redevelopment projects that involve private ownership of the developed property. The only exception to the public use requirement is that private property may be taken for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes.

In Washington, property generally may be condemned only for a public use.

The Legislature has enacted a number of statutes specifying which state and local government agencies possess authority to acquire property through condemnation and

setting forth the procedures that must be followed during condemnation. *See* Title 8 RCW. Washington law provides that, in some cases, property may be taken immediately with compensation being determined and paid in a subsequent judicial proceeding or by agreement between the government and landowner. *See* RCW 8.04.090.

3. Inverse Condemnation.

There may be times where the government does not intend to acquire property through condemnation, but the government action nonetheless has a significant impact on the value of property. In some cases, the government may argue that its action has not taken or damaged private property, while the property owner argues that a taking has effectively occurred despite the fact that a formal condemnation process has not been instituted. This dispute may lead to an "inverse condemnation" claim, and the filing of a lawsuit against the government, in which the court will determine whether the government's actions have damaged or taken property. If a court determines that the government's actions have effectively taken private property for some public purpose, it will award the payment of just compensation, together with the costs and attorneys fees associated with litigating that inverse condemnation claim. Inverse condemnation cases generally fall into two categories: those involving physical occupation or damage to property; and those involving the impacts of regulation on property.

a. Physical Occupation or Damage. The government may be required to pay just compensation to private property owners whose land has been physically occupied or damaged by the government on a permanent or ongoing basis. For example, if the construction of a public road blocks access to an adjacent business resulting in a significant loss of business, the owner may be entitled to just compensation for "damage" to the property.

b. Regulatory Takings. In general, zoning laws and related regulation of land use activities are lawful exercises of police powers that serve the general public good. However, the state and federal constitutions have been interpreted by courts to recognize that regulations purporting to be a valid exercise of police power still must be examined to determine whether they unlawfully take private property for public use without providing just compensation. This relationship between takings law and regulation is sometimes explained as looking at whether a regulation has the effect of forcing certain landowners to provide an affirmative benefit for the public, when the burden of providing that benefit is one that should actually be carried by society as a whole.

In general, zoning laws and related regulation of land use activities are lawful exercises of police powers that serve the general public good. However, the state and federal constitutions have been interpreted by courts to recognize that regulations purporting to be a valid exercise of police power must still be examined to determine whether they unlawfully take private property for public use without providing just compensation.

The issue is how to identify just when a specific regulation may exceed constitutional limits. When there is a question of regulatory taking, the inquiry often focuses on the nature and purpose of the government regulation, the means used to

achieve it, and the effect of the regulation on legitimate and established expectations for the use of private property.

To better explain when a regulation unlawfully takes property, this section briefly describes three major types of regulatory takings challenges: (1) challenges alleging a categorical taking, (2) challenges that require a court to balance the governmental interest against the effect on particular private property, and (3) challenges to permit conditions that exact some interest in property.

(1) Challenges Alleging a Categorical Taking. Certain forms of government action are characterized as "categorical" or "per se" takings. In these circumstances the government action is presumptively classified as a taking of private property for public use for which the payment of just compensation is required. The court does not engage in the typical takings analysis involving a detailed factual inquiry that weighs the utility of the government's purpose against the impact experienced by the landowner.

Physical occupations of property are the most well-understood type of categorical taking. When the government permanently or repeatedly physically occupies property, or authorizes another person to do the same, this occupation has been characterized as such a substantial interference with property that it always constitutes a taking requiring the payment of just compensation, even if the amount of compensation is small.

A regulation that deprives a landowner of all economic or beneficial use of property or that destroys a fundamental property right (such as the right to possess the property, the right to exclude others, or the right to dispose of the property) is the second form of categorical taking, requiring the payment of just compensation without further takings analysis. However, a regulation that prohibits all economically viable or beneficial use of property is not a taking if the government can demonstrate that the proposed use of the property that is being denied is prohibited by laws of nuisance or other long-standing and pre-existing limitations on the use of property.

Courts have emphasized that these "categorical" forms of taking arise in exceptional circumstances and that the tests are narrowly tailored to deal with these exceptional cases.

(2) Balancing the Governmental Interest Against the Effect on Particular Private Property. Ascertaining whether a government regulation goes so far as to take private property usually requires a detailed factual investigation into the purpose of the government regulation, the means used to achieve the government's purpose, and the financial impact on the individual landowner. This analysis is often referred to as the "*Penn Central* balancing test," because it was set forth in *Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978). The majority of regulatory takings cases will be evaluated using this traditional multi-factor analysis – weighing the impact of government regulation against the government's objectives and the means by which they are achieved.

If government has authority to deny a land use, it also has authority to condition a permit to engage in that use. For example, a local government may

condition a development permit by requiring measures that mitigate identifiable adverse impacts of the development. However, a permit condition that imposes substantial costs or limitations on the use of property could amount to a taking.

In assessing whether a regulation or permit condition constitutes a taking in a particular circumstance, courts weigh the public purpose of the regulatory action against the impact on the landowner's vested development rights. Courts also consider whether the government could have achieved the stated public purpose by less intrusive means. One factor used to assess the economic impact of a permit condition is the extent to which the condition interferes with a landowner's reasonable investment-backed development expectations.

The federal and state constitutions do not require the government to compensate landowners for every decline in property value associated with regulatory activity.

Most courts apply this balancing analysis using a case-by-case factual inquiry into the fairness of the government's actions. Economic impacts from regulation are usually fair and acceptable burdens associated with living in an ordered society. The federal and state constitutions do not require the government to compensate landowners for every decline in property value associated with regulatory activity. However, government action that tends to secure some affirmative public benefit rather than preventing some harm, or that is extremely burdensome to an individual's legitimate expectations regarding the use of property, or that employs a highly burdensome strategy when other less burdensome options might achieve the same public objective, raises the possibility that the action may be a taking of private property. A useful way to approach this principle is to consider whether there is any substantial similarity between a proposed regulatory action and the traditional exercise of the power to condemn property. When government regulation has the effect of appropriating private property for a public benefit rather than to prevent some harm, it may be the functional equivalent of the exercise of eminent domain. In those cases the payment of just compensation will probably be required.

When government regulation has the effect of appropriating private property for a public benefit rather than to prevent some harm, it may be the functional equivalent of the exercise of eminent domain. In those cases the payment of just compensation probably will be required.

Washington's rather detailed test for evaluating takings claims was set out by the Washington State Supreme Court in *Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993). See the ***Appendix*** in part four of this ***Advisory Memorandum*** for a discussion of that case.

Note: Until recently, the takings analysis also asked whether the regulation of property substantially advanced a legitimate government interest. In *Lingle v. Chevron*, 544 U.S. 248 (2005), summarized in the ***Appendix***, the United States Supreme Court explained that this question is not relevant to a claim of taking by regulation. Instead, the issue of whether a regulation substantially advances a legitimate government purpose is better evaluated under principles of

substantive due process (discussed below). Washington's courts have not yet considered whether or how to modify the state's takings analysis in light of this recent U.S. Supreme Court precedent.

(3) *Challenges to Permit Conditions That Exact Some Interest in Property.* Sometimes a permit condition will attempt to extract some interest in property as mitigation for the adverse public impact of the proposed development. Courts have referred to these types of conditions as *exactions.* While such exactions are permissible, government must identify a real adverse impact of the proposed development and be prepared to demonstrate that the proposed exaction is reasonably related to that impact. The government also must be prepared to demonstrate that the burden on the property owner is roughly proportional to the impact being mitigated.

The limitations that are placed upon property exactions are further discussed in the ***Appendix***, in the case note relating to the United States Supreme Court decision in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and in the case notes discussing some of the more recent Washington cases following *Dolan*.

4. Substantive Due Process.

Under Washington law, even if a government action does not effect a taking, it may be unconstitutional if it violates principles of substantive due process. Substantive due process invokes the due process provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution to invalidate flagrant abuses of government power – actions that authorize some manifest injustice or that take away the security for personal liberty or private property that our government was formed to protect. *Calder v Bull*, 3 U.S. 386 (1798). While the remedy for a government action that works a taking is just compensation, the remedy for a government action that violates substantive due process is invalidation of the violating government action.

Under Washington law, even if a regulation does not effect a taking, it is subject to substantive due process requirements.

a. ***Substantive Due Process in Land Use Cases.*** Washington courts frequently consider both takings claims and substantive due process claims as alternative claims in the same case. In contrast, federal courts sitting in Washington have dismissed Fourteenth Amendment substantive due process claims where a remedy is available by bringing a takings claim under the Fifth Amendment Takings Clause. *See Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996) (en banc).

Our State Supreme Court's approach to substantive due process in a land use regulation context was first developed in *Orion Corp. v. State*, 109 Wn.2d 621, 747 P.2d 1062 (1987), *cert. denied*, 486 U.S. 1022 (1988), and *Presbytery of Seattle v. King Cy.*, 114 Wn.2d 320, 787 P.2d 907, *cert. denied*, 111 S. Ct. 284 (1990), and refined in *Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993), and *Margola Assoc. v. Seattle*, 121 Wn.2d 625, 854 P.2d 23 (1993). These decisions are summarized in the ***Appendix*** in part four of this ***Advisory Memorandum***. In assessing whether a regulation has exceeded substantive due process limitations and should be invalidated, the court considers three questions. First, is the regulation aimed at achieving a legitimate public purpose? There must be a public problem or "evil" that needs to be remedied for there to be a legitimate

public purpose. Second, is the method used in the regulation reasonably necessary to achieve the public purpose? The regulation must tend to solve the public problem. Third, is the regulation unduly oppressive on the landowner? Failing to consider and address each of these questions may lead to a substantive due process violation.

The "unduly oppressive" inquiry, which has been the decisive inquiry in most Washington substantive due process cases, involves balancing the public's interests against those of the regulated landowner. Factors to be considered in analyzing whether a regulation is unduly oppressive include (a) the nature of the harm sought to be avoided; (b) the availability and effectiveness of less drastic protective measures; and (c) the economic loss suffered by the property owner.

In assessing these factors to determine whether a land-use regulation should be invalidated as a violation of substantive due process, the Washington Supreme Court has directed trial courts to the following considerations:

> On the public's side — the seriousness of the public problem, the extent to which the owner's land contributes to it, the degree to which the proposed regulation solves it, and the feasibility of less oppressive solutions.
>
> On the owner's side — the amount and percentage of value loss, the extent of remaining uses, the temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation, and how feasible it is for the owner to alter present or currently planned uses.

b. Substantive Due Process and Retroactive Legislation. A statute or regulation may attempt to impose new standards for previously-authorized conduct or may attempt to remedy newly-discovered impacts from conduct that was previously legal. The requirements of substantive due process do not automatically prohibit such retroactive legislative action so long as it serves a rational purpose. However, retroactive legislation is generally not favored because "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994).

In light of the substantive due process principles discussed above, Washington courts tend to apply a stricter standard of rationality to retroactive legislation than to prospective legislation. The fact that legislation may be rational when applied prospectively does not mean it will necessarily be rational when applied retroactively. There must be some independent rational basis for the retroactivity itself. Some of the additional factors to consider when evaluating the retroactivity of legislation include the following:

> Whether there is a direct relationship between the conduct of the landowner and the "harm" that is being remedied.
>
> Whether the imposed "cure" is proportional to the harm being caused.
>
> Whether the landowner could have generally anticipated that some form of retroactive regulation might occur. It appears this factor is of greater importance where there is a weak link between the landowner's conduct and the "cure" being imposed by the government.

These standards are not individually determinative; they operate together to paint a picture that speaks to the "fairness" of retroactive regulation. *See Rhod-A-Zalea & 35th Inc. v. Snohomish Cy.*, 136 Wn.2d 1, 959 P.2d 1024 (1998).

5. Remedies.

In the usual condemnation case, the government must pay just compensation to a property owner before the property may be taken and used for a public purpose. Compensation usually is based on the fair market value of the property at the time of the taking.

In an inverse condemnation case, the payment of just compensation is due the property owner if a taking has occurred without compensation first having been paid. Compensation usually is based on the fair market value of the property actually taken, at the time of the taking. The government may also be liable for the payment of interest and the property owner's legal expenses incurred in obtaining just compensation.

If a court determines there has been a regulatory taking, the government generally has the option of either paying just compensation or withdrawing the regulatory limitation. However, even if the regulation is withdrawn, the government might be obligated to compensate the property owner for a temporary taking of the property during the period in which the regulation was effective.

If a court determines a regulation has taken private property for private use, the court probably will invalidate the regulation rather than ordering compensation. *See Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000).

If a court determines there has been a substantive due process violation, the appropriate remedy is invalidation of the regulation. *See Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993). A prevailing landowner who also proves that the government's actions were irrational or invidious may recover damages and reasonable attorney's fees under the Federal Civil Rights Act, 42 U.S.C. § 1983.

If a court determines there has been a regulatory taking, the government generally has the option of either paying just compensation or withdrawing the regulatory limitation.

If a court determines a regulation has taken private property for private use, the court probably will invalidate the regulation rather than ordering compensation.

If a court determines there has been a substantive due process violation, the appropriate remedy is invalidation of the regulation.

In addition to the causes of action and remedies discussed above, under Washington law, a property owner who has filed an application for a permit may also have a cause of action for damages to obtain relief from government actions that were arbitrary, capricious, or made with the knowledge that the actions were in excess of lawful authority. *See* RCW 64.40. This statute also provides relief for failure to act within the time limits established by law.

6. Burdens of Proof and Prerequisites to the Filing of a Claim.

A person challenging an action or ordinance generally has the burden of proving that the action or ordinance is unconstitutional. However, in a challenge to a government exaction of land to mitigate for adverse impacts from a proposed land use activity, the burden is on the government to identify a specific impact that needs to be mitigated and demonstrate that the exaction is roughly proportional to the identifiable impact.

A claim that property has been taken may not be brought until the landowner has exhausted all administrative remedies and explored all regulatory alternatives. This means that the landowner generally must submit an application and pursue available administrative appeals of any action that the landowner contends is erroneous. Furthermore, the landowner must allow the planning or regulatory agency to explore the full breadth of the agency's discretion to allow some productive use of property. This may include seeking variances and submitting several applications to determine the full extent to which the regulatory laws may allow or limit development. However, the landowner should not be made to explore futile options that have no practical chance of providing some meaningful use of the land. Once the government comes forward with evidence that there are regulatory options which might provide for some use of the land, the landowner has a heavy burden to show that pursuing these options would be futile. *See Estate of Friedman v. Pierce Cy.*, 112 Wn.2d 68, 768 P.2d 462 (1989).

A claim that property has been taken may not be brought until the landowner has exhausted all administrative remedies and regulatory alternatives.

In some cases a landowner may pursue a "facial challenge" to a law, claiming that the mere enactment of legislation results in a taking or violates due process. These are difficult cases to make because legislation is presumed constitutional and the landowner must demonstrate that under every conceivable set of facts the challenged legislation is constitutionally defective. *See Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000).

Part Three: Warning Signals

The following warning signals are examples of situations that may raise constitutional issues. The warning signals are phrased as questions that state agency or local government staff can use to evaluate the potential impact of a regulatory action on private property.

State agencies and local governments should use these warning signals as a checklist to determine whether a regulatory action may raise constitutional questions and require further review.

The presence of a warning signal means there could be a constitutional issue that government staff should review with legal counsel.

The fact that a warning signal may be present does not mean there has been a taking or substantive due process violation. It means only that there *could* be a constitutional issue and that staff should carefully review the proposed action with legal counsel. If property is subject to the regulatory jurisdiction of multiple government agencies, each agency should be sensitive to the cumulative impacts of the various regulatory restrictions.

1. Does the Regulation or Action Result in a Permanent or Temporary Physical Occupation of Private Property? Government regulation or action resulting in a permanent physical occupation of all or a portion of private property generally will constitute a taking. For example, a regulation requiring landlords to allow the installation of cable television boxes in their apartments was found to constitute a taking, even though the landlords suffered no economic loss. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

This is one of two "categorical" forms of property takings. It does not require any investigation into the character of or justification for the government's actions. It is premised upon the belief that a permanent physical occupation is such an unusual and severe impact on property that it will always be treated as an action that requires the payment of just compensation. However, because this is such a strict and narrow test, it applies only when the government physically occupies the property or provides another person the right to do so.

2. Does the Regulation or Action Deprive the Owner of All Economically Viable Uses of the Property? If a regulation or action permanently eliminates all economically viable or beneficial uses of the property, it will likely constitute a taking. In this situation, the government can avoid liability for just compensation only if it can demonstrate that the proposed uses are prohibited by the laws of nuisance or other pre-existing limitations on the use of the property. *See Lucas v. South Carolina Coastal Coun.*, 505 U.S. 1003 (1992).

This is the other narrow categorical form of taking that does not balance the government's interests in regulation against the impact of regulation. However, in this circumstance, unlike the permanent physical occupation analysis, it is necessary to evaluate the regulation's economic impact on the property as a whole, and not just on the portion of the property being regulated. Accordingly, it is important to assess whether there is any profitable use of the remaining property available. *See, e.g., Florida Rock Industr., Inc. v. United States*, 791 F.2d 893 (Fed Cir. 1986). The existence of some economically viable use of the property will preclude the use of this categorical test. Furthermore, the remaining use does not necessarily have to be the owner's planned use, a prior use, or the highest and best use of the property. However, the fact that some value remains does not preclude the possibility that the regulatory action might still be a taking of property under other takings tests that balance economic impact against other factors.

A regulation must be analyzed for its economic impact on the property as a whole, not just the portion being regulated.

Regulations or actions that require all of a particular parcel of land be left substantially in its natural state should be reviewed carefully.

In some situations, pre-existing limitations on the use of property could insulate the government from takings liability even though the regulatory action ends up leaving the property with no value. For example, limitations on the use of tidelands under the public trust doctrine probably constitute a pre-existing limitation on the use of property that could insulate the government from takings liability for prohibiting development on tidelands. *See Esplanade Properties, LLC v. City of Seattle*, 307 F.3d 978, 983 (9th Cir. 2002); *Orion Corp. v. State*, 109 Wn.2d 621, 747 P.2d 1062 (1987), *cert. denied*, 486 U.S. 1022 (1988). A proposed land use that is precluded by principles of nuisance law is another example. However, the U.S. Supreme Court has made it clear that this principle does not apply simply because the property was acquired after a regulation prohibiting some land use was enacted. *See Palazzolo v. Rhode*

Island, 533 U.S. 606 (2001). A pre-existing limitation on the use of property must be a long-standing property or land use principle before it will effectively insulate the government from takings liability in those rare cases where the property is left with no value. The pre-existing nature of any regulation that limits the use of property may be an important consideration for other takings tests, however, because it may demonstrate whether the landowner had a reasonable expectation of using the property in some manner. This issue should be carefully evaluated with legal counsel.

3. Does the Regulation or Action Deny or Substantially Diminish a Fundamental Attribute of Property Ownership? Regulations or actions that deny or impair a landowner's ability to exercise a fundamental attribute of property ownership are potential takings which should be analyzed further. The fundamental attributes of property ownership are generally identified as the right to own or possess the property, the right to exclude others from the property, and the right to transfer the property to someone else. *See Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993). For example, regulations that prevent property from being inherited have been found to destroy a fundamental property attribute.

4. Does the Regulation or Action Require a Property Owner to Dedicate a Portion of Property or to Grant an Easement? Regulation that requires a private property owner to formally dedicate land to some public use or that extracts an easement should be carefully reviewed. The dedication or easement that is required from the landowner must be reasonable and proportional — i.e., specifically designed to mitigate adverse impacts of a proposed development. Ultimately, the government must demonstrate that it acted reasonably, and that its actions are proportionate to an identifiable problem. Usually, the burden is on the government to identify the problem and demonstrate the reasonableness and proportionality of is regulation.

5. Does the Regulatory Action Have a Severe Impact on the Landowner's Economic Interest? Courts have acknowledged that regulations are a necessary part of an ordered society and that they may limit the use of property, thereby impacting its value. Such reductions in value do not necessarily require the payment of compensation under either the federal or state constitutions. Nor do they necessarily violate substantive due process. However, if a regulation or regulatory action is likely to result in a substantial reduction in property value, the agency should consider the possibility that a taking or a violation of substantive due process may occur. If the regulation or regulatory action acts more to provide a public benefit than to prevent a public harm, it should be evaluated using the takings analysis discussed below. If it acts more to prevent a public harm, it is probably not a taking, but should nonetheless be evaluated using the substantive due process analysis discussed below. Because government actions often are characterized in terms of overall fairness, a taking or violation of substantive due process is more likely to be found when it appears that a single property owner is being forced to bear the burden of addressing some societal concern when in all fairness the cost ought to be shared across society.

> ***a. Factors to Consider in a Regulatory Takings Analysis.*** Regulatory action that deprives property of all value constitutes a taking of that property. Where there is less than a complete deprivation of all value, a court will evaluate whether a taking has occurred by balancing the economic impact against two other factors: (1) the extent to which the government's action impacts legitimate and long-standing expectations about the use of the property; and (2) the character of the government's actions — is there an important interest at stake and has the government tended to use the least intrusive means to achieve that objective?

Other factors to consider include the presence or absence of reciprocal benefits and the manner in which the costs and benefits of regulations are shared. For example, zoning regulations may eliminate some profitable uses of property while simultaneously preserving or enhancing property value by limiting development activities (e.g., preventing industrial operations in residential neighborhoods).

As with other analyses of economic impact where a taking is alleged, this evaluation of economic impact and balancing of other factors is normally applied to the property as a whole, not just the portion subject to regulation.

b. Factors to Consider in a Substantive Due Process Analysis. Substantive due process principles require the government to ensure that its actions are reasonably designed to advance a legitimate state interest. To determine whether the government action is reasonable, a court will consider the relation between the government's purpose and the burden on the landowner. To what extent does the landowner's land contribute to the problem the government is attempting to solve? How far will the proposed regulation or action go toward solving the problem? A court will also want to know if less oppressive solutions are feasible.

Often a key question is the amount by which the value of the owner's property will be decreased by the government's action. In evaluating this loss in property value, a court will look at both the absolute decrease in value of the property and the percentage this decrease comprises of the total value of the property.

Another factor to consider is how the owner's plans for the property are affected by the proposed government action. What uses remain after the proposed action? Is the regulation temporary or permanent? Should the owner have been able to anticipate the regulation? How feasible is it for the owner to alter present or planned uses?

The people of Washington are best served when governments aspire to adopt the fairest possible approaches for accomplishing important public policy purposes.

Conclusion

Ultimately, the people of Washington State are best served when state and local governments aspire to adopt the fairest possible approaches for accomplishing important public purposes. We therefore encourage government decision-makers to seek effective regulatory approaches that fairly consider both the public interests and the interests of private property owners, while using these guidelines to avoid unconstitutional regulation.

Part Four: Appendix

This ***Appendix*** includes lists of *some* of the principal cases dealing with takings and/or related due process issues and a short summary of the result in each case. These cases provide examples of how federal courts and Washington courts have resolved specific questions and may be helpful for assessing how courts might resolve analogous situations. There are many takings cases not discussed here, as well as several excellent law review articles on the subject.

Contents of Appendix

2000 –

2. Summaries of Significant Washington State Takings Cases (Chronological Order)

1970 – 1979

1980 – 1989

1990 – 1999

1. Summaries of Significant Takings Cases in the United States Supreme Court (Chronological Order)

Before 1970

Pennsylvania Coal Co. v. Mahon,
260 U.S. 393, 43 S. Ct. 158, 67 L. Ed. 322 (1922)

Regulations can "go too far" and may become the functional equivalent of an exercise of eminent domain that requires the payment of just compensation.

This case begins the United States Supreme Court's development of the concept of regulatory takings. Pennsylvania's laws had prohibited coal mining that produced severe ground subsidence, which made it commercially impossible to mine coal in certain areas of the state. The Court rejected the notion that the constitutional requirement of just compensation was limited to traditional exercises of eminent domain (formal condemnation proceedings). Instead, the Court noted that regulatory activity can "go too far," having such an impact on property that it is the functional equivalent of an exercise of eminent domain. The Court did not lay out clear standards as to when a regulatory action "goes too far."

1970 – 1979

Penn Central Transportation Co. v. New York City,
438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978)

Takings claims are evaluated by examining and balancing three factors: (1) the economic impact of the regulatory action on the property; (2) the extent to which legitimate property use expectations exist and have been interfered with; and (3) the extent to which the government has used reasonable means to achieve an important public objective. When undertaking this evaluation the court must consider the impact on the entire property owner's interest at stake, not just the portion subjected to regulation.

Grand Central Station was declared a landmark under New York City's historic preservation ordinance. Penn Central, the owner, proposed to "preserve" the original station while building a 55-story building over it. The city denied the

construction permit. The Court rejected Penn Central's takings claim, explaining that the city ordinance served a valid public purpose and, so far as the Court could ascertain, Penn Central could still make a reasonable return on its investment by retaining the station as it was. Responding to Penn Central's argument that the ordinance would deny it the value of its "pre-existing air rights" to build above the terminal, the Court held that it must consider the impact of the ordinance upon the property as a whole, not just upon "air rights." The Court also applied a multi-factor test for evaluating a claim that specific government action has "taken" property. Courts must consider and balance three factors: (1) the economic impact of the regulation on the property; (2) the extent to which the regulation interferes with investment-backed expectations; and (3) the character of the governmental action (whether it furthers an important interest and could have been accomplished by less intrusive means).

1980 – 1989

***Agins v. City of Tiburon*,**
447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980)

Regulatory actions may be a taking where they fail to advance a legitimate state interest or where they deprive property of all its value.

[In Lingle,[3] the Court abandoned the "substantially advance" test as part of takings analysis, recognizing it instead as an element of substantive due process.]

The city adopted a zoning ordinance that limited property development to no more than five homes per parcel of land. Agins brought a takings claim alleging that the ordinance "completely destroyed the value of the property." The Court appears to have identified an alternative test for evaluating whether a regulation results in a taking. The Court held that a taking occurs only where the regulation (1) fails to substantially advance a legitimate state interest; or (2) denies an owner all economically viable uses of the land. The Court upheld the ordinance because it advanced a legitimate interest and did not deprive the landowner of all economic value.

***Loretto v. Teleprompter Manhattan CATV Corp.*,**
458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982)

A physical invasion of property, no matter how slight, will categorically constitute a taking of that portion of the property occupied for the period of time that it is occupied.

A state statute required landlords to allow the installation of cable television on their property. The owner of an apartment building challenged the statute, claiming a taking of private property. The installation in question required only a small amount of space to attach equipment and wires on the roof and outside walls of the building. The Court held the statute was unconstitutional, concluding that "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." The Court reasoned that an owner suffers a special kind of injury when a "stranger" invades

[3] Cross-referenced decisions that are summarized in this ***Appendix*** are underlined.

and occupies property and that such an occupation is "qualitatively more severe" than a regulation on the use of property.

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,
473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)

A taking claim is not ripe and must be dismissed in two instances: (1) where the land use decision process has not been pursued, or is incomplete; and (2) where the landowner brings suit in federal court without first seeking compensation at the state level. The federal Just Compensation Clause does not require payment of compensation before a taking occurs, so long as a means of obtaining just compensation is provided.

Over a course of years, the county first granted in part, then ultimately denied applications for permits to develop a golf course and residential area. The applicant alleged a taking. The Court held the claim was premature for two reasons: (1) the applicant had not sought variances that would have allowed it to develop the property according to its proposed plat and thus had not obtained a final decision as to the application of the ordinance to its property; and (2) the applicant had not used state procedures provided for obtaining just compensation. Tennessee had a statutory scheme allowing persons claiming a regulatory taking to file an inverse condemnation claim; the Court held the statutory scheme provided an adequate procedure for seeking just compensation, and the applicant could not claim a violation of the federal Just Compensation Clause until it used the state procedure and was denied just compensation. The Court also held that the Fifth Amendment does not require that just compensation be paid in advance of, or contemporaneously with, a taking; all that is required is that a "reasonable, certain and adequate provision for obtaining compensation" exists at the time of the taking.

MacDonald, Sommer & Frates v. Yolo County,
477 U.S. 340, 106 S. Ct. 2561, 91 L. Ed. 2d 285 (1986)

Where a land use planning agency retains some discretion to allow for meaningful use of the property, those opportunities must be explored before alleging that a final disposition exists regarding the permissible uses of the property.

A developer appealed the county's denial of a "tentative subdivision map," claiming the denial deprived it of all economic use of its property. Following the reasoning in *Williamson County*, the Court held that until a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retains any reasonable beneficial use or whether existing expectation interests have been destroyed.

First English Evangelical Lutheran Church of Glendale v. Los Angeles County, California,
482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987)

The remedy for a regulatory taking of property is the payment of just compensation rather than simple invalidation of the regulation. If a regulation found to have "taken" property subsequently is repealed by the government, the property owner may be entitled to compensation for a "temporary taking" – the loss of value during the time the taking existed.

When a flood destroyed a church campground, California responded with a moratorium prohibiting development in the flood plain area. The church sought damages, claiming its property had been taken. California argued that the only remedy available was to challenge the validity of the regulation and seek to have it overturned, but the Court held that just compensation is the appropriate remedy if property was "taken." The Court also explained that if a statute effected a taking, the state could not avoid paying compensation by repealing the statute; compensation might be required for any loss of value during the time that the taking existed, that is for the "temporary taking." The Court did not conclude there was a "temporary taking" in this case, only that the Just Compensation Clause allows compensation for a "temporary taking."

Hodel v. Irving,
481 U.S. 704, 107 S. Ct. 2076, 95 L. Ed. 2d 668 (1987)

The destruction of a "fundamental attribute of property" (the right to own, exclude others, dispose of property, or make at least some economic use of the property) will result in a taking.

Portions of the Sioux Indian reservation that had been "allotted" to individual tribal members had become fractionated, sometimes into very small parcels. Good land often lay fallow, amidst great poverty, because of the difficulties in managing the property. In 1983, Congress passed legislation which provided that any undivided fractional interest constituting less than two percent of a given tract's acreage and earning less than $100 in the preceding year would revert to the tribe. No compensation was to be provided tribal members whose property was lost under the statute. Tribal members challenged the statute. The Court noted that, under the balancing test traditionally applied to takings challenges, the statute might be constitutional. In this case, however, the character of the government action was "extraordinary" in that it destroyed "one of the most essential" rights of ownership: the right to transfer property, especially to one's family. The Court held that such an action was a taking, regardless of the public interest that might favor the legislation.

Keystone Bituminous Coal Association v. DeBenedictis,
480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987)

Takings claims must be evaluated with respect to the entire parcel of land owned by the claimant, not just the portion affected by the regulation. Property may not be segmented into separate legal interests for purposes of evaluating a takings claim.

Pennsylvania enacted a law requiring coal companies to leave certain amounts of coal in place to prevent subsidence of surface property. Keystone claimed a taking, alleging the law would require it leave up to 27 million tons of its coal un-mined, thereby effectively appropriating its coal for a public purpose. Keystone challenged the law on its face, rather than challenging its application in a particular set of facts. The Court held Keystone had a difficult burden of proof because legislation is presumed to be constitutional. The Court explained that legislation properly may regulate an activity to prevent severe impacts to the public, even if the activity has not traditionally been classified as a nuisance. Absent a showing that the legislation had a severe impact on Keystone's entire property (the 27 million tons of coal was about two percent of Keystone's holdings) the Court declined to invalidate the legislation. In response to

Keystone's arguments that its coal had been appropriated for a public purpose, the Court reaffirmed that takings law does not compensate a landowner for every loss in value. The Court refused to consider the coal left behind as a separate piece of property and affirmed that takings law evaluates the impact of regulation on the entire property held by the landowner, not just the portion being regulated.

Nollan v. California Coastal Commission,
483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987)

Permit conditions that extract something from a landowner must have some reasonable relationship (some "nexus") to an identifiable impact that the conditions seek to mitigate.

The Nollans sought a permit to replace a bungalow with a larger house on their California oceanfront property. The property lay between two public beaches. The Nollans were granted a permit, subject to the condition that they allow the public an easement to pass along their beach. The Court found this requirement to be a taking. The Court reasoned that it would have been a taking if the government had simply ordered the Nollans to give the public an easement outside of any permit process; the existence of a permit process and the extraction of an easement as a permit condition changes nothing unless the condition is related to some impact associated with the permit application. Even then, the permit condition is only valid if it substantially advances a legitimate state interest. The Court observed that if the Nollans' proposed house had blocked the public's view of the ocean from the street, a view easement perhaps would have been appropriate. But there was no indication that the Nollans' house plans interfered in any way with the public's ability to walk up and down the beach. Accordingly, the Court held there was no reasonable relationship, or "nexus," between the permit condition and any public interest that might be harmed by the construction of the house. Lacking this nexus, the required easement was a taking of property.

1990 – 1999

Lucas v. South Carolina Coastal Council,
505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992)

A regulation that permanently deprives property of all economic value is a categorical form of taking that does not need to be evaluated using the Penn Central balancing test. If, however, the government can show that the regulated use of property would be barred under fundamental principles of property law or nuisance, there is no categorical taking even if the property is left without economic value.

Lucas bought two South Carolina beachfront lots intending to develop them. Before he initiated any development of the lots, the state enacted legislation to protect its beaches, which prevented development of the lots. The parties stipulated that the parcels had no remaining economic value. The Court held that a regulation which "denies all economically beneficial or productive use of land" is categorically a taking unless the government can show that the proposed uses of the property are prohibited by nuisance laws or other preexisting limitations on the use of property. The Court explained, however, that such categorical takings will be "relatively rare" and the usual balancing approach for determining takings, from *Penn Central*, will apply in most cases.

Yee v. City of Escondido, California,
503 U.S. 519, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992)

Government regulation that affects the use of property, but that does not compel a landowner to involuntarily suffer the presence of the government or a third party, is not a categorical taking under Loretto.

Yee challenged a rent control ordinance for mobile home parks that scaled rents back to 1988 levels and prohibited increases without city approval. Yee argued that the rent control provision, in combination with the state laws limiting the termination of rental agreements, forced the property to be used as a mobile home park with artificially low rents. He contended the result was a categorical taking similar to the physical invasion identified in the *Loretto* case. Observing that Yee voluntarily rented space to mobile homes and could get out of the business and convert the property to another use at any time, the Court held the ordinance was a regulation of property, not a physical invasion. The Court noted that a conventional regulatory taking analysis under *Penn Central* might be possible in this circumstance, but refused to apply that analysis because Yee's suit had only been litigated as a physical occupation claim.

Dolan v. City of Tigard,
512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 104 (1994)

Under Nollan, a permit condition that extracts something from a landowner must have some nexus to an identifiable impact. In addition, the scope of the condition must be "roughly proportional" to the impact being mitigated.

The city approved a permit to expand a store and pave a parking lot, on condition that the business owner (1) dedicate a portion of her property for a public greenway along an adjacent stream to minimize flooding that would be exacerbated by the increased impervious surface, and (2) provide for a bicycle path intended to relieve traffic congestion. When the city denied her variance request, she alleged a taking. The Court distinguished most of its prior regulatory takings cases for two reasons: (1) they involved challenges to legislative comprehensive land use regulations, whereas this case involved an adjudicative decision to condition an application for a building permit on an individual parcel; and (2) the conditions imposed here did not simply limit use, but also required that the landowner deed portions of her property to the city. The Court found a sufficient nexus between the permit conditions and the impacts they targeted, under *Nollan*, then proceeded to consider whether the required dedication was "roughly proportional" to the impacts being mitigated. The Court held no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development. Finding that the city had not demonstrated why the floodplain could not be protected without depriving the landowner of her property, the Court held there was no evidence of a reasonable relationship between the business expansion and the required dedication for a public greenway. The Court also found that the bike path could be a reasonable requirement to mitigate the impact of increased traffic caused by the expanded business, but it was troubled by the lack of evidence concerning the magnitude of any traffic impact. The Court remanded for further proceedings.

City of Monterey v. Del Monte Dunes at Monterey, Ltd.,
526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882 (1999)

(1) If a takings claim can be brought in federal court and is raised as a 42 U.S.C §1983 civil rights claim, a jury may be used to evaluate the government's regulatory activity.

(2) The "rough proportionality" analysis set forth in Dolan is used only to evaluate regulatory exactions of some interest in property.

After the city repeatedly failed to approve the development of a 37.6-acre parcel of land, based on the need to protect the habitat of an endangered butterfly, the plaintiffs sought compensation in federal court. The takings claim was lodged as a civil rights violation under 42 U.S.C. § 1983. At trial, a jury was used to consider two different takings theories – a categorical *Lucas*-type taking based upon a complete deprivation of all economically viable uses, and a takings theory based upon the Court's *Agins* analysis examining the nature of the government's actions. (Note: After *Lingle*, decided in 2005, this second form of takings analysis is no longer used in federal courts). On appeal from a successful verdict, the city argued that it was improper to submit the takings question to a jury. The Court disagreed, noting that the jury was not being asked to scrutinize the question of whether the government's regulatory decisions were appropriate. The case had been raised as a civil rights claim and was litigated on the premise that the city's regulations were valid but had been applied inconsistently. The Court specifically refused to decide whether a jury might be used to determine takings claims brought outside of this context. In addition, the Court clarified that the rough proportionality test laid out in *Dolan* applies only when evaluating whether a property exaction amounts to a taking; it does not apply to regulatory actions that do not exact some property interest from the landowner.

2000 –

Palazzolo v. Rhode Island,
533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001)

(1) The mere fact that a government regulation was enacted before a regulated property was acquired does not mean the regulation will be treated as a background limitation on the use of the property that cuts off a taking claim, although the regulation may be considered in any Penn Central analysis that is performed. Only background limitations that traditionally have limited the use of property will cut off a regulatory takings claim.

(2) Where a regulation denies or limits the use of property, a takings claim will be ripe only if the landowner fully explores available variances or regulatory land use options or demonstrates that it would be futile to do so.

A landowner was denied a permit to fill wetlands as part of a plan to build several waterfront homes. The landowner sued, alleging that the property had no remaining value and had been taken under the "total deprivation of all value" test laid out in *Lucas*. The planning agency responded (1) that the claim was not ripe because the landowner had not sought a variance; (2) that, because the landowner had acquired the property after the effective date of the regulation, the regulation constituted a preexisting limitation on the use of property, thereby cutting off any

taking claim; and (3) that no *Lucas* claim existed because the evidence showed at least one home could be built on the unfilled portion of the property.

The Court reaffirmed that a case is not ripe where a planning agency retains the discretion to allow some alternate form of valuable development. In this case, while the applicable ordinance allowed for variances based upon a showing of "compelling public purpose," the planning agency had already indicated that no compelling interest could be shown. On that basis, the Court held the appeal was ripe because it would be futile to make the landowner go through the motions of attempting to obtain a variance.

Agreeing that pre-existing property limitations may cut off a taking where the background limitation on property uses has always existed as a part of the law of property, the Court held this principle should not be used to treat newly enacted regulations as some bright line cut-off of any subsequent claim that the newly enacted regulations amount to a taking. Instead, the fact that a property owner may have acquired property with the knowledge that a previous regulation might preclude certain land uses could be weighed as part of the *Penn Central* balancing test when evaluating a landowner's legitimate investment expectations. Finding that the entire property retained some value, the Court rejected the *Lucas*-based takings claim and remanded the case for a determination whether a taking had occurred, using the *Penn Central* balancing test.

***Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002)**

This opinion summarizes much of the Court's prior takings analysis, including the principle that property is not segmented into components for purposes of a takings analysis (the "whole parcel rule"), and confirms that the Penn Central balancing test is the usual test for evaluating takings claims. Categorical takings claims are limited to the narrowly tailored exceptions set forth in Loretto (physical occupation) and Lucas (total deprivation of all economic value).

The Tahoe Regional Planning Agency imposed two moratoria, totaling 32 months, on development in the Lake Tahoe Basin while formulating a comprehensive land use plan for the area. Landowners affected by the moratoria filed suit claiming a taking of their property without just compensation, alleging that their properties had been deprived of all value during the moratoria. The court refused to apply the categorical taking test of *Lucas*, explaining that a temporary deprivation of all value does not qualify as a taking under *Lucas*. For example, the normal delay associated with getting a permit does not give rise to a claim for any lost value. The Court held moratoria should be evaluated instead using the *Penn Central* balancing test, under which a moratorium could be treated as a taking if imposed for a long enough time or in a manner that was disproportionate to the legitimate planning needs of the agency.

The Court affirmed that takings claims normally are evaluated using the *Penn Central* balancing test. Categorical takings, such as the total deprivation of all value principle laid out in *Lucas* or the physical invasion principle laid out in *Loretto*, are rare and narrowly-tailored exceptions to normal takings analysis. The Court also affirmed that takings analysis must not segregate the regulated property into partial interests when evaluating the regulatory impact (e.g., a portion of time when the property may be used, a partial legal interest in the use

of the property, or a physical segment of the property being regulated). The property must be considered as a whole when evaluating the impact of regulation.

***Lingle v. Chevron U.S.A. Inc.*,**
544 U.S. 5288, 125 S. Ct 2074, 161 L. Ed. 2d 876 (2005).

The "substantially advances" formula articulated in Agins is not an appropriate test for determining whether a regulation effects a taking of property requiring just compensation, but is instead a principle associated with a substantive due process analysis.

Concerned about the effects of market concentration on retail gasoline prices, the Hawaii Legislature passed a law limiting the rent that oil companies could charge dealers leasing company-owned service stations. Chevron sued, seeking a declaration that the rent cap was a taking of its property. Applying *Agins*, the district court held that the rent cap effected a taking in violation of the Fifth and Fourteenth Amendments because it did not substantially advance Hawaii's asserted interest in controlling retail gas prices. The Supreme Court reversed, concluding the "substantially advances" formula is not a valid method of identifying compensable regulatory takings. Rather, it prescribes an inquiry in the nature of a due process test, which has no proper place in takings jurisprudence. A plaintiff seeking to challenge a government regulation as a taking of private property may proceed by alleging (1) a *Loretto*-based physical taking, (2) a *Lucas*-type total regulatory taking, (3) a *Penn Central* taking using the traditional balancing inquiry into the nature and effect of the government regulation, or (4) a land-use exaction violating the *Nollan* and *Dolan* reasonable relationship and proportionality standards.

San Remo Hotel v. City and County of San Francisco,
545 U.S. 323 , 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005).

Full Faith and Credit considerations bar a Fifth Amendment takings claim from further litigation in federal court after a state court has analyzed the federal takings issue, found no taking, and denied compensation. It makes no difference that a federal suit would have been dismissed under Williamson County as unripe for failing to first proceed in state court.

The San Remo Hotel was subject to a city ordinance requiring anyone wishing to convert residential hotel units into tourist hotel units to mitigate the loss of residential units by constructing new residential units, rehabilitating old ones, or paying an "in lieu" fee. When the hotel sought to convert all its rooms to tourist units, the city required it to pay a $567,000 "in lieu" fee after all the units in the hotel were classed as residential. San Remo filed a state court action challenging the classification of its units, and a federal court action asserting that the ordinance worked a taking, both facially and as applied to San Remo. Relying on the ripeness principles in *Williamson County*, the Ninth Circuit held the as-applied challenge in federal court was not ripe because state court proceedings were available to seek just compensation. The court of appeals granted San Remo's petition that it abstain from deciding the facial challenge until the state court case was resolved. The state court case then was expanded to include both facial and as-applied takings claims.

The California Supreme Court, analyzing the takings claims under both the federal and California constitutions, denied both takings claims. San Remo then attempted to litigate its takings claims in federal court. The federal district

court held that both takings challenges were barred by traditional principles of abstention: federal courts do not re-litigate claims resolved in state courts because they are not courts of appeal for such litigation. The U.S. Supreme Court affirmed, invoking the Full Faith and Credit clause of the U.S. Constitution, Art. IV, § 1; the full faith and credit statute, 28 USC 1738; and traditional abstention principles. The Court explained that the fact that state court proceedings are not chosen, but instead are required to ripen federal takings claims, does not eliminate the preclusive effect of the prior determination so long as the state court proceedings fully litigate the takings issues.

Kelo v. City of New London,
545 U.S. 469 , 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005).

Under the Fifth Amendment to the U.S. Constitution, the condemnation of private property and its transfer to private developers under a government-approved program for economic rejuvenation is evaluated using a broad definition of "public use" that defers in part to a legislative determination that the program is of public benefit.

The city approved an integrated development plan designed to revitalize its ailing economy. The city purchased most of the property earmarked for the project from willing sellers, but it initiated condemnation proceedings against those owners who refused to sell. These property owners sued in state court, claiming the condemnation of their property as part of a plan to transfer the property to private developers did not constitute a "public use" of their property, as required in the federal Takings Clause. The Connecticut Supreme Court held the condemnation action was valid, and the U.S. Supreme Court affirmed. The Court held a government action serves a government use as long as it advances a public purpose. Relying on precedents extending back to the 19th century, the Court rejected the argument that "public use" literally means "use by the general public." The Court looked instead to the state legislative determination as to whether the proposed use was a public use and held that in some circumstances economic development is a valid public use that can justify the condemnation of private property through eminent domain.

2. Summaries of Significant Washington State Takings Cases (Chronological Order)

1970 – 1979

Maple Leaf Investors, Inc. v. Department of Ecology,
88 Wn.2d 726, 565 P.2d 1162 (1977)

A prohibition on construction for human habitation within a floodway is a valid exercise of the state police power, not a taking or damaging of private property.

Maple Leaf Investors owned property along the Cedar River in an area subject to flood control regulations, which prohibited construction for human habitation within the floodway channel. Seventy percent of the property lay within the floodway channel. Considering a claim that the flood control regulations effected a taking, the Washington Supreme Court examined the balance between the public interest in the regulations and the private interest in using the property without restriction. The court found the primary purpose of the regulations was not to put the property to public use, but to protect the public health and safety: the regulations prevented harm to persons who might otherwise live in the floodway, and barred the construction of structures that might break loose during a flood and endanger life and property downstream. Further, since 30 percent of the property was still usable, there was no indication that the regulations prevented profitable use of the property. Finally, the court noted that it was nature, not the government, that placed Maple Leaf's property in the path of floods. The court rejected the taking claim.

Department of Natural Resources v. Thurston County,
92 Wn.2d 656, 601 P.2d 494 (1979), *cert. denied*, 449 U.S. 830 (1980)

Restricting development density to protect bald eagle habitat is not a taking, so long as the county allows sufficient density for the owner to make a profitable use of its property.

A developer leasing property from the state sought plat approval from the county for a proposed residential development. The county denied preliminary plat approval, finding the proposed development would interfere with eagle perching and feeding areas. The developer claimed a taking of private property. The Washington Supreme Court held it was not a taking, primarily because the county had indicated it would approve a less intensive development. (The county commission had found no adverse impact from the development of 11 of the 22 lots proposed by the developer.) The court held there was a strong public interest in protecting the eagles, and there had been no showing that all reasonably profitable uses of the property were foreclosed.

1980 – 1989

Granat v. Keasler,
99 Wn.2d 564, 663 P.2d 830, *cert. denied*, 464 U.S. 1018 (1983)

A city ordinance that conveyed perpetual occupancy rights to paying tenants effected a taking of property from houseboat moorage owners.

Under a Seattle houseboat ordinance, the only reason a houseboat moorage owner could evict a paying tenant would be to use the moorage site for the owner's own non-commercial residence. A moorage owner appealed the ordinance. The Washington Supreme Court held the ordinance was a taking of private property without just compensation. The court's reasoning followed that of its earlier decision in *Kennedy v. Seattle*, 94 Wn.2d 376, 617 P.2d 713 (1980), where a similar ordinance was invalidated because it effectively conveyed perpetual occupancy rights of a landowner's property to another person.

Buttnick v. City of Seattle,
105 Wn.2d 857, 719 P.2d 93 (1986)

A historical preservation requirement in a city ordinance does not effect a taking if, considering the market value and income producing potential of the subject property, the requirement imposes no unnecessary or undue hardship on the plaintiff.

A Seattle historic preservation ordinance required a building owner conducting repairs to replace a parapet in a manner approximating the original design. The building owner claimed its property was taken without compensation. Following the U.S. Supreme Court's analysis in *Penn Central*, the Washington Supreme Court held the estimated cost of replacing the parapet would not be an undue hardship on the building owner, considering the market value and income-producing potential of the building. The court rejected the taking challenge to the historic preservation ordinance.

Valley View Industrial Park v. City of Redmond,
107 Wn.2d 621, 733 P.2d 182 (1987)

A reasonable delay in obtaining a required development permit does not give rise to a claim for a regulatory taking.

A developer sought to build a phased development on a parcel that was the focus of efforts to conserve agricultural lands, which resulted in several delays during the permit approval process. The Washington Supreme Court found the task of obtaining a regulatory permit usually takes many months, and often several years, and concluded that reasonable delays do not result in a taking of property. The court also reiterated the Washington rule that, although the mere passage of time does not bar a landowner's right to seek just compensation for an alleged taking by inverse condemnation, that right may be subject to statutory time limits.

Orion Corp. v. State,
109 Wn.2d 621, 747 P.2d 1062 (1987), *cert. denied,* 486 U.S. 1022 (1988)

(1) A government prohibition on development actions that is reasonably tailored to protect the public interest in navigable waters under the Public Trust Doctrine does not constitute a regulatory taking.

(2) If a court concludes there is a regulatory taking, the decision lies with the legislative branch to decide whether to (a) cure the taking by amending the regulations, while providing compensation for a temporary taking; or (b) exercise eminent domain to complete a permanent taking, with appropriate compensation for the condemnation.

The Orion Corporation was denied a shoreline permit to build a residential community on tidelands in Padilla Bay. Although the denial was issued pursuant

to a county shoreline ordinance, the Washington Supreme Court found the state was the proper defendant for Orion's regulatory takings claim; the court concluded the county was acting as agent for the state when it adopted its shoreline ordinance, because the ordinance became effective only when approved by the state. This case contains extensive discussions of the evolving notion of regulatory takings, although many of the principles discussed have been more fully developed since the time this opinion was issued. In addition to the interesting historical look at the development of the law, the opinion continues to be noteworthy for its conclusions (1) that private interests in navigable waters are burdened by public interests under the Public Trust Doctrine, and (2) the government may prohibit development actions that impair these public interests without effecting a taking and without violating principles of due process so long as the government's actions are reasonably tailored to prevent an impairment of the public's interests in the property.

Unlimited v. Kitsap County,
50 Wn. App. 723, 750 P.2d 651, *review denied,* 111 Wn.2d 1008 (1988)

To avoid a taking, an exaction placed on a proposed development must serve a legitimate public purpose, must be reasonable, and must address a problem that arises from the proposed development.

Unlimited sought a planned unit development approval to construct a convenience store on part of its property. The county approved the application subject to two conditions which required Unlimited to (1) dedicate a 50-foot right of way to provide commercial access to the next door property, and (2) dedicate a strip of its property sufficient to extend a county arterial along the front of its property. Unlimited appealed these conditions. The Washington Court of Appeals, relying upon the U.S. Supreme Court's decision in *Nollan*, stated that a private property interest can be exacted without compensation only where "the problem to be remedied by the exaction arises from the development under consideration, and the exaction is reasonable and for a legitimate public purpose." The court ruled that providing commercial access to the adjacent private property benefited a private person, rather than mitigating a public problem, and it found nothing in the proposed development that created a need to extend the arterial. The court held the conditions imposed by the county effected a taking.

Estate of Friedman v. Pierce County,
112 Wn.2d 68, 768 P.2d 462 (1989)

A taking claim is not ripe for judicial review where the government retains some discretion to allow profitable uses of land.

After the county denied a master application for a proposed development, the developer challenged the denial and alleged a taking. The superior court rejected both claims, dismissing the taking claim as not ripe for review because no specific project had been proposed. The Washington Supreme Court affirmed, holding that a taking claim is not ripe for adjudication where a regulatory agency retains some discretion to allow profitable uses of land. Without a final regulatory disposition that clearly shows the economic impact of the regulatory program, it is not possible for the court to assess the extent to which the regulation interferes with reasonable investment-backed expectations. Ripeness is a question for the judge, not the jury. If the regulatory agency raises as a defense the landowner's failure to exhaust administrative remedies, the burden is on the

landowner to persuade the court that futility excuses exhaustion. The burden is on the landowner to demonstrate it would be futile to pursue available development alternatives, and this is a substantial burden.

1990 – 1999

***Presbytery of Seattle v. King County*,**
114 Wn.2d 320, 787 P.2d 907*, cert. denied*, 498 U.S. 911 (1990)

A land use regulation may be challenged either as a taking or as a violation of substantive due process.

Presbytery purchased land on which it intended to build a church. The land contained a significant wetland, which occupied approximately one-third of the 4.5-acre parcel. Several years after the purchase, but before Presbytery had filed any development application, the county adopted an ordinance protecting wetlands, including the wetland on this parcel. Although the ordinance contained a reasonable use exemption, and despite the county's contention that a church could be built on the remaining two-thirds of the parcel, Presbytery alleged the wetlands portion of its property had been taken without just compensation.

This case marked the Washington Supreme Court's first attempt to provide an analytical framework for evaluating regulatory takings that incorporated U.S. Supreme Court cases and allowed for simultaneous or alternative substantive due process challenges. The state court's analysis first considered whether a regulation safeguards the public interest in health, safety, the environment, or fiscal integrity of an area rather than seeking to acquire some benefit for the public. If so, the regulation is not normally a taking. The constitutional validity of such a regulation then would be analyzed by considering whether it violates substantive due process.

If the regulation went beyond safeguarding the public's interests and worked to enhance a public interest, or if it destroyed a fundamental attribute of property ownership (the right to possess, to exclude others, or to dispose of property), then the regulation would be subject to analysis under the federal takings clause. A taking analysis would start by assessing whether the regulation substantially advances a legitimate state interest. If it did not, then there would be a taking. If the regulation does substantially advance a legitimate state interest, then the court would assess the extent of the economic impact on the property subject to the regulation, employing the balancing test laid out in *Penn Central*.

The usual remedy for a violation of substantive due process is invalidation of the ordinance. The usual remedy for a taking is just compensation. (But see the decision in *Manufactured Housing*, summarized below.)

The *Presbytery* test was re-worked in *Guimont v. Clarke* in response to subsequent U.S. Supreme Court holdings.

***Sintra, Inc. v. City of Seattle*,**
119 Wn.2d 1, 829 P.2d 765*, cert. denied*, 506 U.S. 1028 (1992) (*Sintra I*)

A substantive due process claim rests on a showing that interference with property rights was irrational or arbitrary, not on a showing that no viable use of the property remains. Where money damages are sought for a substantive due

process violation under 42 U.S.C. § 1983, there also must be a showing that the land use regulation is invidious or irrational.

This is one in a series of related cases in which the plaintiffs applied to develop and change the use of hotels that previously had been used for low-income housing. In each case, Seattle imposed a housing preservation assessment under its housing preservation ordinance as a condition of development. While the applications were pending, the superior court invalidated this provision of the ordinance as an unconstitutional tax, and the Washington Supreme Court affirmed in *San Telmo Assocs. v. Seattle*, 108 Wn.2d 20, 25, 735 P.2d 673 (1987).

Sintra filed a lawsuit under 42 U.S.C. § 1983 seeking damages for the imposition of the housing preservation assessment on its proposed development, alleging both a violation of substantive due process and a taking of private property. The superior court dismissed the claim for damages, but the Washington Supreme Court reversed. Applying the *Presbytery* test, the court found the record insufficient to determine whether a taking had occurred and remanded also for a determination whether the ordinance placed so great an economic burden on the property that no viable use was available. If Sintra could make such a showing, then compensation for a taking would be available. (*See Sintra II*.)

Turning to the substantative due process claim, the court held that even though the housing preservation ordinance served a legitimate public purpose, it violated substantive due process because it was unduly oppressive, because the burden of providing low-income housing fell entirely on regulated landowners. Consistent with *Presbytery*, the court invalidated the assessment. To recover damages for this violation, however, the court held the plaintiff must prove the city acted invidiously or irrationally in imposing the assessment on the plaintiffs. The court remanded for a determination whether plaintiffs could make the required showing.

Guimont v. Clarke,
121 Wn.2d 586, 854 P.2d 1 (1993), *cert. denied*, 510 U.S. 1176 (1994)

This opinion set forth the basic steps used by Washington courts to analyze challenged alleging regulatory takings or violations of substantive due process.

In 1989, the Legislature adopted a statute that required owners of mobile home parks to establish a fund to financially assist tenants in moving their homes should the owner decide to close the park or change the property to another use. The statute was challenged facially by park owners on regulatory takings and substantive due process grounds. In its first takings case since the U.S. Supreme Court's decision in *Lucas*, the Washington Supreme Court reviewed its *Presbytery* analysis and re-worked the analysis slightly to accommodate the *Lucas* holding. Interpreting U.S. Supreme Court cases, the court mapped out a three-part regulatory takings analysis in Washington.

(1) The court begins with a threshold analysis, which applies the classic categorical or "*per se*" takings tests, in which the government's actions are not weighed against their financial impact. The court asks whether the challenged regulation deprives the owner of all economic value (*Lucas*), causes a physical invasion (*Loretto*), or otherwise destroys a fundamental attribute of

property ownership (the right to own property, exclude others, or dispose of the property). If so, a taking has occurred unless, in a *Lucas*-type claim, the background property limitation principle applies. If not, the court proceeds to a second threshold analysis.

(2) The second threshold analysis asks two subsidiary questions. First, does the regulation impinge upon a fundamental attribute of property ownership? (*See Hodel* and *Agins*.) Second, does the regulation do more to prevent harm to the public than to acquire some affirmative public benefit? If the regulation does not impinge upon a fundamental attribute of property ownership and if it manifestly prevents harm rather than acquiring a benefit for the public, then no taking exists and the taking analysis concludes. Otherwise, the court proceeds to the third part of the takings analysis. (Note that the harm/benefit test frequently is difficult to apply because it is difficult to distinguish between harm prevention and benefit acquisition.)

(3) If the regulatory action impinges upon a fundamental attribute of property ownership, or if some public benefit is acquired, the court asks whether the regulatory action substantially advances a legitimate state interest. If the answer is no, the action is a taking. If the answer is yes, the Court then uses the balancing test set forth in *Penn Central* to evaluate the economic impact of the government's actions against the purposes and methods used by the government.

In this case there was no taking because the landowners could still evict tenants and change the use of the property. However, the court held the statute violated substantive due process because the potential financial impact of the statute's relocation reimbursement requirements would be unduly oppressive on park owners.[4] While the statute legitimately addressed the problem of declining space for mobile homes, the court concluded that the park owners were not more responsible for the problem than the general public and should not be required to bear the entire responsibility for achieving the stated public goal. Following the test in *Presbytery*, the court invalidated the Act.

Margola Associates v. City of Seattle,
121 Wn.2d 625, 854 P.2d 23 (1993)

To prove a regulation results in a physical taking, a landowner must show the regulation requires the landowner to submit to the physical occupation of his or her land.

Apartment house owners challenged a city ordinance that required owners of buildings with more than one housing unit to register with the city and pay an annual inspection fee. Owners who did not register could not evict a tenant. Applying the analysis from *Guimont v. Clarke*, the court held the ordinance did not effect a regulatory taking, finding the city had a legitimate interest in ensuring compliance with its housing code and concluding the ordinance neither deprived

[4] The test for substantive due process set out in *Presbytery* is (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the landowner. As in *Guimont v. Clarke*, the analysis usually turns on the "unduly oppressive" part of the test.

the owners of all economic value nor amounted to a physical invasion. Relying on the U.S. Supreme Court decision in *Yee*, the Washington Supreme Court rejected the argument that the ordinance's restriction on eviction effectively compelled a physical invasion of property, explaining that the owners had voluntarily rented the units and could continue to evict tenants by paying a small fee, so the owners' right to exclude others was not destroyed. The court also found the small annual fee (one-half of one percent of the average rent) was not an undue burden on the owners and held the owners were not deprived of substantive due process.

Guimont v. City of Seattle,
77 Wn. App. 74, 896 P.2d 70*, review denied*, 127 Wn.2d 1023 (1995)

A prohibition on one type of use does not effect a regulatory taking if other economically viable uses remain available.

While the Washington Supreme Court's review was pending in *Guimont v. Clarke*, the Legislature amended the statute at issue by scaling back the required financial contributions to the relocation program. Instead of challenging the amended statute, the plaintiffs in this case challenged a Seattle ordinance that reserved spaces in mobile home parks solely for mobile homes, excluding "recreational vehicles." Both facial and "as applied" taking claims were alleged, together with a substantive due process claim. The Washington Court of Appeals found the record insufficient to decide the as-applied claims and rejected the facial claims. Applying the *Guimont v. Clarke* analysis, the court held (1) there was no categorical taking because the law did not prevent all economically viable use of the property and because there was no physical invasion (using reasoning similar to that used by the U.S. Supreme Court in *Yee*); (2) no fundamental property attribute was destroyed, derogated, or implicated; (3) the showing of financial impact was insufficient to support a general conclusion that the ordinance unfairly disrupted the landowners' investment-backed expectations; and (4) the legislation advanced a legitimate state interest in dealing with declining opportunities to locate mobile homes that are occupied by elderly and low-income families. The court concluded the ordinance had "minimal" impact on the mobile park owners and did not violate substantive due process.

Luxembourg Group, Inc. v. Snohomish County,
76 Wn. App. 502, 887 P.2 446, *review denied*, 127 Wn.2d 1005 (1995)

To meet Nollan's "essential nexus" requirement, an exaction of property must address some problem arising from the development under consideration.

As a condition for approving a subdivision, the county required the developer to grant an easement to a neighboring landlocked property owner. The Washington Court of Appeals held the condition was a taking, because the there was no essential nexus between the easement requirement and any adverse impact of the development (s*ee Nollan*). The court reasoned that the interior parcel would be land-locked regardless of whether the developer's property was subdivided or not.

Sparks v. Douglas County,
127 Wn.2d 901, 904 P.2d 738 (1995)

The government must demonstrate that the exaction it imposes to mitigate development is "roughly proportional" to the impact of the development.

As a condition for approval of a development plat, the county required the developer to dedicate several rights of way for future street improvements. The developer conceded there was a "nexus" between the condition and the identified impact of the proposed development, but challenged the amount of the dedication as a taking, claiming it was not specifically proportional to the identified impact. Applying the "rough proportionality" test of *Dolan*, the Washington Supreme Court concluded the county did not need to show exactly proportional mitigation requirements, just a roughly proportional calculation of impact and mitigation. So long as the county had some valid reasoning and did not rely upon merely conclusory findings, the mitigation condition could be upheld.

Ventures Northwest Ltd. Partnership v. State,
81 Wn. App. 353, 914 P.2d 1180 (1996)

A plaintiff alleging a regulatory taking must be able to demonstrate the alleged deprivation of property actually was caused by the government's regulation or action.

Ventures sought to develop property in a flood plain and applied for permits from both the state and the federal government. The federal permitting process proved difficult and a federal Corps of Engineers permit was denied for several reasons, including opposition by various federal agencies, the state Department of Ecology's refusal to issue water quality certifications, and Ventures' repeated failure to work through various permitting information concerns. While the federal permit decision was pending, the county denied a grading and filling permit. Ultimately, the county began foreclosure proceedings against Ventures' property for nonpayment of assessments and taxes. Ventures filed takings claims against the state and the county. Ventures alleged the state's actions had caused the federal permit process to fail, and it alleged the county's permit denial contributed to its inability to develop its property. The Washington Court of Appeals rejected the claims, explaining that a taking claim must be premised upon "causation in fact" – the plaintiff must be able to demonstrate the alleged loss would not have occurred "but for" the government's actions. The court concluded the federal government had a basis to deny the permits before the state refused to provide the required water quality certification. The court also concluded the county's denial of the permit was reasonable because Ventures failed to satisfy a properly imposed condition and because Ventures failed to show that the permit denial resulted in any loss of economic viability.

Schreiner Farms, Inc. v. Smitch,
87 Wn. App. 27, 940 P.2d 274 (1997)

A restraint on the sale of property is not a taking where it is not accompanied by some physical restriction on the property.

Schreiner Farms operated an 800-acre game farm that bred and raised several exotic animal species, along with native elk. To protect native wildlife from disease, the state adopted regulations banning the importation, possession, or sale of elk, with certain exceptions, including a limited right to continue possession of previously-acquired elk. Schreiner Farms sued for compensation, alleging its elk and other property were taken by the regulations. The Washington Court of Appeals held the regulations did not destroy or derogate a fundamental attribute of property because Schreiner Farms retained the right to possess the elk and could dispose of them so long as they were transported out of state. The

regulations imposed a restraint upon the range of options for disposing of the elk (including a bar on in-state sales), but the court, relying on *Andrus v. Allard*, 444 U.S. 51 (1979), held the restraint on sale of elk was not a taking where there was no accompanying physical property restriction, such as a prohibition on possession or transportation of the elk.

Sintra, Inc. v. City of Seattle,
131 Wn.2d 640, 935 P.2d 555 (1997) (*Sintra II*)

A plaintiff who prevails on a regulatory takings claim is entitled to payment of interest on the value of the property taken for the time period between the taking and the ultimate payment of compensation.

After *Sintra I* remanded to the superior court, a jury found a taking had occurred and awarded compensation to Sintra, but the jury denied Sintra's claim for money damages under 42 U.S.C. § 1983 flowing from the city's violation of substantive due process, finding the violation had not proximately caused Sintra any harm. The Washington Supreme Court affirmed.

Sintra II involved questions about the appropriate amount of interest to be paid as part of compensation for a taking. The court explained that just compensation should be sufficient to put the property owner into the same position monetarily as the owner would have been had the property not been taken. The value of just compensation is calculated as of the time the taking occurs. In an inverse condemnation or regulatory taking, however, there is a delay between a taking and the judicial determination that compensation should be awarded, such that the payment of interest is necessary to compensate the owner for the lost use of the monetary value of a taking. The court held that simple interest at the statutory rate should be awarded, unless there is evidence that such an award would not afford just compensation. In this case, the trial court erred by awarding compound interest.

Snider v. Board of County Commissioners of Walla Walla County,
85 Wn. App. 371, 932 P.2d 704 (1997)

A court cannot force a legislative branch of government to exercise the power of eminent domain.

As a condition for approving a preliminary plat for a proposed subdivision, the county required that an existing road be widened, which would require the developer to acquire a right of way from an adjacent landowner. The superior court upheld the determination that a widened road was needed to serve the proposed development, but held it was arbitrary and capricious for the county to require the developer to obtain the right of way. The superior court modified the condition to require the developer to deposit money with the county sufficient to acquire the right of way and construct the necessary improvements, effectively requiring the county to use its eminent domain power to acquire the right of way. The Washington Court of Appeals reversed. It held the original condition was proper given the impact of the development. More fundamentally, under the doctrine of separation of powers, the court held the superior court lacked the power to modify the condition to require the county to exercise its power of eminent domain.

Burton v. Clark County,
91 Wn. App. 505, 958 P.2d 343 (1998), review denied, 137 Wn.2d 1015 (1999)

To avoid constituting a taking, an exaction placed on a proposed development must solve or tend to alleviate an identified public problem.

As a condition for approving a short plat, the county required the applicant to dedicate right of way and construct a road, curbs, and sidewalks. Applying the principles of *Nollan* and *Dolan*, the Washington Court of Appeals held that, before a government agency may condition a permit using an exaction, it must identify a public problem – not just a problem affecting some private landowners – and must be able to conclude that the proposed development will exacerbate this public problem. The exaction must solve or tend to alleviate the identified problem that is caused by the development and it must do so in a roughly proportional manner. The Washington Court of Appeals found the proposed subdivision would aggravate certain public problems related to traffic congestion problems, but it concluded the road exaction would contribute to the solution of this problem only if it were extended across another undeveloped parcel. Because there was no evidence any such extension might occur, the court held the county had not met its burden of showing the condition would help solve the identified problem.

Phillips v. King County,
136 Wn.2d 946, 968 P.2d 871 (1998)

No inverse condemnation claim lies against a county that issued a permit to a private development that has a design defect leading to surface water flooding of adjacent property, unless the government is acting as a direct participant in the development that caused the flooding.

A developer proposed a drainage plan that constructed a discharge system on adjacent county right-of-way even though its engineers warned of liability to adjacent landowners because of soil conditions. The drainage plan was vested under an old code and did not meet the standards of the existing code. The county approved the plan notwithstanding concerns raised by Phillips, whose property lay on the opposite side of the county right-of-way.

Soon after the drainage system was built, Phillips sued both the developer and the county, claiming the system resulted in flooding of Phillips' property. Phillips alleged the county's approval of the drainage system resulted in an inverse condemnation of a portion of Phillips' property. The Washington Supreme Court rejected the inverse condemnation claim. The court explained that a claim for inverse condemnation from surface water flooding is possible where a county artificially collects and discharges water onto surrounding property in a manner different than from the natural flow, but no inverse condemnation arises (1) where the county merely permitted a development that causes a surface water problem when constructed or (2) where the county later took ownership of the drainage system and the surface water problem was not due to the county's poor maintenance but to the developer's poor design. The court held, however, that when the county allowed the drainage system to be built on county land it potentially became part of the problem by allowing its land to be used in an allegedly improper manner. The court remanded to the trial court to determine if the county had participated in a surface water invasion of the neighbor's property.

Kahuna Land Co. v. Spokane County,
94 Wn. App. 836, 974 P.2d 1249 (1999)

Conditions imposed on development that are reasonably necessary for public health and safety do not effect a taking. Conditions made necessary by the character of the property are not unduly oppressive and do not violate substantive due process.

As a condition for approving a preliminary plat for a proposed subdivision, the county required the construction of an access road and sewer across an adjacent parcel owned by the federal government. Alleging the cost of this condition was so great it would take all profit from the development, Kahuna claimed a taking of property and was a violation of substantive due process. The Washington Court of Appeals rejected Kahuna's categorical taking claim, applying *Guimont v. Clarke* and finding the property retained value and had not been physical invaded. Finding the access and sewer requirements imposed by the county were reasonably necessary for public health and safety and that no public benefit had been acquired, the court found it unnecessary to undertake a *Penn Central* balancing analysis. The court also rejected the substantive due process claim, concluding the conditions were reasonably necessary to a legitimate public purpose, and the cost of the conditions had more to do with the remoteness of the site than the county's choices as to conditions.

2000 –

Manufactured Housing Communities of Washington v. State,
142 Wn.2d 347, 13 P.2d 183 (2000)

Under the Washington Constitution, private property may be taken only for public use, and not for private use (with certain exceptions). Public benefit, by itself, does not constitute public use.

To address problems facing low income and elderly mobile home tenants as space for mobile homes became increasingly scarce, the Washington Legislature enacted a statute that gave qualified mobile home tenant organizations a right of first refusal to purchase mobile home parks when the landlord decided to sell the land. The mobile home park owners complained that granting a right of first refusal would impair their power to negotiate the best sale of their property and that the enactment of the legislation took their property. The Washington Supreme Court agreed. It first conducted a *Gunwall* analysis[5] and held the opening portion of article I, section 16, of the Washington Constitution, which prohibits government from taking private property for a "private use," provides greater protection than the federal Constitution.

The court concluded the statute impinged on the "right of first refusal," which the court found to be a significant interest in property. A finding that fundamental property interests have been impinged upon normally leads to a *Penn Central* analysis, under the test set forth in *Guimont v. Clarke*). In this instance, however, the statute transferred the right of first refusal from the mobile home park owner to a third person—the mobile home tenant's association, and the court found this transfer to be functionally equivalent to the exercise of eminent domain, and therefore a taking of property. Rather than awarding compensation,

[5] *Gunwall v. State*, 106 Wn.2d 54, 720 P.2d 808 (1986).

however (which the statute provided in full measure), the court invalidated the statute, holding that the statute violated the first portion of article I, section 16. The court explained that although the statute might provide a public benefit, mere public benefit does not constitute public use for purposes of article I, section 16.

Eggleston v. Pierce County,
148 Wn.2d 760, 64 P.3d 618 (2003)

Police power and eminent domain power are separate and distinct powers of government. The duty to provide evidence in a criminal case, which involves the police power, does not give rise to a taking of property.

Mrs. Eggleston's home was rendered uninhabitable when county police removed a load-bearing wall to preserve evidence of a crime committed by her adult son. The police action was taken pursuant to a search warrant and an order to preserve evidence. While the court struggled with the severe impact sustained by Mrs. Eggleston, it concluded that some government actions are pure exercises of police powers and cannot be equated with the power of eminent domain. The preservation of evidence for criminal proceedings is such a power. The court left open the possibility that Mrs. Eggleston may have other legal means to address the manner in which the police acted, but concluded that the matter should not be analyzed as a taking of property.

Edmonds Shopping Center Associates v. City of Edmonds,
117 Wn. App. 344, 71 P.3d 233 (2003)

A reasonable exercise of the police power that does not destroy a fundamental attribute of ownership or impose a private burden for a public benefit is not a taking.

The city granted Marty's Public House a gambling permit to expand its card table gambling operation and a building permit to expand its building. Shortly thereafter, the city adopted an ordinance banning cardrooms. Marty's claimed the ordinance was not a legitimate exercise of the police power and effected a taking. The Washington Court of Appeals rejected that claim, holding the regulation of gambling is a reasonable exercise of the police power to protect the public health, safety and welfare, and the ordinance neither destroyed a fundamental attribute of ownership nor imposed a private burden for a public benefit. The court also rejected Marty's substantive due process claim, concluding an ordinance is not unduly oppressive when it regulates only the activity which is directly responsible for the harm and noting that Marty's building could be used for other purposes.

Saddle Mountain Minerals, L.L.C. v. Joshi,
152 Wn.2d 242, 95 P.3d 1236 (2004)

Before a property owner can raise a regulatory taking claim, there must be a final governmental decision regarding the application of the regulation to the property at issue.

In 1993, the city rezoned a parcel owned by Joshi to high density residential, a designation that does not allow mining. Thereafter, Saddle Mountain Minerals purchased the mineral estate in Joshi's parcel. A year later, Joshi began developing the property, using sand and gravel from the property to grade an off-site access road. Saddle Mountain sued Joshi, claiming damages for the off-site use of the sand and gravel, part of the mineral estate of the property.

Joshi defended by arguing that the mineral estate had been destroyed when the zoning was changed and that Saddle Mountain's predecessor should have filed a takings claim against the city.

The Washington Supreme Court rejected Joshi's defense, holding that the city's ordinance did not destroy Saddle Mountain's mineral rights. The court explained (1) it was inappropriate to apply takings law to a dispute between private parties; (2) a takings claim against the city was not ripe because there was no final government decision applying the zoning regulations to the site, since Saddle Mountain had never applied for a variance or waiver from the mining prohibition in the ordinance; and (3) there was no determination by a fact finder of the remaining value of Saddle Mountain's mineral rights.

In the Matter of Property Located at: 14255 53rd Ave S., Tukwila, King County, Washington,
120 Wn. App. 737, 86 P.3d 222 (2004), *review denied*, 152 Wn.2d 1034 (2004), *cert. denied*, 125 S. Ct. 1862 (2005)

Government action necessary to avert a public calamity does not give rise to a takings claim.

Washington State declared an emergency when it discovered that plants in a commercial nursery were infested with the citrus longhorned beetle. The unchecked spread of this beetle could have devastating effects on Washington's trees and native forests. The primary control strategy approved by a panel of scientists required the destruction of potential host trees within a certain radius of the infested nursery. Three homeowners whose trees were to be destroyed alleged this control strategy was a taking of their property and that compensation had to be paid in advance of any control activities. The Washington Court of Appeals disagreed, holding (1) the destruction of potential host trees was not a physical invasion leading to a taking claim; (2) government action undertaken to avoid a public disaster is not an appropriation of private property for public use and is not susceptible to a takings analysis; and (3) that there is no private right to maintain property in a condition that would lead to a public nuisance, so that the government may abate the nuisance without facing a taking claim.

Paradise Village Bowl v. Pierce County,
124 Wn. App. 759, 102 P.3d 173, *review denied*, 154 Wn.2d 1027 (2005)

A regulation that does no more than protect the public against a specific harm does not effect a regulatory taking.

Paradise challenged a county ordinance that eliminated social card gaming unless it was conducted for charitable or non-profit purposes, claiming a taking and a violation of substantive due process. The Washington Court of Appeals rejected both claims. Applying the threshold questions in *Guimont v. Clarke*, the court concluded (1) the ordinance had not destroyed a fundamental attribute of property, including the ability to make some profitable use of the property, since the plaintiff could continue to use its property as a bowling alley and restaurant; and (2) the ordinance was designed to protect the public, by regulating against social ills associated with unrestricted gambling, rather than to acquire some public benefit. Because the threshold questions were answered in the negative, there was no need to undertake the *Penn Central* balancing test to evaluate whether there might be a taking based upon the magnitude of the economic impact and the means used to regulate the property.

In rejecting the substantive due process claim, the court concluded an ordinance is not unduly oppressive when it regulates only the activity which is directly responsible for the harm.

Dickgieser v. State,
153 Wn.2d 530, 105 P.3d 26 (2005)

(1) A taking may exist for damage to private property that is reasonably necessary for a public use to proceed.

(2) An alleged governmental tort, such as negligence, does not become a taking simply because the government is the alleged tortfeasor.

Logging on state land resulted in flooding damage to Dickgieser's property, which lay down slope from the state land. Dickgieser claimed the state's actions constituted an inverse condemnation of his property, but the trial court granted summary judgment to the state, ruling that no taking occurred because the logging of state lands was not a public use. The Washington Supreme Court reversed. The court held damage to private property that is reasonably necessary to log state lands is for a public use and requires compensation under article 1, section 16 of the Washington Constitution. The court remanded to the trial court for a determination whether the damage to Dickgieser's property was reasonably necessary for logging of state land, and whether the state's logging activity concentrated and gathered water into artificial channels or drains and discharged it onto Dickgieser's land in quantities greater than or in a different manner than the natural flow.

The court rejected the state's argument that Dickgieser's claim was no more than a negligence claim against the state, finding that Dickgieser in fact had raised a taking claim. The court reiterated, however, that alleged governmental torts, such as negligence, do not become takings simply because the government is the alleged tortfeasor.

Tiffany Family Trust Corp. v. City of Kent,
155 Wn.2d 225, 119 P.3d 325 (2005)

The Legislature may impose time periods and other statutory limits on takings claims.

In 1986, Tiffany entered into a mitigation agreement with the city to pay a proportional amount of the related cost of improvements to nearby roads, to mitigate impacts associated with an application for a conditional use permit. Rather than requiring any payment at the time the permit was granted, however, payment for the improvements was to be made pursuant to the formation of a local improvement district (LID). When the LID was formed in 1998, however, the assessment was 15 times the estimate made in 1986. Tiffany sued, alleging a taking of property, a violation of substantive due process, and a civil rights claim under 42 U.S.C. § 1983. Tiffany asked the court both to declare the assessment void and to award compensation for a taking. The trial court dismissed the claims, ruling that the statutory time period for attacking the assessments had passed, and that Tiffany could not get around that bar by collaterally attacking the assessment using the same arguments disguised as constitutional claims. The Washington Supreme Court affirmed. While LID assessments in excess of special benefits received are prohibited and result in a taking, a property owner who wishes to challenge a LID assessment must do so before the final assessment

roll is confirmed, after which the LID is deemed conclusively correct and may not be challenged.

HTK Management, L.L.C. v. Seattle Popular Monorail Authority,
155 Wn.2d 612, 121 P.3d 1166 (2005)

If a condemning authority has conducted its deliberations on an action honestly, fairly, and upon due consideration for facts and circumstances, that action will be upheld, even where the court believes an erroneous conclusion has been reached.

The Seattle Monorail Project (SMP) brought an action to condemn a parking garage for use as a monorail station. HTK, owner of the garage, challenged the condemnation. The parties agreed that SMP needed a portion of the property for the station itself and the remainder of the property for staging during construction, after which the excess property would be sold.

As a threshold question, HTK claimed SMP lacked authority to condemn private property. The Washington Supreme Court found that SMP was a creature of the City of Seattle, so that the city's condemnation authority and procedures applied to SMP.

HTK contended SMP should be limited to acquiring a multiyear lease on the portion of the property needed only during construction. The court upheld SMP's finding that it needed the entire property, holding that determinations about the type and extent of property interest necessary to carry out a public purpose are legislative questions to which courts give deference. If a condemning authority has conducted its deliberations on an action honestly, fairly, and upon due consideration for facts and circumstances, that action will be upheld, even when there is room for a difference of opinion upon the course to follow, or a belief by the reviewing authority that an erroneous conclusion has been reached.

City of Des Moines v. Gray Businesses, LLC,
130 Wn. App. 600, 124 P.3d 324 (2006)

A taking does not arise from the regulation or denial of a property use that is contingent on state or local regulations. Such use is not a part of the bundle of sticks the owner enjoys as a vested incident of ownership, and the regulation or denial of that use does not derogate a fundamental property interest.

When the owner of a mobile home park failed to provide the city with a site plan of its park within the time required by ordinance, the city notified the owner that it would no longer issue permits allowing mobile homes to come onto the site to replace those that moved away. The owner subsequently claimed a regulatory taking, arguing the right to lease vacant spaces was at least as important than the right of first refusal at issue in *Manufactured Housing*. The Washington Court of Appeals disagreed, holding the right to operate as a mobile home park was not a fundamental attribute of ownership. *Manufactured Housing* dealt with an owner's inherent right to sell or lease its property to anyone it chooses. By contrast, the right to use and lease property for mobile homes is not inherent, but derived from and limited by state and local laws. The ability to use or lease property for mobile home is not a part of the bundle of sticks the owner enjoys as a vested incident of ownership.

Central Puget Sound Regional Transit Authority v. Miller,
156 Wn.2d 403, 128 P.3d 588 (2006)

Compliance with statutory notice requirements constitutes adequate notice of a public hearing concerning the anticipated condemnation of property.

Sound Transit provided notice of a public meeting to discuss possible sites for condemnation by posting notice and its agenda on its web site, but nowhere else. One month later, Sound Transit determined to condemn Miller's property. At the public use and necessity hearing for the condemnation, Miller claimed notice of the prior public meeting was inadequate. The Washington Supreme Court rejected Miller's claim, finding Sound Transit had satisfied its statutory notice requirement. Sound Transit was required to use the same methodology as first class cities for giving notice of public meetings where condemnation is discussed.

Peste v. Mason County,
133 Wn. App. 456, 136 P.3d 140 (2006)

To allege successfully that a statute on its face effects a taking by regulating the permissible uses of property, a landowner must show that the mere enactment of the regulation denies all economically viable use of the property.

Peste appealed a down-zoning of his property, claiming a taking and a violation of substantive due process. The Washington Court of Appeals rejected both claims. Relying primarily on *Guimont v. Clarke*, the court examined first whether the downzone on its face destroyed a fundamental attribute of property ownership, in this case the right to make some economically viable use of the property. To prove that a statute on its face effects a taking by regulating the permissible uses of property, the landowner must show that the enactment of the regulation denies the owner all economically viable use of the property. The court concluded Peste presented no evidence showing a facial taking. Peste's as-applied takings claim also failed for lack of evidence. On the record before it, the court rejected Peste's substantive due process claim, finding the downzone was not unduly oppressive.

Wallace v. Lewis County,
134 Wn. App. 1, 137 P.3d 101 (2006)

In some circumstances, the passage of time may bar an inverse condemnation claim.

Neighbors filed nuisance claims against a landowner who operated a tire disposal business, and inverse condemnation and other claims against the county for using the business for tire disposal. The trial court dismissed all claims and the Washington Court of Appeals affirmed. Insofar as the inverse condemnation claim rested on the fact that tires spilled onto one neighbor's property, the court held the tires had been placed on the neighbor's property for so long they created a prescriptive easement, so that the passage of time barred an inverse condemnation claim. The court also held the inverse condemnation claim failed because the county's tire-disposal activities were not related to a public use or a public benefit; the county acted as a private party who contracted with another private party for disposal of its own tires.


ATTORNEY GENERAL
OF WASHINGTON

1 SPOKANE PEDESTRIAN MASTER PLAN

PLAN PURPOSE

Walking is the most fundamental transportation choice -- the starting place for all journeys, even as people walk to their cars, transit, or bicycle to move between the places they visit throughout the day. Despite the fact that nearly all Spokane residents walk at some point, the details of the walking environment go largely unexamined; as for most people in Spokane the duration of a walking trip is so short that a facility of any quality that connects two places with the shortest path will do.

Like many cities, Spokane has focused its attention over the last 60 years on planning and design solutions that improve motor vehicle access and mobility. Street and intersection designs have come to accommodate high motor vehicle speeds and traffic volumes with limited delay. The drawback of this focus is that the pedestrian infrastructure of sidewalks, intersection crossings, pedestrian signals, and other elements, no longer accommodates people of all ages and abilities, leaving them open to injury in the event of a collision with a motor vehicle. Furthermore, the probability of choosing transit or walking as a primary mode is reduced by missing or deteriorated sidewalks, a lack of high quality crossings on higher speed and volume streets such as arterial streets, and long trip distances along curvilinear streets.

In response to these conditions, and a demand for more safe transportation options, Spokane, like cities across the country is choosing to redesign its streets. These redesigns can provide a high quality barrier-free walking environment that supports increased levels of physical activity, important connections to transit, and more transportation options for all. Of particular note in considering these changes is that the Millennial generation (born between 1981 and 2000) is expecting diverse shared mobility options. According to the 2010 Census, the 85.4 million Millennials who make up close to 28% of the total U.S. population are traveling differently. Compared to their parents' generation, Millennials are:

- Purchasing fewer cars and driving less[1] [2]
- Not obtaining their driver's license[3]
- Biking, walking, and taking transit more [4] [5]

This chapter includes the following sections to support a more walkable Spokane:

- Goals for the pedestrian environment
- Description of the basic elements of providing a quality pedestrian experience
- Assessment of existing conditions for walking today

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[1] American Public Transportation Association. "Millennials & Mobility: Understanding the Millennial Mindset." http://www.apta.com/resources/reportsandpublications/Documents/APTA-Millennials-and-Mobility.pdf

[2] Ibid.

[3] Federal Highway Administration, *Highway Statistics 2010—Table DL-20*, September 2011.

[4] American Public Transportation Association. "Millennials & Mobility: Understanding the Millennial Mindset." http://www.apta.com/resources/reportsandpublications/Documents/APTA-Millennials-and-Mobility.pdf

[5] U.S. PIRG. "A New Direction." 2013. http://uspirg.org/sites/pirg/files/reports/A%20New%20Direction%20vUS.pdf.

- Recommended policies and actions

This chapter also provides a number of relevant best practices which are intended to serve as a toolbox for Spokane as it addresses key pedestrian improvements. The best practices should be used to inform opportunities to improve and enhance Spokane's existing pedestrian environment.

Vision and Goals

Five goals guide the continued enhancement of the pedestrian environment in Spokane.

- **Goal 1 Well Connected and Complete Pedestrian Network** - Provide a connected, equitable and complete pedestrian network within and between Priority Pedestrian Zones that includes sidewalks, connections to trails, and other pedestrian facilities, while striving to provide barrier-free mobility for all populations.
- **Goal 2 Maintenance and Repair of Pedestrian Facilities** - Provide maintenance for and improve the state of repair of existing pedestrian facilities.
- **Goal 3 Year-Round Accessibility** - Address the impacts of snow, ice, flooding, debris, vegetation and other weather and seasonal conditions that impact the year-round usability of pedestrian facilities.
- **Goal 4 Safe and Inviting Pedestrian Settings** - Create a safe, walkable city that encourages pedestrian activity and economic vitality by providing safe, secure, and attractive pedestrian facilities and surroundings.
- **Goal 5 Education** - Educate citizens, community groups, business associations, government agency staff, and developers on the safety, health, and civic benefits of a walkable community.

Pedestrian Priority Zones

The Pedestrian Master Plan establishes Priority Pedestrian Zones to guide investments to areas with the greatest potential to support walking access to destinations such as employment, schools, parks, and transit stops. Priority zones were identified using an analysis of pedestrian demand and deficiency found later in this chapter. Identification of these zones will help the City target investments in pedestrian infrastructure such as sidewalks, curb ramps, and pedestrian crossings.

EXISTING GUIDING DOCUMENTS

Spokane's current plans, design guidelines, and best practices influence the recommendations in this chapter.

Neighborhood Plans Addressing Pedestrians

Since the adoption of the 2001 City of Spokane Comprehensive Plan, several neighborhoods have participated in localized planning efforts. They have engaged stakeholders, evaluated existing conditions, established visions and goals and identified key projects and implementation steps to improve neighborhood livability. Among other things, the neighborhood plans address many topics including pedestrian transportation, connectivity and safety. The following neighborhood plans have been adopted by resolution by the Spokane City Council:

- Browne's Addition: underway
- East Central: City Council resolution number: RES 2006-0032
- Emerson-Garfield: City Council resolution number: RES 2014-0086
- Five Mile: City Council resolution number: RES 2012-0007
- Grandview/Thorpe: City Council resolution number: underway
- Logan: City Council resolution number: RES 2006-0069
- Logan Neighborhood Identity Plan and Model Form-Based Code for Hamilton Corridor: RES 2014-0053
- Nevada Lidgerwood: City Council resolution number: RES 2012-0009
- North Hill: City Council resolution number: underway
- Peaceful Valley: City Council resolution number : underway
- Southgate: City Council resolution number: RES 2012-0008
- South Hill Coalition: City Council resolution number: RES 2014-0067
- West Central: City Council resolution number: RES 2013-0012

Many neighborhood plans include consideration of pedestrian improvements (see examples below). Although these plans will require further study for implementation, they provide direction to the City of Spokane as to the future desires of the neighborhood and are a useful tool for planning capital projects within a neighborhood. In the context of the Pedestrian Master Plan, the neighborhood plans are valuable for addressing neighborhood based connectivity improvements and in setting priorities for future projects. It is anticipated that the Spokane City Council will adopt additional neighborhood/subarea plans in the future that consider pedestrian improvements.

Southgate Neighborhood Connectivity Master Plan

Emerson-Garfield Neighborhood Action Plan 2014

Pedestrian Improvement Plan—Five Mile Prairie Neighborhood Plan

South Hill Coalition Connectivity and Livability Strategic Plan

Downtown Spokane Streetscape Inventory, SPVV Landscape Architects, November 2014

The Downtown Spokane Sidewalk Inventory and Assessment was completed in November of 2014. The inventory included the downtown area from Spokane Falls Boulevard to Interstate 90; west side of Monroe Street to the east side of Browne Street.

The goal of the Inventory and Assessment project was to gain an understanding of the conditions of the pedestrian surfaces in Downtown Spokane, including the pavement types and conditions; street furnishings; street trees and accessible ramps. The inventory process took place between August and October, 2014, and included data collection in the field in the form of written notes,

photographs, preparation of narratives for each block, and area take-offs that identify square footages of pedestrian surfaces needing replacement or repair; locations and types of street trees, tree grates, benches, trash receptacles, media boxes and other street furnishings; locations of access hatches into structural sidewalks; and identification of compliant- and non-compliant pedestrian cross-walks. The document contains individual chapters for each block within the study area, including a map graphic with colored representations of each type of sidewalk surfacing that needs repair/replacement, along with supporting photographs of each block and major elements within the inventory. In addition to graphic information found here, substantial amounts of information were uploaded to the City of Spokane GIS database regarding site furnishings, street trees, tree grates, etc.

Spokane Design Guidelines

The City's current design standards for pedestrian facilities are found in the adopted Comprehensive Plan, Unified Development Code, Street Design Standards, and Spokane's Standard Plans. The Street Design Standards developed as part of the Transportation Plan Update will become the design standards for the City.

NACTO Urban Street Design Guide

In November 2014, the Spokane City Council endorsed the National Association of City Transportation Officials (NACTO) Urban Street Design Guide and Urban Bikeway Design Guide.[6] The NACTO guide offers a blueprint for modern urban streets, guiding design decisions for streets, intersections, and traffic control. The guide holistically integrates pedestrian planning into street design. Additionally, it offers documented guidance to support engineering decisions to use innovative treatments that are not yet found in other guides.

[6] City of Spokane Council Resolution RES 2014-0113, December 11, 2014. Accessed online: http://nacto.org/wp-content/uploads/2014/12/Spokane-WA_USDG-UBDG-Resolution.pdf

WHAT IS THE QUALITY OF THE WALKING EXPERIENCE IN SPOKANE TODAY?

According to the US Census Bureau's American Community Survey (ACS), approximately 4% of Spokane's residents walk to work[7] while another 4% use public transportation, a trip that most often requires a pedestrian trip on one or both ends of the journey[8].

Short blocks, complete sidewalks, and marked crossings result in a walkable environment in the downtown core. Older streetcar suburbs like Browne's Addition feature shaded streets, sidewalks with planted buffers, and quieter streets that are comfortable to cross. Walking conditions are more challenging in other parts of the city, such as portions of North Division, where narrow sidewalks adjacent to high speed traffic are relatively uncomfortable to walk along and contain barriers for disabled populations where there is inadequate space to navigate around street furniture or utility poles. Other parts of the city have few or no sidewalks and a lack of marked crossing opportunities.

Any walking experience is made more safe and comfortable by design strategies that establish a clear path of travel for pedestrians separated from other modes, both along street segments and at intersections. In addition, because the pace of people walking is slower, intriguing and interesting adjacent buildings and land uses make the walk more pleasant. This section describes best practices for design and land use conditions and compares them to the state of walking in Spokane today, focusing on the considerations that have significant impact on the quality of the pedestrian experience:

- Continuous sidewalks and buffers
- Pedestrian accommodation at signalized intersections
- Convenient marked pedestrian crossings
- Driveway curb cuts
- Street connectivity
- Land use and building design
- Safe routes to school
- Universal accessibility

[7] US Census, "Commuting Characteristics by Sex, 2009-2013 American Community Survey, 5-Year Estimates." Accessed January 12, 2015 online: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_S0801&prodType=table

[8] ACS asks respondents to report their most common means of transportation taken to work, meaning it is possible that some residents choose to walk to work sometimes, but that travel goes unreported. Additionally, the journey to work is only one of a large number of purposes that generate daily travel activity. In 2013, work trips accounted for just 15.6% of all trips and 27.8% of vehicle miles of travel. It is for this reason that the Census journey to work question generally underestimates the amount of walking in a community.

Continuous Sidewalks and Buffers

Because they provide a place to walk that is physically separated from traffic, sidewalks are the most effective way to avoid pedestrian involved collisions. Yet they are often taken for granted as a basic design element.

Best Practices

A system of pedestrian 'zones' helps to organize sidewalk space and buffer cars from pedestrians:

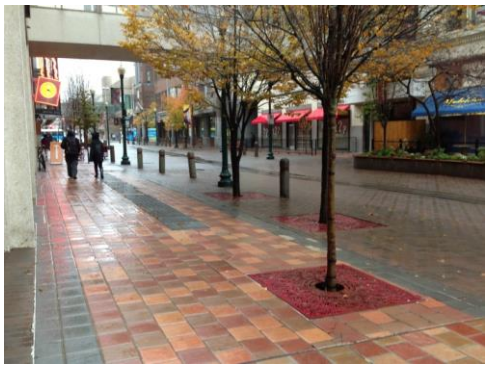
- The Curb Zone provides a physical buffer between the walking/seating areas of the sidewalk and the roadway.
- Pedestrian Buffer Strip provides a place for shade trees that give shade and further physical separation between moving vehicles and pedestrians. The pedestrian buffer strip ideally includes landscaping and trees to add to the appeal and perceived safety of the street. Depending on the land use context, typical elements in the pedestrian buffer strip include pedestrian lighting, trash receptacles, seating, transit stops, and street utilities such as traffic signal controls and fire hydrants. Street trees in a landscaped buffer similarly protect the sidewalks from the cars beyond them and also create a perceptual narrowing of the street that can lower driving speeds.
- The Pedestrian Through Zone is the open sidewalk area for pedestrian movement, and should be free of obstacles. Commercial and activity districts tend to feature the widest pedestrian zones, often allowing people to walk side by side.
- The Frontage Zone is the area in front of buildings used for tables/chairs or displaying "wares" to entice shoppers.
- On-Street Parking complements the pedestrian buffer strip. Whether parallel or angled, occupied on-street parking provides a physical barrier between moving traffic and the sidewalk. It can also slow traffic, because drivers tend to slow down out of concern for possible conflicts with cars parking or pulling out.
- Lighting contributes to personal security, traffic safety and a high quality pedestrian environment.

Spokane's Design Guidance regarding Sidewalks and Pedestrian Buffer

The City's current design standards for sidewalks and pedestrian buffer widths are found in the adopted Comprehensive Plan, Unified Development Code, Street Design Standards, and Spokane's Standard Plans. In Spokane's four adopted standards, sidewalks are required on both sides of streets, with widths ranging from 5 feet to 12 feet depending on the land use context. There have historically been some discrepancies among the Design Standards, Unified Development Code, Standard Plans and the Comprehensive Plan, with respect to terminology and required dimensions within each land use type. A part of the Transportation Plan Update is updated Street Design Standards that provide sidewalk and buffer recommendations that should be reflected in future revisions to the Standard Plans.

Existing Sidewalk Conditions in Spokane

Wall Street, downtown Spokane



South Perry Street, a neighborhood center

Intersection of Mission Street and Greene Street

Decatur Avenue

Pedestrian conditions vary along neighborhood streets, largely based on the age of the neighborhood. In older historic neighborhoods such as Browne's Addition, sidewalks on both sides of streets include wide pedestrian buffer strips; streets in older (up to the mid-20th century) neighborhoods such as Cliff/Cannon include sidewalks on both sides, with sidewalks and buffer strips narrower than historic neighborhoods. Mid-20th century to late 20th-century neighborhoods such as Southgate and the Nevada/Lidgerwood neighborhoods have a mix of streets with and without sidewalks, sometimes featuring sidewalks on one side of the street or with numerous sidewalk gaps.

Downtown sidewalks tend to be more than 12-feet wide, located alongside slower automobile traffic or buffered by parking. On arterials, it is common to find narrow sidewalks with widths of 5-feet or less and no landscaped buffer to separate pedestrians from adjacent traffic. Many arterial sidewalks have frequent obstructions, such as utility poles and signs. Sidewalk conditions vary depending on the age of the sidewalk. Many sidewalks are in need of repair due to tree root damage.

Citywide, sidewalks are missing on 38% (381 miles) of the 981 roadway miles suitable for sidewalks.[9] Over 55% of City streets have sidewalks on both sides of the street while 6% have sidewalks on one side.[10]

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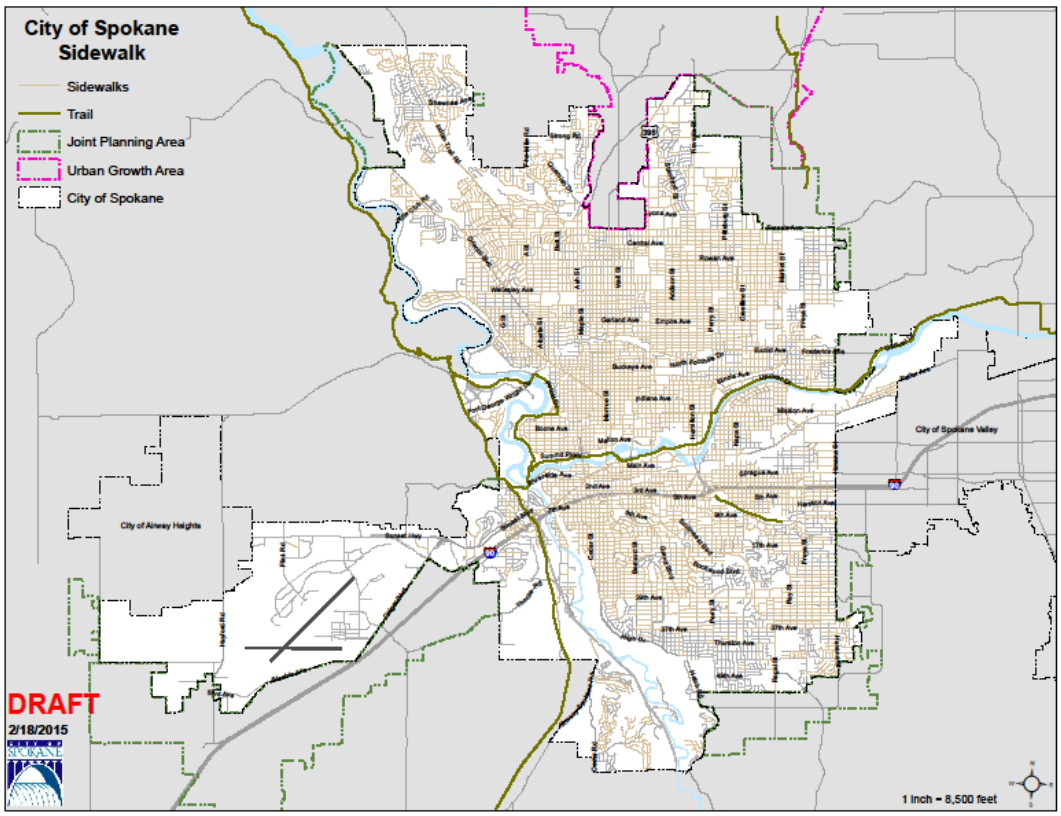
[9] City of Spokane. DRAFT ADA Transition Plan, 2014-2019. Accessed online: https://static.spokanecity.org/documents/about/spokanecity/accessibility/ada-transition-plans-draft.pdf

Figure 1 - Spokane's Sidewalk and Path Network, Existing 2015

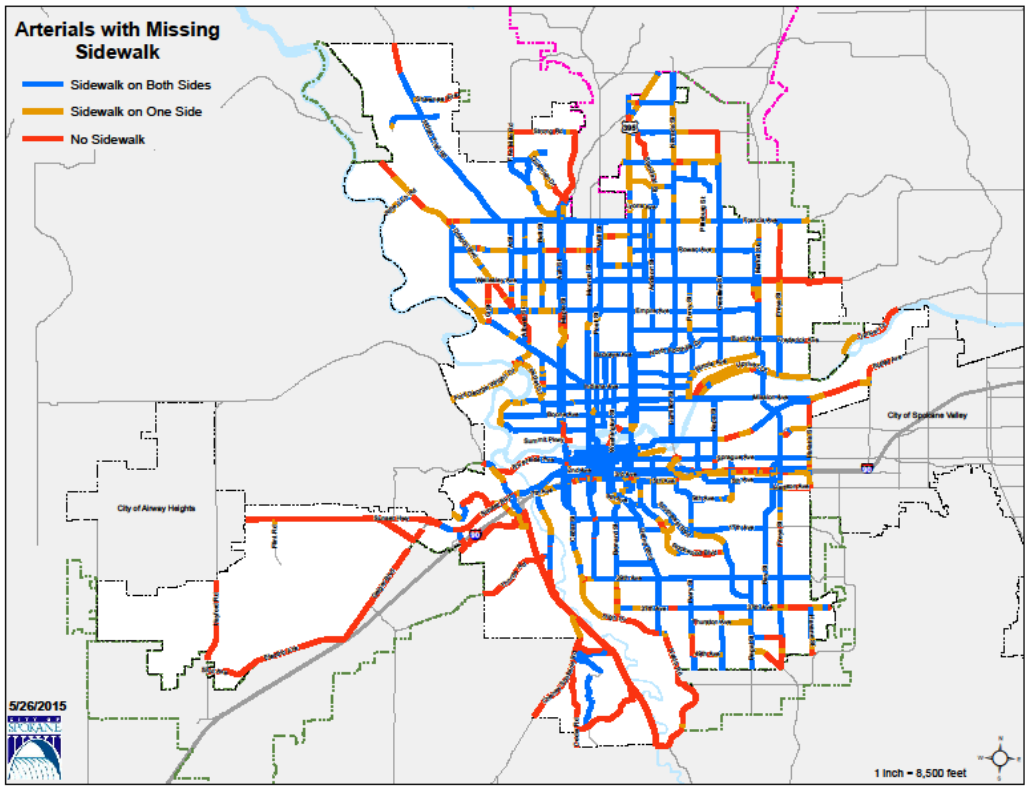


[10] City of Spokane. DRAFT ADA Transition Plan, 2014-2019. Accessed online: https://static.spokanecity.org/documents/about/spokanecity/accessibility/ada-transition-plans-draft.pdf

Sidewalks along Arterial Streets

Figure 2 shows the existing arterial streets in Spokane and identifies the arterial streets with sidewalk on both sides, sidewalk on one side, and no sidewalks. Most of the arterial streets have sidewalks along one or both sides. This map is useful for the identification of gaps in the sidewalk network and the prioritization of capital projects.

Figure 2 – Sidewalks along Arterial Streets



Pedestrian Accommodation at Signalized Intersections

The traffic operations of higher volume intersections typically benefit from signalization. However, the phased separation of conflicting motor vehicle phases also introduces pedestrian delay and conflict. The delay is caused by the need of the pedestrian to wait for their turn to move in the sequence after pressing the pedestrian push button, regardless of suitable gaps in traffic. Signalized intersections tend to be over-represented in collisions.

Best Practices

A number of tactics can improve pedestrian comfort and safety at signalized intersections:

- High visibility crosswalks (e.g. continental (zebra) striping or special paving) - raise driver awareness at unsignalized intersections that are in a zone where pedestrians are expected to be crossing.
- Leading pedestrian interval - gives pedestrians a few seconds head start to claim the right-of-way ahead of turning traffic, this may reduce conflicts with turning vehicles.
- Prohibiting right turns on red - prevents vehicles from turning into crossing pedestrians. Signal phases need to accommodate adequate time for through-movement to reduce the urge to violate the no-turn-on-red signal.
- Reducing intersection widths - improves visual contact between drivers and pedestrians and reduces crossing distances and the time needed to cross on foot.
  - Curb extensions are often placed at the end of on-street parking lanes so that pedestrians standing on the curb can see and be seen by drivers before crossing. These can also be placed mid-block to effectively shorten block lengths.
- Rightsizing to reduce the width or number of travel lanes, often by converting a 4-lane street into a 2- or 3-lane plus bike lane and/or a center turn lane. This reduces crossing distances, vehicle speeds, and the number of travel lanes to cross the street. When using this approach, the entire traffic corridor must be considered, not just one intersection.
- Pedestrian recall – describes the situation where pedestrian is given the 'walk' signal at every signal phase, without having to push a button. Pedestrian recall is presently used in areas with higher levels of pedestrian activity (e.g., downtown), and could be considered in new locations with high pedestrian traffic. Some intersections work best using recall during busier hours of the day and switching to pushbutton operation at night.

Spokane's Signalized Intersection Design Guidance

The City of Spokane operates over 250 signalized intersections. This number will change over time as new signalized intersections are added. Signal installation is warranted according to the Manual on Uniform Traffic Control Devices (MUTCD), and local guidance provides for basic signal timing parameters. Traffic signals are found in the Central Business District downtown, along major corridors, arterials and locations with high pedestrian volumes. The city uses the MUTCD standard of 3.5-feet per second to time the clearance phase, meaning that someone walking 3.5-feet per second who leaves the curb while the walk symbol is on can make it to the far curb before the conflicting motor vehicles get a green light.

Existing Signalized Intersection Conditions in Spokane

Signalized intersections represent about 4% of all intersections in the city. Most include pedestrian signal heads indicating the walking interval. Instead of recalling to the walking symbol icon when through-traffic has a green light, many intersections require pedestrians to push a push-button to 'actuate' or trigger the walking phase.

The intersections of arterials can create cross sections in excess of seven lanes to accommodate left- and right-turn pockets. These large intersections increase pedestrian exposure due to the long distance between the curbs. Slower pedestrians may be unable to make it all the way across the crosswalk before the conflicting light turns green.

Many signalized intersections have protected left turning phases, meaning only left turning vehicles move during the phase. While left turn phases introduce additional wait time for pedestrians, the benefit of this treatment is that it minimizes the chance of a left turning vehicle having a collision with oncoming traffic or a pedestrian in the crosswalk.

Drivers are often observed encroaching on pedestrians in crosswalks, both as they wait in the crosswalk and pass closely in front or behind them while pedestrians have the right of way. Washington State law requires operators of all vehicles to stop and remain stopped to allow pedestrians in marked or unmarked crosswalks to completely clear the lane of the operator.[11]

[11] Washington State Legislature, Revised Code of Washington, *RCW 46.61.235, Crosswalks.*

Convenient Marked Pedestrian Crossings

People generally cross where it is most convenient, expedient, efficient, and in as direct a line to their destination as possible. This is known as the 'desire line.' A network of convenient and comfortable marked pedestrian crossings is essential to increase predictability for all road users.

South Grand Boulevard

North Foothills Drive

Best Practices

The placement of marked crosswalks should be considered carefully. Crossings should be provided where an analysis shows a concentration of origins and destinations across from each other.

- Crossings should be located according to the walking network rather than the driving network.
- There is no hard and fast rule for crossing spacing. Generally speaking, people will not travel far out of their way in order to cross at a signalized crossing, making midblock or marked crosswalks at unsignalized crossings important for connectivity.

There are circumstances in which a marked crosswalk alone is insufficient. The type of crossing treatment is largely a function of automobile speed, automobile volume, pedestrian volume, and roadway configuration. People informally cross narrow streets of low automobile speed and volume without marked crossings. On the other hand, in general, a marked crosswalk alone is insufficient for crossing more than two lanes of traffic. The following principles inform the selection of enhanced crossing treatments:

- Multi-lane, high-speed, and high-volume roads require more aggressive treatments such as lane narrowings, curb extensions, high visibility continental (zebra) crosswalks, median refuge islands, flashing beacons, overhead signs, and advance stop lines. The City Street Design Standards provide guidance for enhanced crossing treatments.
- Enhanced crosswalks are more visible and thus make it more clear to pedestrians where crossing is intended, and increases the probability that people driving will stop for them.
- Small curb radii and curb extensions reduce vehicle-turning speeds to 15 mph or less for passenger vehicles. Making the corner bigger through smaller curb radii also increases storage for people waiting to cross, and makes pedestrians more visible.

Spokane's Design Guidance regarding Marked Crossings

Spokane City Council adopted a new crosswalk ordinance in the fall of 2014 that lays out criteria for placement and design (see SMC 17H.010.210). These changes, summarized below, are intended to improve the connectivity and safety of Spokane's crossings:

- Marked crosswalks to be installed at intersections in centers and corridors adjacent to schools, parks, hospitals, trail crossings, and other pedestrian traffic-generating locations, at signalized intersections, and priority pedestrian areas.
- Mid-block crossings are permitted on arterial streets at pedestrian generators or where pedestrian conditions warrant. Exceptions are allowed if engineering studies determine that the proposed crosswalk does not meet nationally-recognized safety standards.
- Advanced stop-lines shall precede each crosswalk at arterial intersections and any mid-block crosswalks in pedestrian-generators in centers and corridors per direction from the Manual on Uniform Traffic Control Devices.
- On arterial streets with three or more lanes per direction in centers and corridors adjacent to schools, parks, hospitals, trail crossings, and other pedestrian-traffic generators, marked crossings with pedestrian refuge islands shall be constructed during the next street rehabilitation project such as resurfacing, unless the installation is in conflict with sub-area or neighborhood plans or contrary to engineering studies.
- Travel lanes may be narrowed, additional existing right-of-way may be utilized, and/or the number of travel lanes may be reduced to accommodate pedestrian refuges.
- Elevated crosswalks may be installed in lieu of pedestrian refuges.

Existing Crossing Conditions in Spokane

Outside of the dense street network in the downtown core, it is not uncommon for there to be distances of a half-mile or more between marked pedestrian crossings on streets such as south Grand Boulevard, east Sprague Avenue, north Greene Street, north Division Street, west Garland Avenue, and west Northwest Boulevard. Because pedestrians are typically unwilling to endure long distance out of direction travel, pedestrians must instead wait for breaks in traffic or rely on driver's yield compliance in accordance with Washington State law, which designates all intersections as crosswalks, whether or not they are marked. (State law RCW 46.61.235).[12]

The City of Spokane is increasingly using state-of-the-practice pedestrian design interventions to improve the pedestrian environment, particularly in locations with limited pedestrian amenities as well as areas with long distances between marked pedestrian crossings. Treatments such as median refuge islands, curb extensions, and High intensity Activated crossWalk (HAWK) beacons (such as installed near Gonzaga University at Hamilton Street and Desmet Avenue), have been demonstrated to improve visibility and increase yielding by motorists.

[12] Revised Code of Washington, RCW 46.61.235; Crosswalks. Accessed online: http://apps.leg.wa.gov/RCW/default.aspx?cite=46.61.235

Figure 3 - Pedestrian crossing Grand Boulevard

Figure 4 - Bus rider crossing Francis & Belt

Driveway Curb Cuts

Parking lots and drive-through facilities introduce hazards and psychological barriers to people on foot as each driveway introduces a potential conflict area with motor vehicles.

Best Practice

Efforts should be made to consolidate driveways across the sidewalk whenever possible. Corridor access management, which limits the frequency and width of driveways, is recognized by FHWA as a 'proven' safety countermeasure. [13]

Driveway Conditions in Spokane

On-the-ground access management in Spokane is inconsistent. Due to factors such as land use changes over time and changing design guidance, the number and width of driveways on some sections of arterials, such as Grand Boulevard and Division Street, exceeds the design guidelines. This creates uncomfortable walking conditions as the pedestrian traverses frequent and wide driveways, some with multiple lanes of traffic entering or exiting the street.

In the urban context, the Federal Highway Administration (FHWA) recommends smaller driveway radii of 25 to 35 feet as narrower driveway throats are more sensitive to pedestrian crossing. While FHWA does not provide direct guidance for driveway spacing, in urban contexts, FHWA recommends driveways positioned as upstream from intersections as possible.[14]

In designated Centers and Corridors curb cut limitations are placed on development. In the *Initial Design Standards and Guidelines for Centers and Corridors*, a curb cut for a nonresidential use should not exceed 30 feet for combined entry/exits. Where a sidewalk crosses a driveway, the driveway width should not exceed 24 feet. No driveways should be located on designated Pedestrian Streets.[15]

[13] http://safety.fhwa.dot.gov/provencountermeasures/fhwa_sa_12_006.cfm

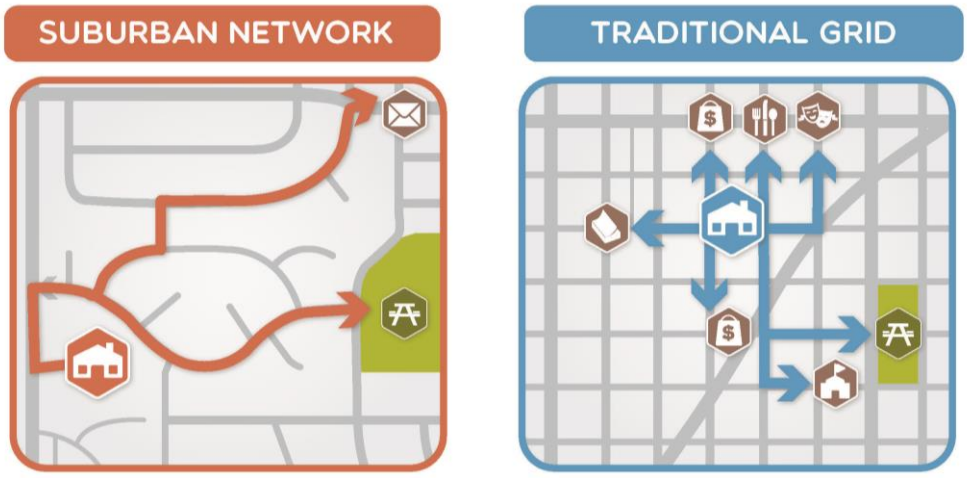
[14] Federal Highway Administration, Technical Summary, *Access Management in the Vicinity of Intersections FHWA-SA-10-002*. Accessed online: http://safety.fhwa.dot.gov/intersection/resources/fhwasa10002/

[15] City of Spokane, Initial Design Standards and Guidelines for Centers and Corridors. Adopted August 2002. Accessed online: https://static.spokanecity.org/documents/business/resources/compplan/centerscorridors/centers-corridors-design-standards.pdf

Street Connectivity

Best Practice

Street connectivity and block length have strong relationships with walking, bicycling, and transit use. Interconnected streets organized in a grid pattern tend to shorten distances for walking and biking trips. Neighborhoods where all roads are designed to connect to arterials or collector streets also allow transit customers to reach bus stops without walking out of their way and provide more efficient routing options that can support efficient transit service. These types of streets place destinations closer to each other, increasing the likelihood of walking.



Spokane's Street Connectivity Guidance

Spokane's Comprehensive Plan directs external and internal connections to neighborhoods. External connections apply to new subdivisions and planned unit developments (PUDs). Comprehensive Plan Policy TR 4.5 states, "design subdivisions and planned unit developments to be well-connected to adjacent properties and streets on all sides."[16] Connections are needed for all transportation users and can take the form of both streets and paths. Policy 4.5 notes that well-connected neighborhoods with good connections for pedestrians, bicyclists, and automobiles, spreads traffic more evenly and reduces congestion and impacts on adjacent land uses.

[16] City of Spokane, Comprehensive Plan, Revised Edition: June 2015, TR 4.5 External Connections.

Internal connections apply to all neighborhoods, subdivisions, and PUDs. Comprehensive Plan Policy TR 4.6 states, "design communities to have open, well-connected internal transportation connections."[17] The Comprehensive Plan directs that designers promote ease of access through avoiding long, confusing routes and by using shorter block lengths. Policy 4.6 notes that internal connections are promoted by connecting streets and avoiding cul-de-sacs. Where cul-de-sacs and vacating streets cannot be avoided, Policy 4.6 recommends pedestrian pathways that link areas. Comprehensive Plan Policy LU 4.5 states, "Block lengths of approximately 250 to 350 feet on average are preferable, recognizing that environmental conditions, (e.g., topography or rock outcroppings), might constrain these shorter block lengths in some areas.[18]

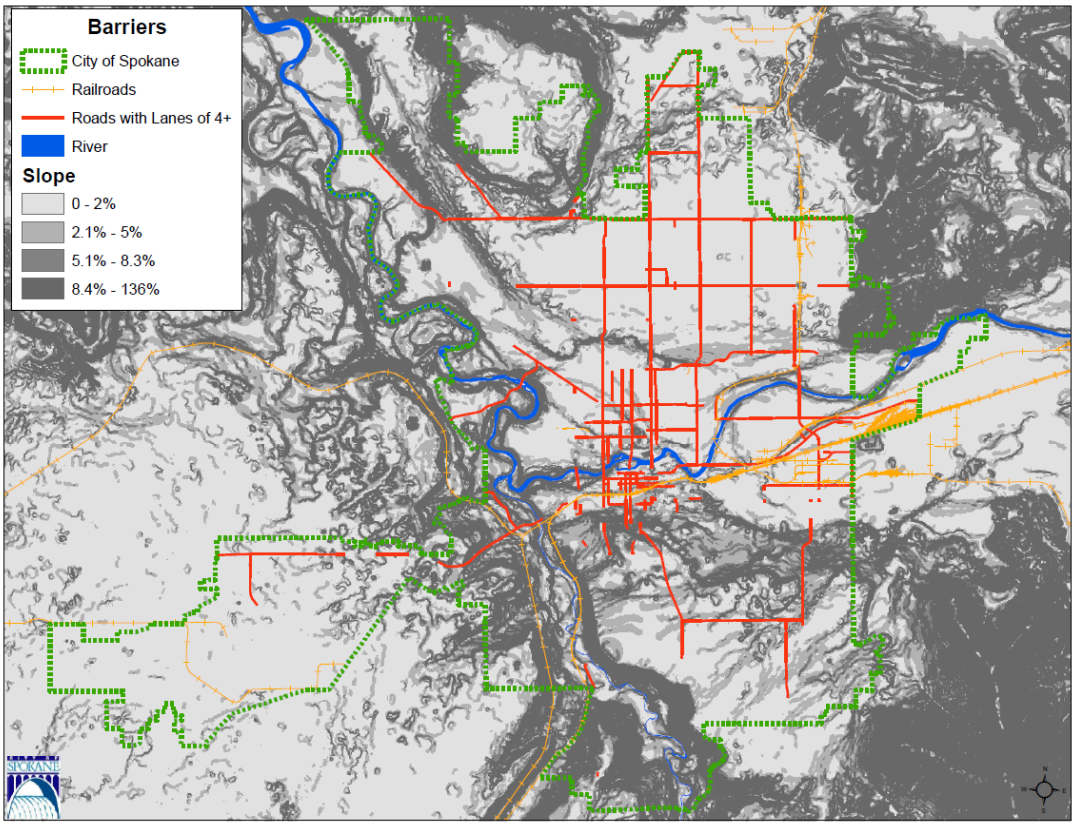
Pedestrian Network Connectivity and Block Length in Spokane Today

Mid-20th century to late 20th-century neighborhoods such as Southgate and the North Indian Trail Neighborhood have a street network with features such as winding streets, dead ends and cul-de-sacs. This type of street pattern is less supportive of pedestrian travel as it makes walking trips longer and less intuitive. Many recent developments include sidewalks but feature a roadway network design that lacks pedestrian connections as walking routes are much longer than a more traditional grid street network. In addition, these streets often lack destinations nearby, like neighborhood shops, schools, and parks. Therefore walking activity is likely limited to recreational trips or trips to reach transit.

In areas of Spokane where the existing street grid provides smaller blocks, it is easier to get around by walking compared to many suburban areas. On the other hand, the ability to walk is more difficult in locations where the street grid is much larger due to the freeway, railroads, and large developments, and where there are natural barriers such as the river and steep slopes. Low pedestrian network connectivity in these areas deters walking by increasing walking distances and walking times.

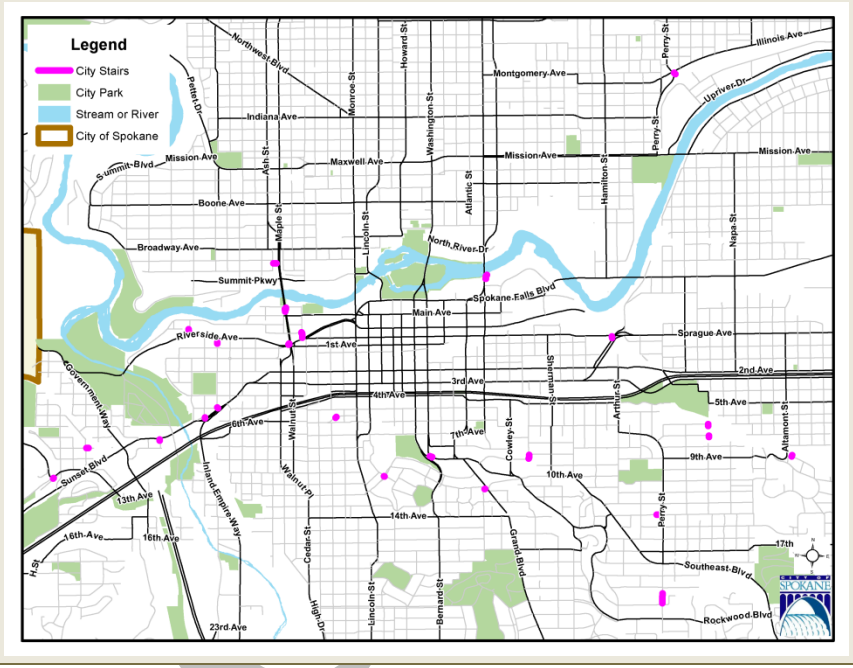
[17] City of Spokane, Comprehensive Plan, Revised Edition: June 2015, TR 4.6 Internal Connections.

[18] City of Spokane, Comprehensive Plan, Revised Edition: June 2015, LU 4.5 Block Length


Barriers
City of Spokane
Railroads
Roads with Lanes of 4+
River
Slope
0 - 2%
2.1% - 5%
5.1% - 8.3%
8.4% - 136%

The City of Spokane has 24 sets of pedestrian stairways available for public use. The stairways are located in public rights-of-way or on city-owned parcels in neighborhoods generally closer to the city center. Typically the stairways are found in areas with steep slopes and provide important connections for pedestrians, allowing them to avoid lengthy detours to move between higher and lower lying areas. Publicly-accessible staircases are located throughout the city, making connections between locations such as Peaceful Valley and Riverside Avenue, and connecting South Perry Street between 20th Avenue and Overbluff Road. Where formal paths or staircases do not exist, such as Glass Avenue and Courtland Avenue, it is common to see informal "social paths" worn into the grass illustrating pedestrian demand.

Anecdotal evidence regarding the origins of the stairways is available from news media stories and other sources. Some stairs may have been developed to provide connections to former streetcar routes, while others, such as along Perry Street north of 20th Avenue, provided a way for people to get up steep hillsides to go to work. The stairs were said to connect Overbluff area mansions with their staff, who often lived below in the smaller, working class homes in the Perry District.



The City's stair inventory provides information about stair locations, condition, and maintenance. Most of the stairways are very old, though dates of construction are not available. The type of material used in the construction of most of the stairs is concrete with railings made of metal pipe. The newer stairs are steel grate with pipe rails. The inventory notes that Spokane's one wooden stairway (located on Spruce Street between Riverside Avenue and Bennett Avenue) is in disrepair.

The historic Tiger Trail is an example of a path/trail that is used to overcome a barrier (steep slopes). The Tiger Trail is a very steep set of stairs and an unimproved pathway located in Pioneer Park near the Corbin and Moore-Turner Heritage Gardens. It generally connects the area between West Cliff Avenue and 7th Avenue. It is named Tiger Trail because students from Lewis & Clark High School use the trail to get to and from school. Walkers and joggers in the neighborhood also use the trail. The South Hill Coalition Connectivity and Livability Strategic Plan identifies this as a potential Ped-Bike Linkage to improve neighborhood grid connectivity.

There is a need to complete additional planning for areas with low pedestrian network connectivity. This planning includes defining, mapping and identification of improvements including features for these areas such as bicycle/pedestrian trails and bridges, new streets with sidewalks, new sidewalk "shortcuts" through large blocks and new or updated stairways.

Land Use and Building Design

Best Practice

Buildings and streetscapes that activate the environment, such as sidewalk cafes and parks, build community and stimulate the desire to walk to reach destinations. Transparent building facades with windows at street level create interest and open up the pedestrian realm so people are not forced to walk beside an imposing blank wall. Active sidewalks and transparent building facades both create 'eyes on the street', which provide pedestrians with a sense of security. Land uses that attract pedestrians include coffee shops, grocery stores, and small-scale retail.

Spokane's Land Use and Building Design Guidance

Spokane's Comprehensive Plan directs the City's zoning, including the urban growth strategies that focus on increasing the mix and density of uses at designated centers and along specific corridors. This is supported through zoning changes, municipal code requirements, the Centers and Corridors Design Guidelines, neighborhood plans, and economic development incentives.

Centers and Corridors are intended to promote pedestrian-orientation through limiting auto-orientation such as parking between and in front of buildings, curb cuts for driveways, and certain land uses such as drive-through restaurants. Direction for pedestrian scale lighting, pedestrian connections in parking lots, and pedestrian streets are detailed in the Municipal Code. Spokane's Centers and Corridors include the corridors of North Hamilton Street near Gonzaga University and North Monroe Street from the river north to Cora Avenue and centers like the Garland District and South Perry Neighborhood.

The Comprehensive Plan defines Centers and Corridors as important places to encourage employment, shopping, and residential activities. In addition to district, employment, and neighborhood centers, pedestrian activity areas include locations along transit routes, near schools and community spaces, and near recreational facilities such as play fields and parks.

Land Use and Building Design in Spokane Today

Spokane's Comprehensive Plan encourages much of the future growth to occur in district centers, employment centers, neighborhood centers, corridors and downtown. Downtown Spokane is the Regional Center and is a thriving neighborhood with a diversity of activities and a mix of uses. Another area of focus is the University District. In addition to centers and corridors, the comprehensive plan describes land uses throughout the city including a full range of residential, commercial, institutional, industrial and open space/recreational designations.

The Unified Development Code (UDC) guides the growth and development of the city. UDC standards for building and site features encourage building and site development that is consistent with the vision of the comprehensive plan. The UDC requires new development to provide features that support pedestrians, such as sidewalks. Site development is directed to provide pedestrian elements and building design that incorporate features that encourage walking and improve the pedestrian experience.

For the Pedestrian Master Plan it is helpful to further define the general city development pattern into two land use contexts:

- Urban –These are places with high levels of pedestrian activity and include retail and commercial hubs. All Centers and Corridors are in the Urban Context as defined in the proposed Street Design Standards.
- Mobility –Areas without much expected pedestrian activity, including state highways, corridors connecting retail centers, or areas without active land use frontages.

The Urban Context

The Downtown Core hosts government buildings, the Financial District, and the Davenport Arts District. Downtown is home to more than 13% of Spokane County's jobs.[19] Residential growth is expected in the downtown area including the University District. The downtown district's businesses and residences benefit from the city's most walkable area. WalkScore, which collects information such as block length, intersection density, and nearby amenities like shops, restaurants, and food stores, scores Downtown Spokane as 90/100. The University District has a Walk Score above 75.[20]

Downtown streets have the highest level of pedestrian amenities in the city, with features including pedestrian countdown timers at signalized intersections, wider sidewalks, pedestrian areas protected from the elements by the overhang of adjacent buildings, and curb extensions to increase pedestrian visibility and shorten crossing distances. The Spokane Municipal Code requires permits and provides standards for placing sidewalk cafés, signs, bike racks and other features in or upon sidewalks in the public right-of-way. The standards address details such as insurance, terms, conditions, and clear distance (unobstructed width). Downtown also includes shared realms that minimize the demarcations between spaces for pedestrians and motor vehicles, such as Wall Street between Spokane Falls Boulevard and Riverside Avenue. The pedestrian network connects to multi-use paths along the river, offering transportation and recreational opportunities as well as connecting to destinations such as the University District, shopping, and recreational opportunities.

Spokane also features a popular skywalk system that offers pedestrians access throughout much of downtown. These walkways offer walking routes that are protected from the weather, passing from building to building, though walking routes are not always direct. Opportunities exist to improve wayfinding to help users navigate the skywalk system. The existence of these routes may reduce pedestrian activity along storefronts on the street below.

As Spokane grows—and grows more pedestrian friendly—many streets in designated Centers and Corridors will be redesigned in the urban context. Today, conditions on those streets vary depending on their location and age of development. Some of the existing districts included in the urban context include the Garland and Perry Districts and the University District.

The Spokane Transit Authority operates along many of the designated Corridors and through Centers. Some busy locations with transit stops, (e.g., The Grand District Center, along East 29th Avenue near the East 29th Avenue and South Grand Boulevard neighborhood center), lack marked crossings near bus stops causing riders to attempt risky crossings or to walk long distances out of direction to reach a signalized intersection. An analysis of such crossings should be considered in these situations to address possible issues with stop placement.

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[19] Spokane Central City Transit Alternatives Analysis Process Summary Report

[20] Walk Score: www.walkscore.com

The Mobility Context

Many of the Centers and Corridors remain strongly auto-oriented with high-speed arterial streets, limited marked crossings, long block lengths, and numerous driveways. Throughout the city, it is common to have more than half-mile stretches between marked crossings on arterial streets.

Today, approximately 52% of Spokane's arterial streets have sidewalks on both sides and another 19% have sidewalks on one side, leaving over 76 miles of arterials without sidewalks on either side.[21] Where there are sidewalks, they are often narrow, and many are in a deteriorating condition, interrupted by frequent driveways, or obstructed by poles or utility vaults. To bring these streets up to the Centers and Corridors standards, they will need to have both "pedestrian emphasis… and [be] automobile-accommodating."[22]

The Spokane Transit Authority uses many of the City's mobility-context arterials, locating stops along streets that may lack adequate sidewalks and crossings.

Indian Trail at Barnes is an arterial in the mobility context that is a planned Neighborhood Center.

[21] City of Spokane. Draft ADA Transition Plan, 2014-2019. Accessed online: https://static.spokanecity.org/documents/about/spokanecity/accessibility/ada-transition-plans-draft.pdf

[22] City of Spokane Planning Services. Initial Design Standards and Guidelines for Centers and Corridors. Adopted 08/11/02. Accessed online: https://static.spokanecity.org/documents/business/resources/compplan/centerscorridors/centers-corridors-design-standards.pdf

Safe Routes to School

Best Practice

Safe Routes to School is a national movement to improve school zone safety and encourage more children to walk and bicycle to school. Successful programs typically integrate engineering, education, enforcement, education and encouragement to foster a safe active transportation culture.

Safe Routes to School Spokane

In February 2015, the Spokane Regional Health District (SRHD) launched its Safe Routes to School Spokane program (http://www.srhd.org/news.asp?id=457). The intent is to encourage more of Spokane's children to safely walk and bike to school. SRHD notes that the program to support walking or biking to school benefits children, families and the community. The program is slated to roll out to seven area public grade schools during the next three years, the program is being introduced this spring to two of them—Holmes Elementary in Spokane and Seth Woodard Elementary in Spokane Valley. The five other elementary schools include Stevens, Logan, Sunset, Bemiss and Moran Prairie. SRHD staff is designing the program to benefit each of the schools in ways unique to the barriers each faces in getting more students walking and biking safely.

Spokane Public Schools Suggested Walk Routes

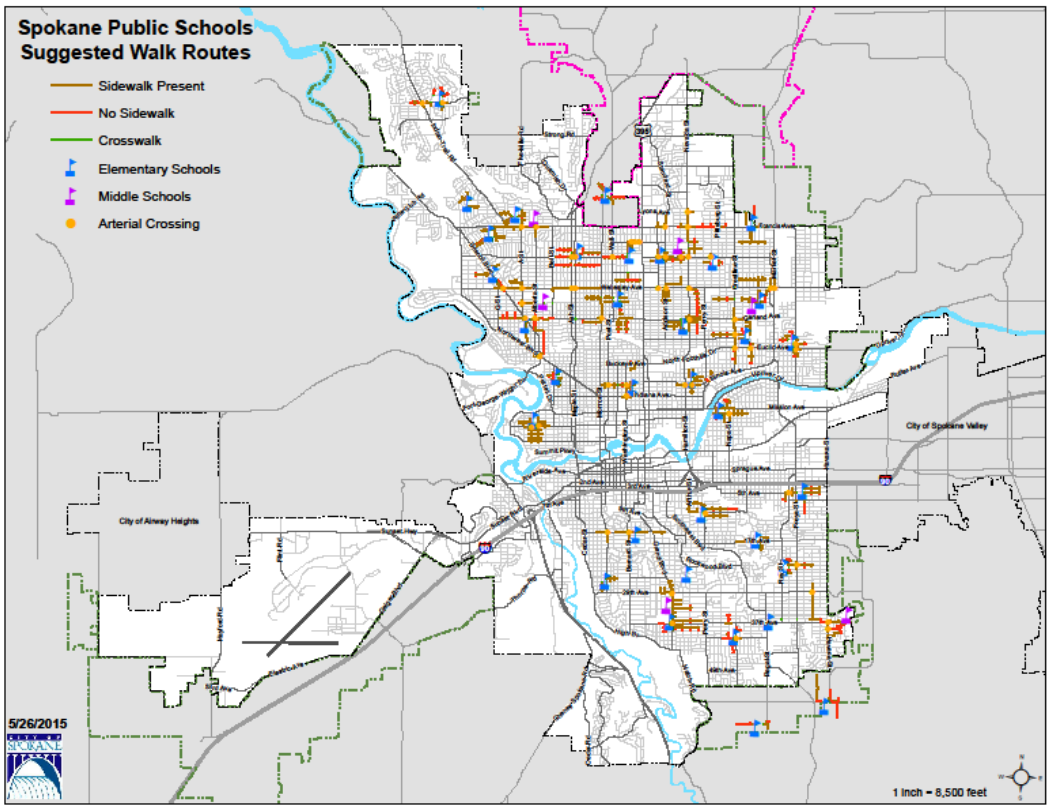
Spokane Public Schools provides information on its website regarding school attendance boundaries for all elementary, middle and high schools. These maps include school location, suggested walk routes, crosswalks, bus stops, and bus service areas (http://www.spokaneschools.org/site/Default.aspx?PageID=89).

The suggested walking route information has been converted to a GIS map in the City of Spokane GIS database. Figure 5 below shows the suggested walk routes information for all Spokane Public Schools consolidated on a single map. The map also shows the suggested walk routes that presently do not have sidewalks. Where there are no sidewalks, the suggested walk routes usually follow unimproved paths paralleling a low traffic residential street. The suggested walk routes guide children to school along the most favorable walking routes that lead to sidewalks and crosswalks with crossing guards. It should be noted that the suggested walk routes information is recognized as a guide and is subject to adjustment and change over time.

There are three school districts operating within the current Spokane city limits. The vast majority of the City of Spokane is served by Spokane Public School District. Cheney School District serves some small corners in the southwest area of the city and the west plains. Mead School District is generally located on Five-Mile Prairie and north of Lincoln Road. Any available Safe Routes to School information from Cheney and Mead School Districts should be considered in the identification of pedestrian facility development projects.

The information in Figure 5 related to the suggested walk routes and those without sidewalks is useful for the identification of gaps in the sidewalk network and the prioritization of capital projects.

Figure 5 – Spokane Public School Elementary School Suggested Walk Routes



Universal Accessibility

Universal Access Best Practice

Streets that are designed for children, the elderly, and people with mobility impairments serve everyone better.

- Americans with Disabilities Act (ADA) guidelines and requirements guide appropriate sidewalk, driveway cut design, curb ramp placement at intersections and building entrances. Driveway cuts should be limited, grades leveled, and cross-slopes reduced to make sidewalks safer and more comfortable for those using mobility devices like wheelchairs or canes.
- Obstacles such as litter, utility poles, and trash cans should be removed from the sidewalk to create a clear path for everyone.
- Visible and consistent placement of signage makes wayfinding systems more navigable and helpful for all people on foot.
- Pedestrians of all abilities benefit from adequate green signal phases with audible countdown signals to allow ample time to cross.
- When unique paving materials or raised crosswalks are used to provide a visual and tactile enhancement to the pedestrian environment, care must be given to ensure that any pavement treatments do not hinder movement for those using wheelchairs or canes.
- Pedestrians need street lighting which contributes to personal safety, traffic safety and a high quality pedestrian environment. Some areas in Spokane have missing or infrequent street lighting.

Spokane's Universal Accessibility Design Guidance

ADA accessibility requires a navigable, safe pedestrian environment for all people, including those with physical disabilities. This includes curb ramps with shallow approach angles and smooth transitions, detectable warning strips with truncated domes, and ideally includes audible crossing signals at priority locations. The City of Spokane uses ADAAG (Americans with Disabilities Act Accessibility Guidelines) guidance to inform all capital projects and land development and consistently utilizes PROWAG (Public Right of Way Accessibility Guidelines) which exceed ADAAG standards.[23]

Accessibility in Spokane Today

The City of Spokane's Draft ADA Transition Plan and the Pedestrian Master Plan identify the City's inventory and need for sidewalk and curb cut gaps. The ADA Transition Plan finds that 38% of the City's roadway miles that are suitable for sidewalks do not have sidewalks on either side and 6% have sidewalks on one side. About 52% of arterial streets have sidewalks on both sides and an additional 19% of arterials have sidewalks on one side.

[23] City of Spokane. Draft ADA Transition Plan, 2014-2019. Accessed online: https://static.spokanecity.org/documents/about/spokanecity/accessibility/ada-transition-plans-draft.pdf

The curb ramp inventory of the ADA Transition plan states that of the 6,928 intersections included in the inventory, 82% are missing at least one access ramp, 1,700 on arterial and highway street intersections and 4,000 on local street intersections.[24]

Pedestrian Needs Analysis

This section provides a pedestrian needs analysis that considers factors indicative of walking potential as compared to the supply (or lack thereof) of pedestrian infrastructure, to illustrate where there is a mismatch in the demand for and availability of walking infrastructure. Indicators included in the analysis are described below. Each indicator is given a numerical value ranging from 1 to 5 according to the visual and physical qualities tied to each indicator, along with weights for each factor. Generally speaking, areas with higher demand (i.e., walking potential) and lower supply (i.e., supply deficiency) are higher priorities for investment as compared to areas with higher demand / higher supply or areas with lower demand / lower supply. This analysis identifies the Pedestrian Priority Zones described in Goal 1.

Pedestrian Demand (Walking Potential)

Figure 6 presents a composite map of the factors included in the analysis of walking potential:

- Employment density - Major employment centers such as downtown and the University District, can generate walking trips both on the journey to and from work (including in connection with other modes) as well as mid-day activity for lunch, errands, etc.
- Population density - Higher density residential areas tend to be more supportive of having destinations within a walkable distance, with a mix of land uses located in close proximity to each other.
- Proximity to destinations (Centers and Corridors, neighborhood shopping, social services, transit stops, schools, parks) – These destinations attract walking trips. Neighborhood shopping and schools are major destinations for daily activities, most transit trips in Spokane begin or end with a walking trip, and children are potential walkers to school.
- Demographic factors from the US Census (% of people with no vehicle available, % of households below the poverty level, % of people under 18, and % of people 65 or over) – These population groups can be dependent on walking due to financial considerations or a lack of access to a personal vehicle.

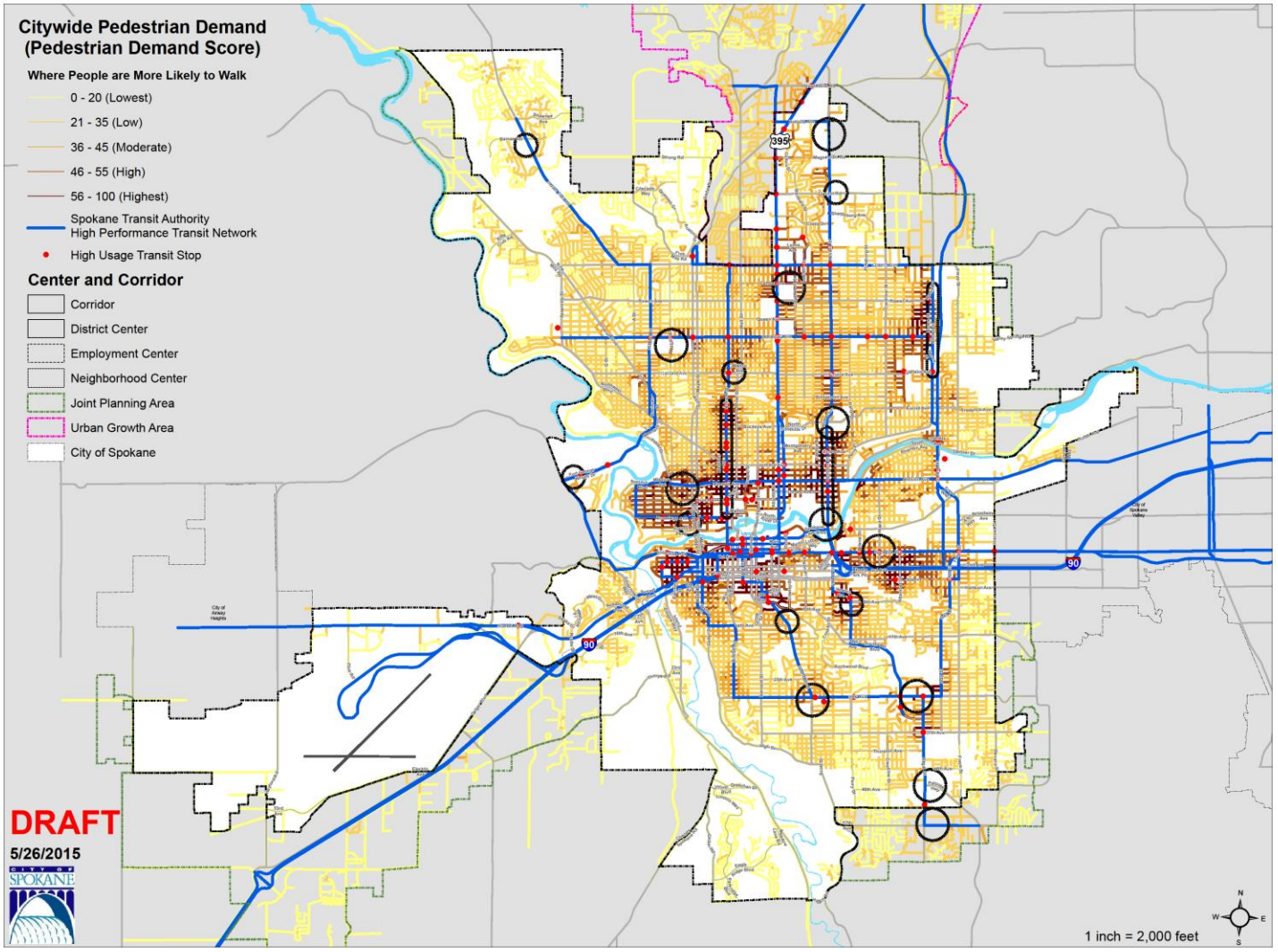
Demand Map Observations

- Higher demand areas correspond with designated centers and corridors and STA's High Performance Transit Network and high usage transit stops
- The Highest demand areas include Holy Family, Hillyard, North Monroe, West Central, North Riverbank, Gonzaga/Logan, Browne's Addition, Downtown, Lower South Hill, East Sprague/East Central, Sacred Heart Medical Center, 9th and Perry, Manito Shopping Center, and Lincoln Heights Shopping Center

[24] City of Spokane. Draft ADA Transition Plan, 2014-2019. Accessed online: https://static.spokanecity.org/documents/about/spokanecity/accessibility/ada-transition-plans-draft.pdf

- Higher demand corridors on the north side of Spokane include Monroe, Hamilton/Nevada, east and west along Wellesley between Shadle and Hillyard, and Market Street
- Higher demand areas on the north side of Spokane include the area near Franklin Park Commons, Tombari Center, and Lowe's.
- Higher demand areas on the South Hill include Lincoln Street near Wilson Elementary School and the area near 29th Avenue and Grand Boulevard, the intersection of 29th Avenue and Regal, and the intersection of 37th Avenue and Regal.
- In general, single family residential areas display lower demand, which increases with proximity to a school, park, or bus route.

Figure 6 – Pedestrian Demand map



Pedestrian Deficiency

Figure 7 presents a composite map of the factors included in the pedestrian deficiency analysis:

- Presence of sidewalks - Sidewalks provide a dedicated facility separated from the roadway (may or may not provide a pedestrian buffer strip)
- Width of the street – Wider roads tend to enable higher vehicle speeds, which reduces comfort for pedestrians and makes roadway crossings more difficult [25] [26]
- Collision history – A history of multiple pedestrian collisions likely reflects difficult walking or crossing conditions.

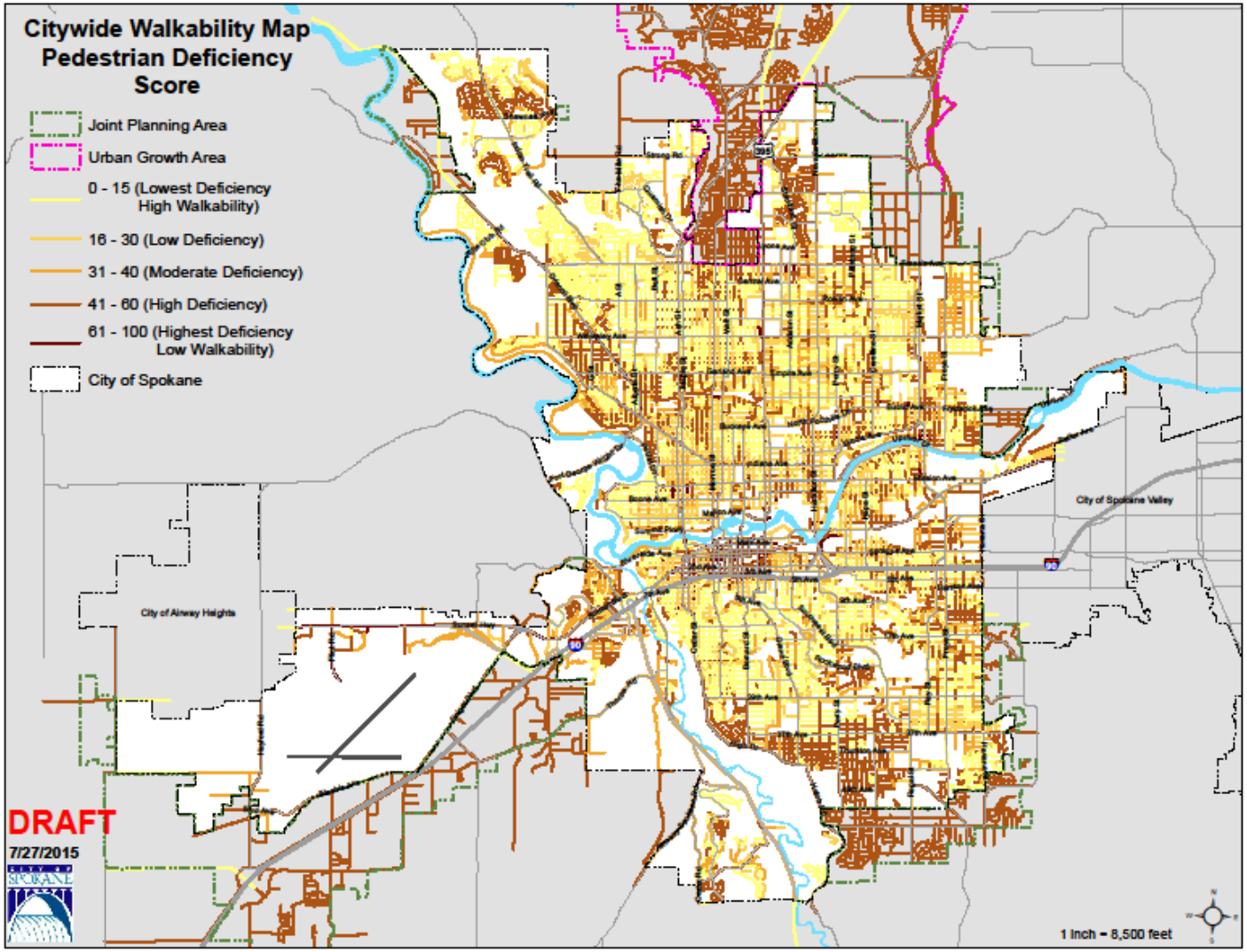
Deficiency Map Observations

- The highest deficiency scores tend to align with streets that lack sidewalks, cul-de-sacs, unpaved streets, long street segments (e.g., Antietam Drive south of Magnesium Road) and very wide streets without sidewalks (e.g., Oak Street near Sinto Avenue and Sycamore Street east of Freya Street north of Sprague Avenue)
- High deficiency scores are common on wider streets (about 36 to 40 feet curb to curb) that lack sidewalks on both sides of the street. (e.g., Nevada Street between Calkins Drive and St. Thomas Moore Way)
- Most arterial streets have sidewalks and about half have sidewalks on both sides. Arterial streets that lack sidewalks (e.g., Cochran Street-Alberta Street-Northwest Boulevard area; Maple Street and Ash Street south of Garland Avenue) score high on the deficiency map
- Areas with longer block lengths show moderate deficiency due the longer distances between crossing opportunities (e.g., Broad Avenue between Alberta Street and Nettleton Street, Longfellow Avenue between Alberta Street and Belt Street, and Northwest Boulevard west of Assembly Street)
- Several areas with moderate to high deficiency are areas with a history of pedestrian collisions (e.g., streets throughout downtown).

[25] "Previous research has shown various estimates of relationship between lane width and travel speed. One account estimated that each additional foot of lane width related to a 2.9 mph increase in driver speed." Kay Fitzpatrick, Paul Carlson, Marcus Brewer, and Mark Wooldridge, "Design Factors That Affect Driver Speed on Suburban Arterials": Transportation Research Record 1751 (2000):18–25.

[26] "Longer crossing distances not only pose as a pedestrian barrier but also require longer traffic signal cycle times which may have an impact on general traffic circulation." Macdonald, Elizabeth, Rebecca Sanders and Paul Supawanich. The Effects of Transportation Corridors' Roadside Design Features on User Behavior and Safety, and Their Contributions to Health, Environmental Quality, and Community Economic Vitality: a Literature Review. UCTC Research Paper No. 878. 2008.

Figure 7 – Pedestrian Deficiency Map



Composite Pedestrian Needs Map: Pedestrian Priority Zones

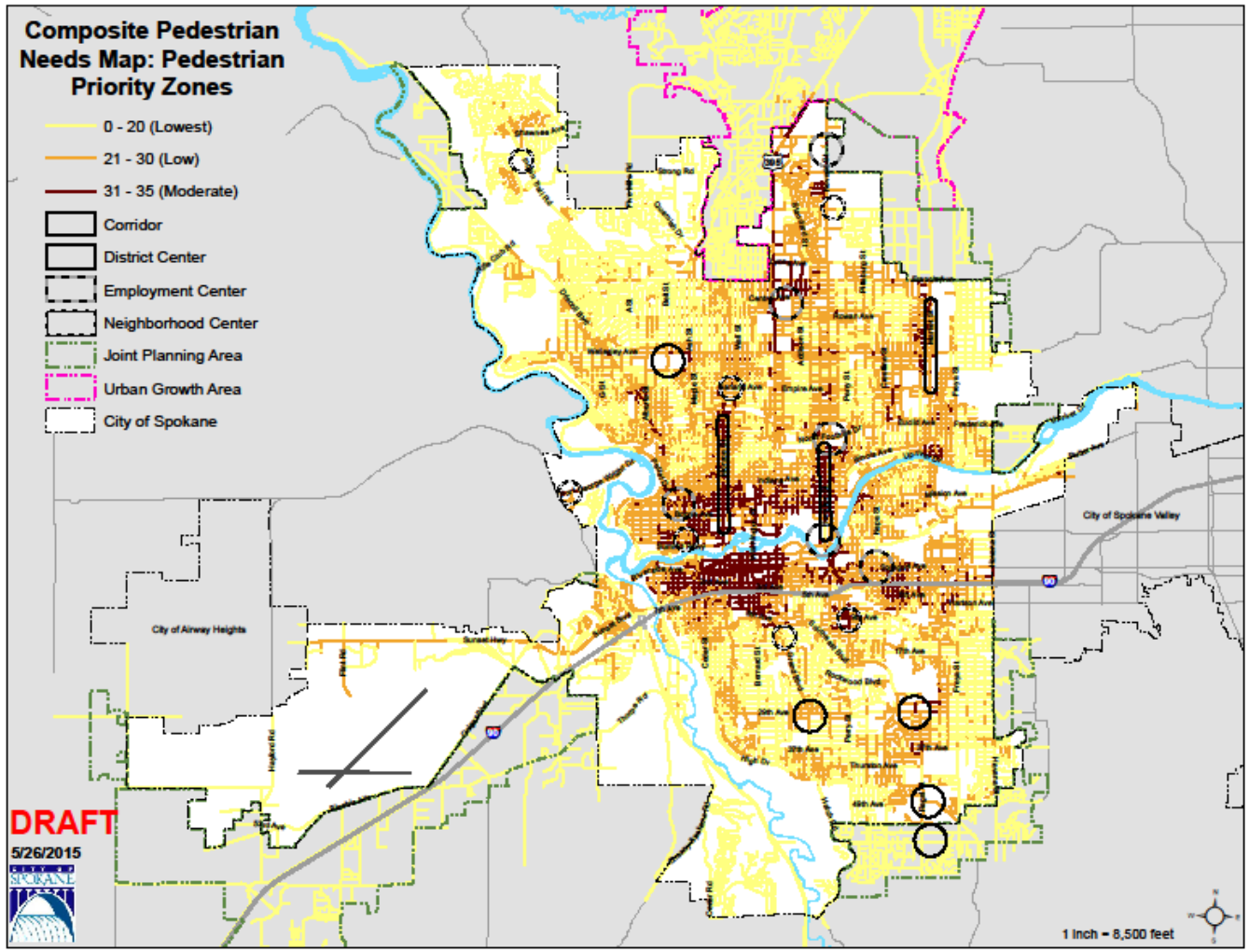
Figure 8 illustrates the results of the composite map which combines the assessment of pedestrian demand and pedestrian deficiency. This map serves to clarify where the pedestrian needs in the city are greatest. Figures 14 and 15 below provide additional data regarding pedestrian and vehicle collisions between 2005 and 2012. Areas with higher demand and deficiency scores are candidates for designation as Pedestrian Priority Zones and include:

- Downtown/Browne's Addition/University District
  - Where: Throughout downtown, Browne's Addition and the University District
  - Why: Downtown and the University District have the highest pedestrian demand and a vibrant mix of uses and destinations. While downtown has relatively good pedestrian infrastructure, this area still has a significant number of collisions involving pedestrians, offering opportunities for further improvement.
- West Central/Emerson-Garfield/Logan neighborhoods north of the Spokane River
  - Where: Boone Avenue at Maple Street/Ash Street; along Maxwell Avenue/Mission Avenue between Belt Street and Hamilton Street.
  - Why: Neighborhoods includes a mix of residential, employment areas such as Spokane County offices, and recreational activities including Spokane Arena. Major arterial crossings make pedestrian connections difficult. One area with many pedestrian-vehicle collisions is the intersection of Division Street & North River Drive.
- Holy Family Employment Center/Northtown/Francis -Division
  - Where: Along Francis near Division; near Holy Family Hospital, Franklin Park, Franklin Park Commons and Northtown Mall.
  - Why: The Holy Family Employment Center, the two shopping centers and the higher intensity land uses including offices, high density residential living, as well as an elementary school and major park are significant generators of pedestrian demand. The streets in this area have very high pedestrian demand scores. Vehicle speeds on Francis Avenue and Division Street are often very high. This area includes a designated Employment Center and a pedestrian fatality took place near the intersection of Division and Francis. Access to Franklin Park from the east side of Division Street is challenging due to high speeds and traffic.
- Mission Park/Mission and Napa area
  - Where: In the area near Mission Park and the Spokane River extending to the east including Stevens Elementary School and the Mission and Napa neighborhood business area.
  - Why: This is an active area with a concentration of activities including mixed land uses, schools, employment, and connections to the Centennial Trail.
- Lincoln Heights activity area
  - Where: Area in the vicinity of the 29th Avenue and Southeast Boulevard intersection east to Ray and along Regal south to 37th Avenue.
  - Why: The Lincoln Heights District Center is the principal activity node of surrounding neighborhoods. The area is a shopping center close to two parks, a senior center, and schools. The area also includes three grocery stores. Pedestrian deficiency scores are high in several locations within this area.

- North Monroe Street Corridor
  - Where: From the Spokane River north along Monroe Street to the Garland District
  - Why: Pedestrian need is relatively low in the residential neighborhoods bordering Monroe, but people in these neighborhoods rely on a variety of services along the corridor, creating high pedestrian demand. The Garland District is a designated Neighborhood Center.
- Market Street, Hillyard Business Corridor
  - Where: Market Street between Wellesley Avenue and Francis Avenue.
  - Why: Developing commercial corridor with residential and employment areas nearby. Demand is very high and pedestrian deficiency scores are moderate.
- South University District, Sprague Avenue
  - Where: Along Sprague Avenue, in the vicinity of Sherman Street.
  - Why: This is a part of the South University District and is an employment area with a mix of commercial and industrial uses. This area is expected to develop with residential uses and along with the planned University District Bridge providing a north-south connection to the University District campus, significant pedestrian demand is anticipated. Demand and overall need scores are high.
- Hamilton Street
  - Where: Hamilton Street, north of the Spokane River to Foothills Drive.
  - Why: Rapidly growing high demand corridor near Gonzaga University which includes parks, grocery stores, employment, and schools. Hamilton is an arterial roadway that is a designated Corridor. Hamilton divides many university uses and passes through residential areas. This corridor illustrates moderate to high pedestrian need scores.
- East Sprague/5th and Altamont
  - Where: In the neighborhood of East Sprague Avenue and extending south of Sprague in the area near Altamont Street.
  - Why: The East Sprague – Sprague and Napa Employment Center is an area with higher pedestrian demand scores, a school, social services and a commercial corridor. Altamont Street connects the neighborhood south of I-90 with Sprague. The area west of Altamont is the location of the East Central Community Center and the East Side Library. There have been recent improvements to the pedestrian environment in portions of this area along Sprague Avenue.
- Driscoll Boulevard/Northwest Boulevard/Alberta/Cochran
  - Where: In the area generally north of Northwest Boulevard along Alberta and Cochran Streets and connecting to Driscoll Boulevard.
  - Why: These arterial streets have higher pedestrian deficiency scores largely because of a lack of sidewalks. The pedestrian demand score for the areas nearby are moderate to high. High traffic volumes on these major arterials make pedestrian crossings difficult.
- Lincoln and Nevada - future opportunity – new development Lincoln and Nevada Neighborhood Center
  - Where: Lincoln Road and Nevada Street.

  - Why: Many residential streets north of Lincoln lack sidewalks but connect to destinations including schools and parks. Vehicle speeds on Nevada Street are often very high. This area includes a Neighborhood Center. A pedestrian fatality took place at the intersection of Magnesium and Nevada to the north when a city truck hit a teenager while turning at the signal. Sidewalk exists on the west side of Nevada. Sidewalk on the east side of Nevada will be constructed as this area develops in the future.
- South Perry
  - Where: In the neighborhood of South Perry Street and 9th Avenue.
  - Why: The South Perry Neighborhood Center is an area with higher pedestrian demand scores, an elementary school, higher density housing, a city park, and social services. Perry Street is a minor arterial that connects to the vicinity of the University District to the north and Southeast Boulevard to the south. The heart of the Perry District is an active business center. There have been recent improvements to the pedestrian environment in this area with improved sidewalks, street trees and other features.
- Lower South Hill/Sacred Heart Medical Center
  - Where: The lower South Hill area generally extending from Maple Street to Cowley Street.
  - Why: This area has some of the highest employment and population density in the city. Sacred Heart Medical Center is a major employer and there are significant office uses in this area. Higher density residential housing is located throughout this area of the South Hill. Lewis and Clark High School generates a large amount of pedestrian activity. Other generators of pedestrian demand include city parks and social services in nearby downtown Spokane.

Figure 8- Composite Pedestrian Needs Map: Pedestrian Priority Zones



Crash Analysis

This section provides a snapshot of pedestrian-involved crashes in Spokane between 2005 and 2012. Figure 9 below identifies the number of reported pedestrian collisions and fatalities in Spokane by year. Over this time period, there has been an average of 172 reported pedestrian collisions per year, while the number of pedestrian fatalities in a given year varies significantly.

Figure 9 – Summary of Pedestrian-Vehicle Collisions by Year

Year	Non-Fatal	Fatalities
2005	104	1
2006	198	2
2007	128	4
2008	111	0
2009	107	8
2010	118	1
2011	117	4
2012	131	5

Approximately 90% of reported pedestrian collisions took place at an intersection. Figure 10 relates the number of intersection collisions during this period with the traffic control present. During this period, about 88% of all pedestrian-involved collisions at intersections took place at locations with some form of traffic control, either stop signs or traffic signals. Eleven-percent of pedestrian-involved collisions took place at locations without a traffic control device. The large number of collisions at locations with some form of traffic control suggests a need to improve these conditions through protected turn phases, enhanced crosswalks, driver behavior change, and other strategies.

Figure 10 - Location of Pedestrian-Vehicle Collisions (2005-2012)

Location of Pedestrian-Vehicle Collision	Collision Count
Collision at intersection with no traffic control	94
Collision at traffic signal	379
Collision at stop control	343
Collision at traffic circle	0
Total number of collisions at intersections	816

Figure 11 provides a map of all pedestrian crashes, with fatal crashes identified in red. Figure 12 utilizes a density analysis to illustrate further high crash corridors and intersections. These maps illustrate locations with concentrations of pedestrian-involved collisions.

The highest amount of pedestrian activity takes place in Downtown Spokane and this is where the greatest concentration of pedestrian-vehicle collisions took place during the analysis period. Intersections in downtown with the highest concentration of pedestrian-vehicle collisions include Second Avenue & Washington Street (11 collisions), Pacific Avenue & Browne Street (9 collisions), Second Avenue & Monroe Street (8 collisions), Second Avenue & Maple Street (7 collisions), Sprague Avenue & Wall Street (7 collisions) Sprague Avenue & Stevens Street (7 collisions) and Sprague Avenue & Browne Street (7 collisions).

Many crashes are concentrated along arterial streets, including those that are wide and with higher posted speeds that make them difficult to cross without marked crossings such as traffic signals or pedestrian refuge islands. Outside of Downtown, a number of corridors register including multiple intersections along Division Street, sections along North River Drive, Mission Avenue in the Chief Garry Park neighborhood, Hamilton Street near Gonzaga University and the intersection of Francis Avenue and Ash Street. The intersection with the largest number of pedestrian-involved collisions is Division Street & North River Drive with 16 crashes.

Figure 11 – Map of Pedestrian Collisions, 2005-2012

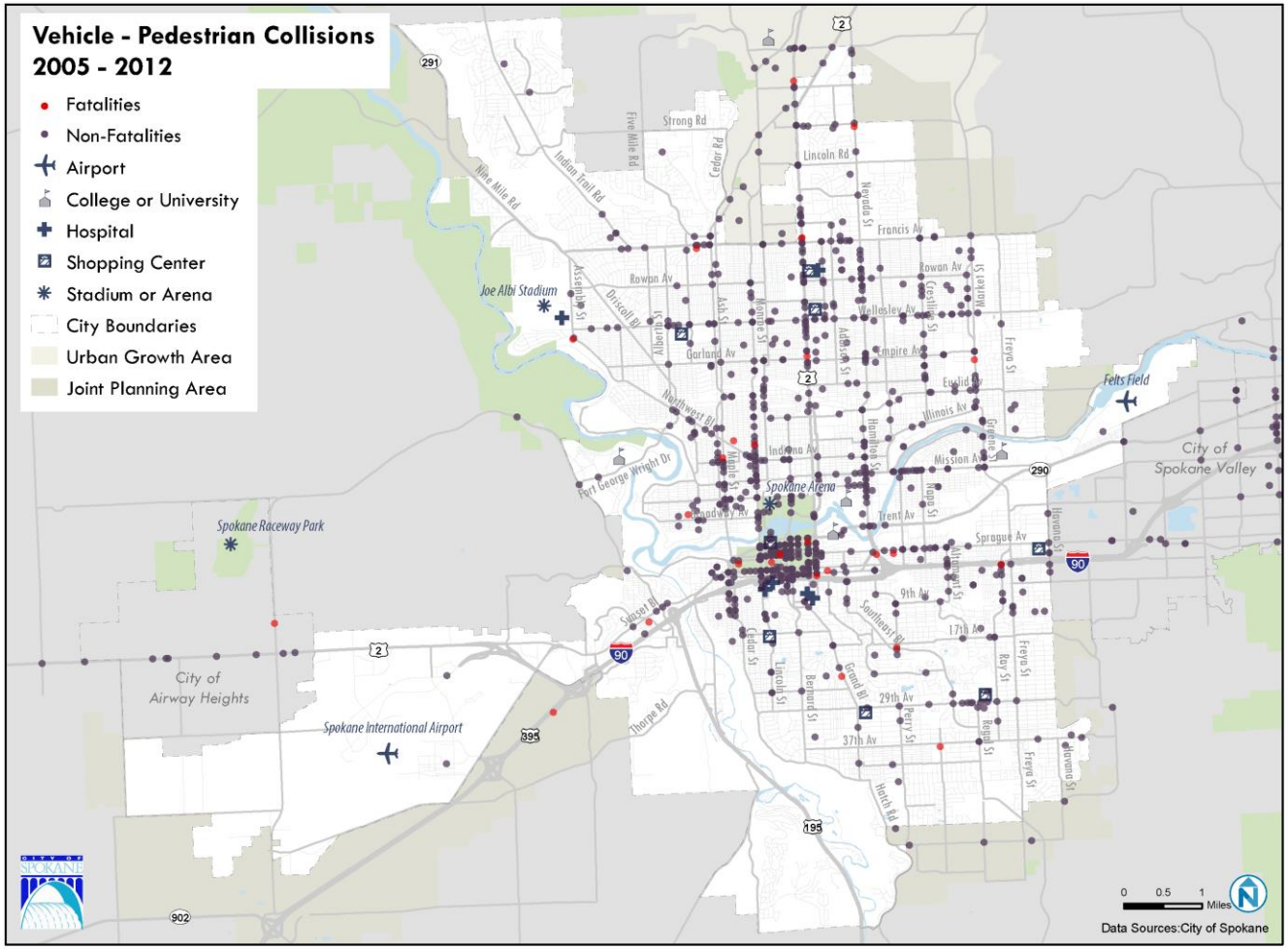


Figure 12 – Map of High Concentrations of Pedestrian Collisions, 2005-2012

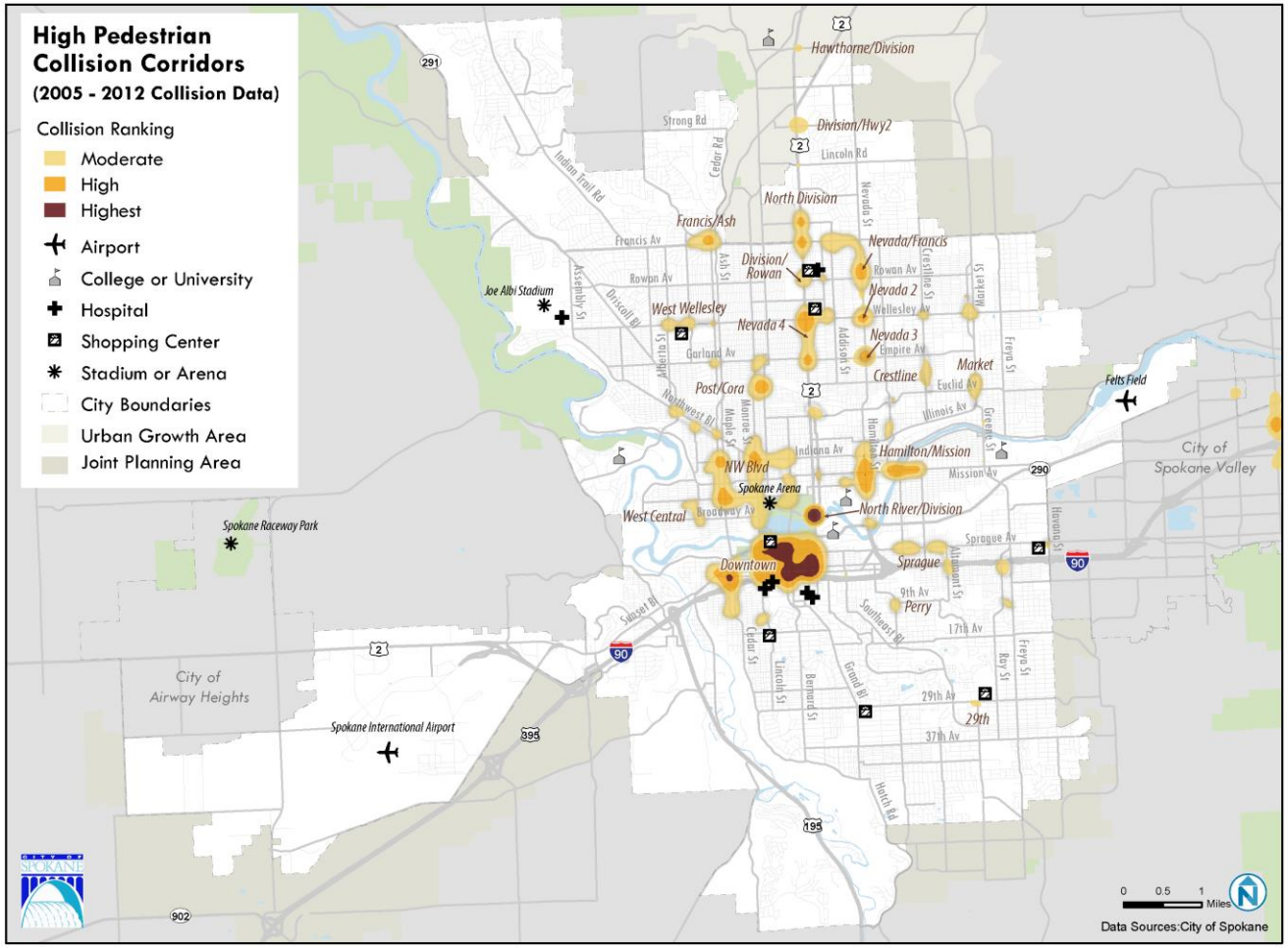


Figure 13 – High Crash Corridors, 2005-2012

Street	Crashes	Fatalities	Length (Miles)	Crashes/Mile	High Crash Intersections
Hamilton from Illinois to Cataldo	36	0	0.8	45	Hamilton & Mission(11), Hamilton & Indiana(4), Hamilton & Sharp(6)
Washington from Maxwell to North River	10	0	0.4	33.3	Sinto & Washington(2), Maxwell & Washington(1), Boone & Washington(3)
Division/Ruby from Desmet to Division St. Bridge	16	0	0.5	32	Division & North River(16)
Mission from Perry to Lee	19	0	0.6	31.6	Mission & South Riverton(4), Mission & Upriver(3), Magnolia & Mission(5)
Market from Courtland to Cleveland	7	0	0.3	23.3	Euclid & Market(1), Liberty & Market(2), Bridgeport & Market(2)
Division from Wedgewood to Gordon	49	2	2.1	23.3	Division & Lyons(5), Division & Wellesley(9), Division & Empire(2)
Crestline from Empire to Bridgeport	7	0	0.3	23.3	Crestline & Gordon (3), Crestline & Empire (1)
Sprague from Ivory to Cook	19	1	0.9	21.1	Lee & Sprague(4), Pittsburg & Sprague(4), Helena & Sprague(3), Altamont & Sprague(3)
Nevada from Lyons to Garland	35	0	1.8	19.4	Joseph & Nevada(6), Nevada & Wellesley(6), Empire & Nevada(7), Nevada & Rowan(3)
Monroe from Garland to Monroe St Bridge	36	1	2.2	16.4	Boone & Monroe(2), Monroe & Spofford(3), Maxwell & Monroe(2), Indiana & Monroe(2), Garland & Monroe(1)
Wellesley from Milton to Maple	12	0	0.8	15	Wellesley & Belt(3), Wellesley & Alberta(3), Wellesley & Ash(2)
Wellesley from Martin to Greene	10	0	0.8	12.5	Lee & Wellesley(2), Lacey & Wellesley (2), Crestline & Wellesley(1)
Francis from Alberta to Cedar	9	1	0.8	11.25	No intersections along Five Mile Shopping
Maple/Ash from Knox to Maple St Bridge	22	1	2.2	10	Indiana & Maple(4), Ash & Gardner(2), Maple & Maxwell(2), Boone & Maple(2), Ash & Maxwell(1)
Northwest from Fairview to Maple	6	0	0.8	7.5	Cochran & Northwest(1),

Figure 14 - Top Crash Intersections within high crash corridors, 2005-2012

Intersection	Traffic Control	Crashes	Corridor
Division St & North River Dr	Signal	16	North River
Second Av & Washington St	Signal	11	Downtown
Hamilton St & Mission Av	Signal	10	Hamilton
Browne St & Pacific Av	None	9	Downtown
Monroe St & Second Av	Signal	8	Downtown
Maple St & Second Av	Signal	7	Downtown
Sprague Av & Wall St	Signal	7	Downtown
Sprague Av & Stevens St	Signal	7	Downtown
Browne St & Sprague Av	Signal	7	Downtown
Empire Av & Nevada St	Signal	7	Nevada
Joseph Av & Nevada St	Stop	6	Nevada
Hamilton St & Sharp Av	Signal	6	Hamilton
Fourth Av & Maple St	Signal	6	Downtown
Nevada St & Wellesley Av	Signal	6	Nevada
Browne St & Second Av	Signal	5	Downtown
Browne St & Third Av	Signal	5	Downtown
Division St & Lyons Av	Signal	5	North Division
Division St & Second Av	Signal	5	Downtown
Monroe St & Sprague Av	Signal	5	Downtown
Magnolia St & Mission Av	Stop	5	Mission
Hamilton St & Indiana Av	Signal	4	Hamilton
First Av & Washington St	Signal	4	Downtown
Riverside Av & Stevens St	Signal	4	Downtown
Mission Av & South Riverton Av	Stop	4	Mission*
Mission Av & Upriver Dr	Stop	3	Mission
Boone Av & Monroe St	Signal	2	Monroe

*This intersection has been modified to right-in, right-out from South Riverton Avenue to Mission Avenue

Figure 15 – Top Crash Intersections independent of high crash corridors, 2005-2012

Intersection	Traffic Control	Crashes
9th Av & Perry St	Stop	5
Boone Av & Walnut St	Stop	4
Garland Av & Post St	Signal	4
Ash St & Five Mile Rd	Signal	3

PROGRAMMATIC RECOMMENDATIONS

This section provides a series of goals, policies and actions to continue making Spokane a more walkable community over time. Making steady progress by implementing these and other actions will help Spokane achieve recognition as a Walk Friendly Community as well as support other community initiatives related to livability, public health and economic development. By applying for a Walk Friendly Community designation, the city will receive specific suggestions and resources on how to make needed changes for pedestrian safety. Through the questions in the assessment tool, the city will be able to identify the areas of needed improvements that can form the framework for a comprehensive pedestrian improvement plan. Communities awarded with a Walk Friendly Community designation will receive national recognition for their efforts to improve a wide range of conditions related to walking, including safety, mobility, access and comfort.

Goal 1 Well Connected and Complete Pedestrian Network - Provide a connected, equitable and complete pedestrian network within and between Priority Pedestrian Zones that includes sidewalks, connections to trails, and other pedestrian facilities, while striving to provide barrier-free mobility for all populations.

Definition of Programmatic Recommendations' Organization

The adopted Spokane Comprehensive Plan states, "Goals and policies provide specificity for planning and decision-making. Overall, they indicate desired directions, accomplishments, or aims in relation to the growth and development of Spokane."

- A **goal** is a general statement of the community's desired outcome
- **Policies** are a course of action that a community will take to meet its goals. They are focused and direct actions
- **Actions** are specific projects and activities directed to achieve the goals.

- Policy 1.1 Create walkable environments through short and connected blocks.
  - Action 1.1.1 Review concurrency and developer requirements and recommend modifications to achieve greater connectivity.
- Policy 1.2 Create direct connections for users of all abilities.
  - Action 1.2.1 Map concentrations of vulnerable users such as older adults, children, or people with disabilities.
  - Action 1.2.2 Create design standards for these areas, including consideration of longer street crossing clearance intervals, if appropriate.
  - Action 1.2.3 Implement the City's ADA Disability Transition Plan for Physical Facilities.
- Policy 1.3 Close gaps in the sidewalk network.
  - Action 1.3.1 Apply a prioritization methodology to identify capital projects, including ADA retrofits and sidewalk infill.
  - Action 1.3.2 Identify new funding sources for construction of sidewalks and crossings.
  - Action 1.3.3 Program projects in the capital budget.
- Policy 1.4 Document the number of each type of improvement to the pedestrian system.

  - Action 1.4.1 Continue and expand the sidewalk inventory, curb ramp inventory, and crosswalk inventory.
  - Action 1.4.2 Track and report new pedestrian facilities and investments.

Goal 2 Maintenance and Repair of Pedestrian Facilities - Provide maintenance for and improve the state of repair of existing pedestrian facilities.

- Policy 2.1 Increase funding for maintenance of pedestrian facilities.
  - Action 2.1.1 Continue and expand the crosswalk maintenance program.
  - Action 2.1.2 Develop an annual program to repair and replace broken sidewalks in pedestrian priority areas.

Goal 3 Year-Round Accessibility - Address the impacts of snow, ice, flooding, debris, vegetation and other weather and seasonal conditions that impact the year-round usability of pedestrian facilities.

- Policy 3.1 Define and maintain the walkable zone to facilitate clear pedestrian travelways.
  - Action 3.1.1 Use available funding sources for maintenance of pedestrian facilities, including snow clearance on regional trail system.
- Policy 3.2 Improve awareness and enforcement of snow clearing and maintenance policies.
  - Action 3.2.1 Improve public information resources for pedestrian facility maintenance.
  - Action 3.2.2 Implement the improvements to the public information resources and document the impacts.

Goal 4 Safe and Inviting Pedestrian Settings - Create a safe, walkable city that encourages pedestrian activity and economic vitality by providing safe, secure, and attractive pedestrian facilities and surroundings.

- Policy 4.1 Increase pedestrian safety both along and across the roadway.
  - Action 4.1.1 Use targeted enforcement programs to ensure the safety and security of pedestrians in crosswalks and on city streets, trails, and walkways.
  - Action 4.1.2 Build new sidewalks and crossings in accordance with street design standards.
- Policy 4.2 Remediate areas of known pedestrian safety incidents.
  - Action 4.2.1 Conduct regular coordination of traffic engineers and planners to work with police to review sites in need of safety improvement for motorists and pedestrians.
  - Action 4.2.2. Use pedestrian crash data to identify problem areas and potential solutions.
- Policy 4.3 Create vibrant places that invite walking and gathering.
  - Action 4.3.1 Create a pilot parklet program.
  - Action 4.3.2 Adopt development standards and guidelines to encourage lively, attractive, safe and walkable pedestrian environments.
- Policy 4.3 Evaluate the impacts of pedestrian improvements.

  - Action 4.3.2 As warranted, conduct field studies to assess changing conditions including yield compliance, visibility triangles, and prevailing speed at project locations.
  - Action 4.3.4 Explore pedestrian count technology to assess change in activity over time.
  - Action 4.3.5 Consider pursuing application for Walk Friendly Community designation.

Goal 5 Education - Educate citizens, community groups, business associations, government agency staff, and developers on the safety, health, and civic benefits of a walkable community.

- Policy 5.1. Partner with other agencies in the promotion of the benefits of walking.
  - Action 5.1.1 Develop and train staff to implement a citywide pedestrian education program based on national best practices.
  - Action 5.1.2 Provide information to Spokane residents about the benefits of new pedestrian facilities.
  - Action 5.1.3 Develop pedestrian messaging campaigns, including public health campaigns related to walking and the benefits of investing in pedestrian facilities.
  - Action 5.1.4 Develop public service announcements to encourage safe walking and driving.
  - Action 5.1.5 Identify funding and partnering opportunities with City agencies and local, regional, and national partners for effective and wide dissemination of the walking encouragement programs.
  - Action 5.1.6 Develop Walking maps (e.g., neighborhood maps, school route maps, city-wide maps, trails and greenways, etc.).
  - Action 5.17 Support implementation of a uniform pedestrian wayfinding system.

PROJECT IDENTIFICATION/PEDESTRIAN IMPROVEMENT METHODOLOGY

The Pedestrian Priority Zones provide guidance for identifying high priority areas for future pedestrian improvements. The Pedestrian Priority Zones were identified using the pedestrian needs analysis. The Pedestrian Needs Analysis compares pedestrian demand indicators with existing pedestrian infrastructure, and is used to compare different locations to help make data-driven decisions that are equitable and fair. This is only one tool to assist with prioritizing locations for pedestrian projects; it should not be used as the sole determinant for making decisions. An integrated approach that includes availability and stipulations of funding, community support, and cost sharing opportunities with other planned projects will be considered in the decision making process. Pedestrian projects and other street projects are identified in the Six-Year Comprehensive Street Program which is updated annually.

Figure 16 shows the general location of the Pedestrian Priority Zones.

Figure 16 – Pedestrian Priority Zones

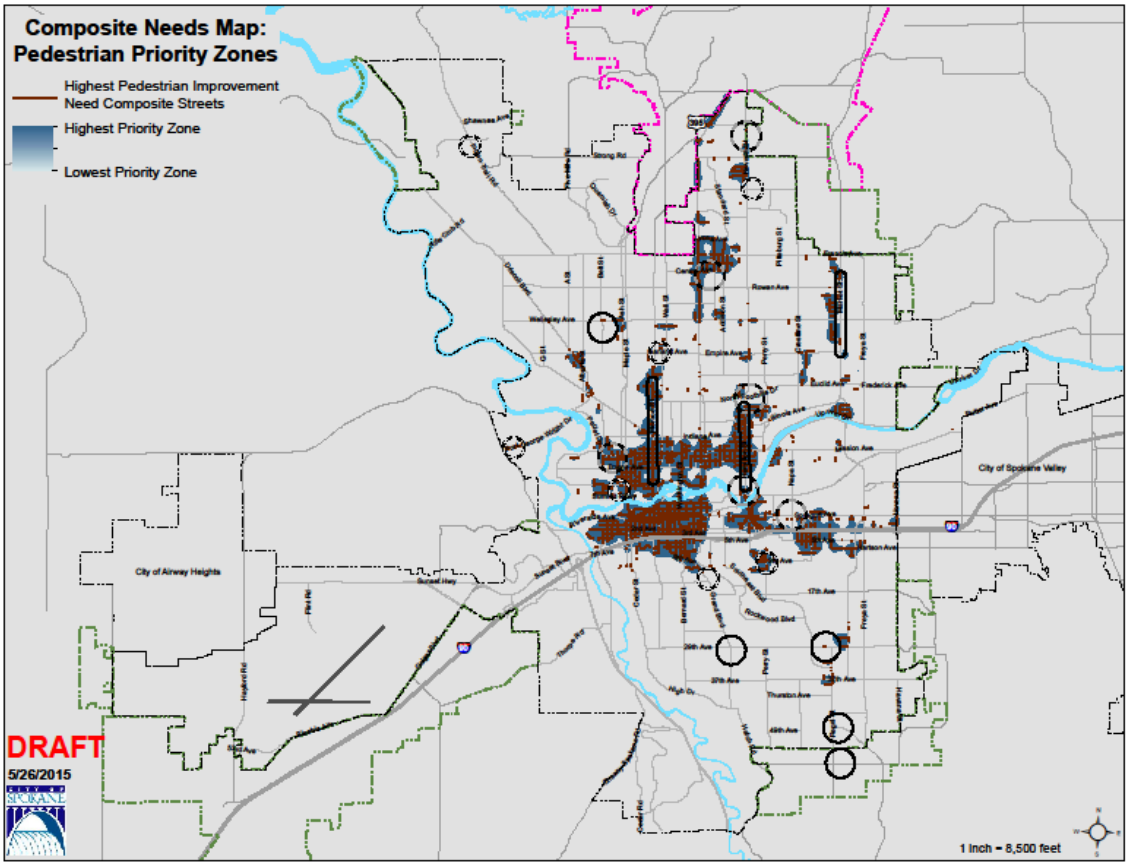


Figure 17 shows the Pedestrian Priority Zones with the 2015 construction projects that include pedestrian facilities and the 2016-2021 6-year Street Program projects that include pedestrian facilities. The street projects incorporate calming traffic and improving safety for pedestrians by reducing road and lane width; providing wider sidewalk, installation of curb extensions; modifying ADA ramps; adding a pedestrian pathway; improving transit accessibility; placing missing sidewalk; repairing sidewalk; installation of pedestrian lighting; improved median refuge islands; and other improvements. Many of the projects are within Pedestrian Priority Zones and are consistent with the guidance provided by the Pedestrian Master Plan.

Figure 17 – 2015 Construction Projects and 2016-2021 6-year Street Program projects that include pedestrian facilities

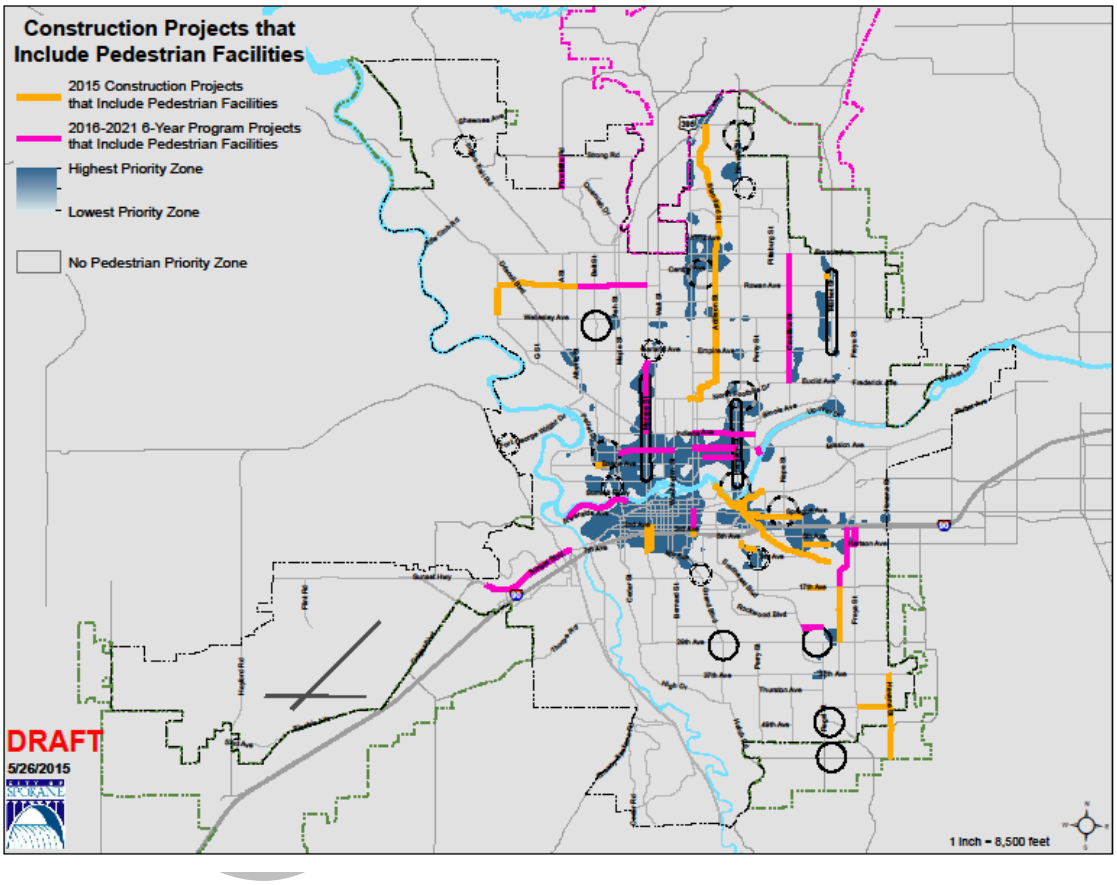
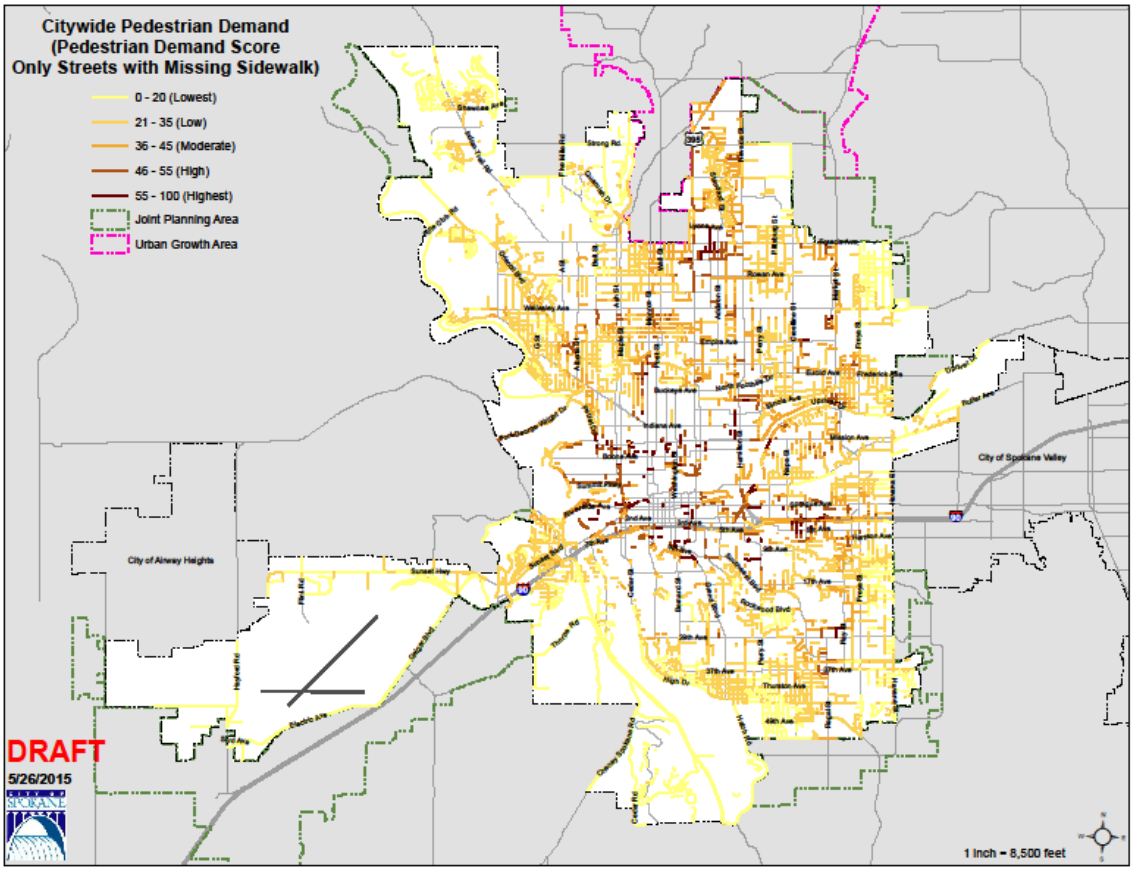


Figure 18 provides an example of how potential sidewalk improvement projects may be identified using the pedestrian demand analysis. The map identifies missing sidewalks on one or both sides of a street. The missing sidewalk data is compared to the Pedestrian Demand Score. The result is an identification of locations where there is missing sidewalk in areas with the highest pedestrian demand.

Figure 18 – Comparison of Pedestrian Demand and Missing Sidewalk



POTENTIAL FUNDING SOURCES

The Pedestrian Master Plan should be used as a guide to identify pedestrian improvement projects and decide which to fund. The evaluation of pedestrian improvement needs should be considered as a part of all projects when city controlled sources of funding are eligible to pay for pedestrian projects.

Several examples of funding sources available for financing pedestrian improvement projects are included below. Other funding sources should be identified and utilized whenever opportunities arise.

Local

- **Transportation Benefit District (TBD)**
  On February 14th 2011, City Council adopted Ordinance No. C34690 establishing the allocation of 10% of the Transportation Benefit District (TBD) revenue generated to implement the Pedestrian Program of the City of Spokane's Six-Year Comprehensive Street Program. The funding will remain in place for six years beginning in 2012. The collection of the TBD funds began in September of 2011. The Pedestrian Master Plan will help identify the pedestrian facilities that would ultimately be funded with TBD revenue under the Pedestrian & Bikeways section of the Program. TBD funding available in 2012 is on the order of $150,000 and is expected to be at almost $180,000 in subsequent years. The front-work of the Pedestrian Master Plan was utilized to select projects for 2012, and future projects under this program will also be identified from the Pedestrian Master Plan.
- **Local Improvement District (LID) bonds**
  A major fund source for the construction of new residential streets and alleys is the use of Local Improvement District (LID) bonds. These bonds are financed through direct property assessment. General obligation bonds financed through property tax (GO bonds) are also used to fund specific projects. Sidewalk construction may be included as a part of an LID project.
- **Automated Traffic Safety Cameras funding allocation**
  On September 30, 2013 the City Council passed Resolution No. 2013-0070 related to allocation of funds from infractions issued with automated traffic safety cameras. Among the items to be allocated funding, the resolution provides a flexible matching fund for neighborhood traffic calming projects, neighborhood business districts, streetscape improvement or community development projects related to public safety.
- **2014 Street Levy**
  In 2014 city voters passed a 20-year levy to create a sustainable, long-term funding source for streets. The levy concentrates new investments on the arterial streets, which account for more than 90 percent of vehicle miles traveled through the City. The levy supports the City's "integrated" way of looking at streets. Integrated streets consider pavement conditions, multi-modal transportation components (including pedestrian facilities), stormwater management, water and wastewater infrastructure, and economic development opportunities. The levy will generate about $5 million a year to fund new street work. Those funds would be matched with local utility dollars and state and federal matching funds to support about $25 million in street improvements annually.

State

- **Paths and Trails Reserve**
  A portion of the State gasoline tax revenue which, by Washington State Law, is returned to local government to be used for the development and maintenance of paths and trails. One half of one percent (0.5%) of the tax is returned to the City. Presently the City receives approximately $14,000 per year from this funding source. Both pedestrian and bike facilities can utilize these funds, however historically these funds have been extremely limited.

- **State Arterial Street Funds**
  State Arterial Street Funds may be obtained for both pedestrian and bikeway facilities as long as the facility is a component part of a street improvement project and available for funding.
- **State Transportation Improvement Board (TIB) Funds**
  A sidewalk program is included in TIB's funding program. Historically these funds have been limited to projects under $250,000 and TIB will not participate in any needed right-of-way costs.

Federal

- **Community Development Block Grant Program**
  This funding comes from the Housing and Community Development Act of 1974 and authorizes the Department of Housing and Urban Development to distribute funds to local governments for the purpose of improving their community. The Community Development Block Grant (CDBG) program primarily addresses capital construction needs in low-to-moderate income neighborhoods. Funds for pedestrian and bicycle facilities are included.
- **Federal Arterial Street Funds**
  Pedestrian facilities may utilize these funds, as long as the facility is a component part of a street improvement project and available for funding.

Implementing new programs and solutions will require funding and there likely will never be enough money to do everything. As a way to prioritize projects, the Pedestrian Master Plan supports incorporating pedestrian safety and accessibility improvements (including ADA) into existing transportation projects that fall within the City's priority areas.

Any project being designed in the public right-of-way, from a street being resurfaced to the placement of the new transit stop, should be reviewed to ensure that pedestrian safety and accessibility improvements are included. For example, as mentioned above, projects funded using the 2014 Street Levy will incorporate multimodal transportation components including pedestrian improvements. Other street projects, including those involving non-arterial streets, will include improvements to meet ADA standards such as the addition of new curb ramps or replacement curb ramps. There will also be an assessment of existing pedestrian facilities such as sidewalks and repair or replacements will be completed as necessary.

Another potential resource is the partnering with other agencies, foundations and the private sector for future awareness and education campaigns. The City should continue partnering with other agencies like the Spokane Regional Health District that have a considerable interest in improving pedestrian safety. Strengthening these partnerships and forming new ones will provide additional opportunities to increase awareness of pedestrian safety issues.

Appendix A - Pedestrian Needs Analysis Methodology

A pedestrian needs analysis was completed that considered factors indicative of walking potential (pedestrian demand) as compared to the supply (or lack thereof) of pedestrian infrastructure (pedestrian deficiencies), to illustrate where there is a mismatch in the demand for and availability of walking infrastructure. Indicators included in the pedestrian demand analysis are:

- Employment density - Major employment centers such as downtown and the University District, can generate walking trips both on the journey to and from work (including in connection with other modes) as well as mid-day activity for lunch, errands, etc.
- Population density - Higher density residential areas tend to be more supportive of having destinations within a walkable distance, with a mix of land uses located in close proximity to each other.
- Proximity to destinations (Centers and Corridors, neighborhood shopping, social services, transit stops, schools, parks,) – These destinations attract walking trips. Neighborhood shopping and schools are major destinations for daily activities, most transit trips in Spokane begin or end with a walking trip, and children are potential walkers to school.
- Demographic factors from the US Census (% of people with no vehicle available, % of households below the poverty level, % of people under 18, and % of people 65 or over) – These population groups can be dependent on walking due to financial considerations or a lack of access to a personal vehicle.

The methodology's premise is that the highest priority improvements should be located in those areas where walking potentials (pedestrian demand) are high and pedestrian facilities are lacking. Each street segment received a pedestrian demand score rating and an infrastructure deficiency rating. The rating values were applied to each street segment based on a conversion of the unique indicator measurement units into a common set of rating criteria. Additionally, the methodology weighted the importance of each indicator relative to other indicators. Pedestrian demand indicators were weighted separately from infrastructure deficiency indicators to support the methodology's two separate indices.

After all street segments received their weighted scores for pedestrian demand and infrastructure deficiency, the highest scoring segments on both indices were found by taking the geometric mean of the two score sets. This produced the pedestrian priority zones which are the areas with the greatest need for improvements.

For the pedestrian demand scoring, using the relative weighting allows placement of emphasis on indicators that are likely to generate more pedestrian demand than other indicators. The results more accurately reflect how an indicator influences pedestrian demand. As an example, employment density is given a higher weight because major employment centers such as downtown and the University District, can generate walking trips both on the journey to and from work as well as mid-day activity for lunch, errands, etc.

Figure 20 and 21 below shows the factors that were considered in the pedestrian needs analysis. The City's GIS database was used to map the indicators and the relative weighting based on the importance of each indicator relative to the other indicators.

Figure 7 of the Pedestrian Master Plan provides the results of the pedestrian demand mapping.

Pedestrian deficiency indicators were also mapped. See Figure 2 below. Indicators included in the pedestrian deficiency analysis are:

- Presence of sidewalks - Sidewalks provide a dedicated facility separated from the roadway (may or may not provide a pedestrian buffer strip).
- Width of the street – Wider roads tend to enable higher vehicle speeds, which reduces comfort for pedestrians and makes roadway crossings more difficult.
- Collision history – A history of multiple pedestrian collisions likely reflects difficult walking or crossing conditions.

Figure 8 of the Pedestrian Master Plan provides the results of the pedestrian deficiency mapping.

Figure 9 of the Pedestrian Master Plan illustrates the results of the composite map which combines the assessment of pedestrian demand and pedestrian deficiency. This map serves to clarify where the pedestrian needs in the city are greatest. Areas with higher demand and deficiency scores are candidates for designation as Pedestrian Priority Zones.

Maps with background information used in the Pedestrian Needs Analysis follow the Pedestrian Demand Score and Pedestrian Deficiency Score tables. See Figure 21 through Figure 34 below.

Figure 19 Pedestrian Demand Score (note: need to improve these tables)

Indicator	Weight	Indicator Score	Rating Value	
Centers and Corridors	5	0 -330	500	*Using City Zoning (CC1, CC2, DTC, DTG, DTS & DTU), City Zoning Overlay (CC3), County Zoning (NC, MU)
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
Street Segment Length (ft)	10	0-400	500	* Left segments broken as they are in the street network.
		400-500	400	
		500-750	300	
		750-1000	200	
		1000-1500	100	
		1500+	0	
Employees per Acre	15	0-3.5	0	*Employees by TAZ given to us from SRTC. These numbers were generated by SRTC to show in their Horizon 2040
		3.5-8	100	
		8.1-16	200	
		16-32	300	
		32-80	400	
		80+	500	
Population per Acre	15	0-5	0	*Using Block 2010 Census
		5-10	100	
		10-15	200	
		15-20	300	
		20-25	400	
		25+	500	
Neighborhood Shopping Proximity (ft.)	5	0 -330	500	*Using City Zoning (NR)
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
Social Service Proximity (ft.)	5	0 -330	500	* Used list of Resources for Disabled
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
Transit Proximity (ft.)	10	0 -330	500	*Used STA HPTN Bus Routes
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
Park Proximity (ft.)	5	0 -330	500	*Used City GIS layer but only kept neighborhood parks, major parks and community parks
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
School Proximity & Community Centers (ft.)	10	0 -330	500	*Used City GIS layer for schools.
		330 -660	375	
		660 -990	250	
		990 - 1320	125	Also Included Community Centers
		1320+	0	
People with No Vehicle Available (%)	5	0-3.2%	0	*Used tract data from American Community Survey. The categories were created by using natural breaks.
		3.3% - 4.9%	125	
		5% - 8.4%	250	
		8.5% - 15.4%	375	
		15.5%+	500	
Below Poverty Level (%)	5	0 - 6.92	0	*Used tract data from American Community Survey.
		6.93 - 11.43	100	
		11.44 - 19.36	200	
		19.37 - 26.4	300	
		26.41 - 32.9	400	
		32.91 +	500	
Under 18, 65 or Over (%)	5	0%	0	*Used block from 2010 Census data
		1 - 24%	100	
		24.1 - 32.14%	200	
		32.15 - 38%	300	
		38.1 - 44.74%	400	
		44.75% +	500	
Bus Stop (ft.)	5	0 -330	500	*Used STA Bus Stops
		330 -660	375	
		660 -990	250	
		990 - 1320	125	
		1320+	0	
Total Weight	100			

Figure 20 – Pedestrian Deficiency Score

Indicator	Weight	Indicator Score	Rating Value
Street Width (ft.)	20	0-25	0
		25-35	100
		35-45	200
		45-55	300
		55-65	400
		65+	500
Sidewalk (%)	50	0 - 20	500
		20 - 35	400
		35 -50	300
		50 - 65	200
		65 - 80	100
		80 - 100	0
Accidents	30	0 - 13.37	0
		13.38 - 66.88	100
		66.89 - 173.91	200
		173.92 - 356.73	300
		356.74 - 642.11	400
		642.12+	500

*Used City of Spokane Pavement Management System data

* Numbers are based on a raster dataset.

The background maps for the Pedestrian Master Plan Pedestrian Needs Analysis are provided below:

- STA HPTN and Transit Stops (Figure 21)
- Street Width (Figure 22)
- Street Segment Length (Figure 23)
- Social Services (Figure 24)
- Sidewalk Coverage (Figure 25)
- Schools and Community Centers (Figure 26)
- Percentage of Population Below Poverty Level (Figure 27)
- Population Density (Figure 28)
- Percentage of Population with No Vehicle Available (Figure 29)
- Parks (Figure 30)
- Neighborhood Retail Zoned Areas (Figure 31)
- Employment Density (Figure 32)
- Center and Corridor and Downtown Zoning (Figure 33)
- Percentage of the Population Under 18 and 65 and Over (Figure 34)

Figure 21 - STA HPTN and Transit Stops

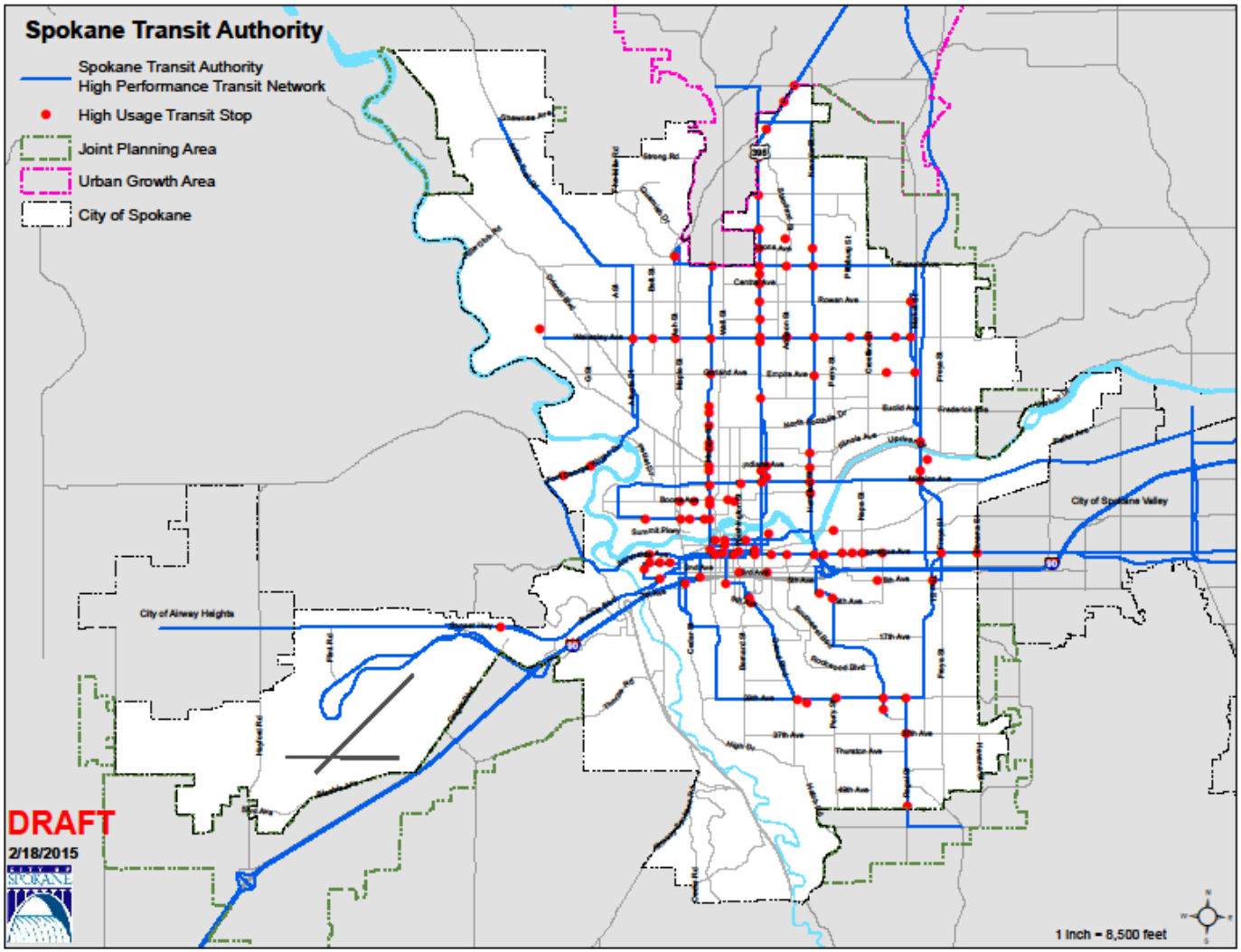


Figure 22 – Street Width

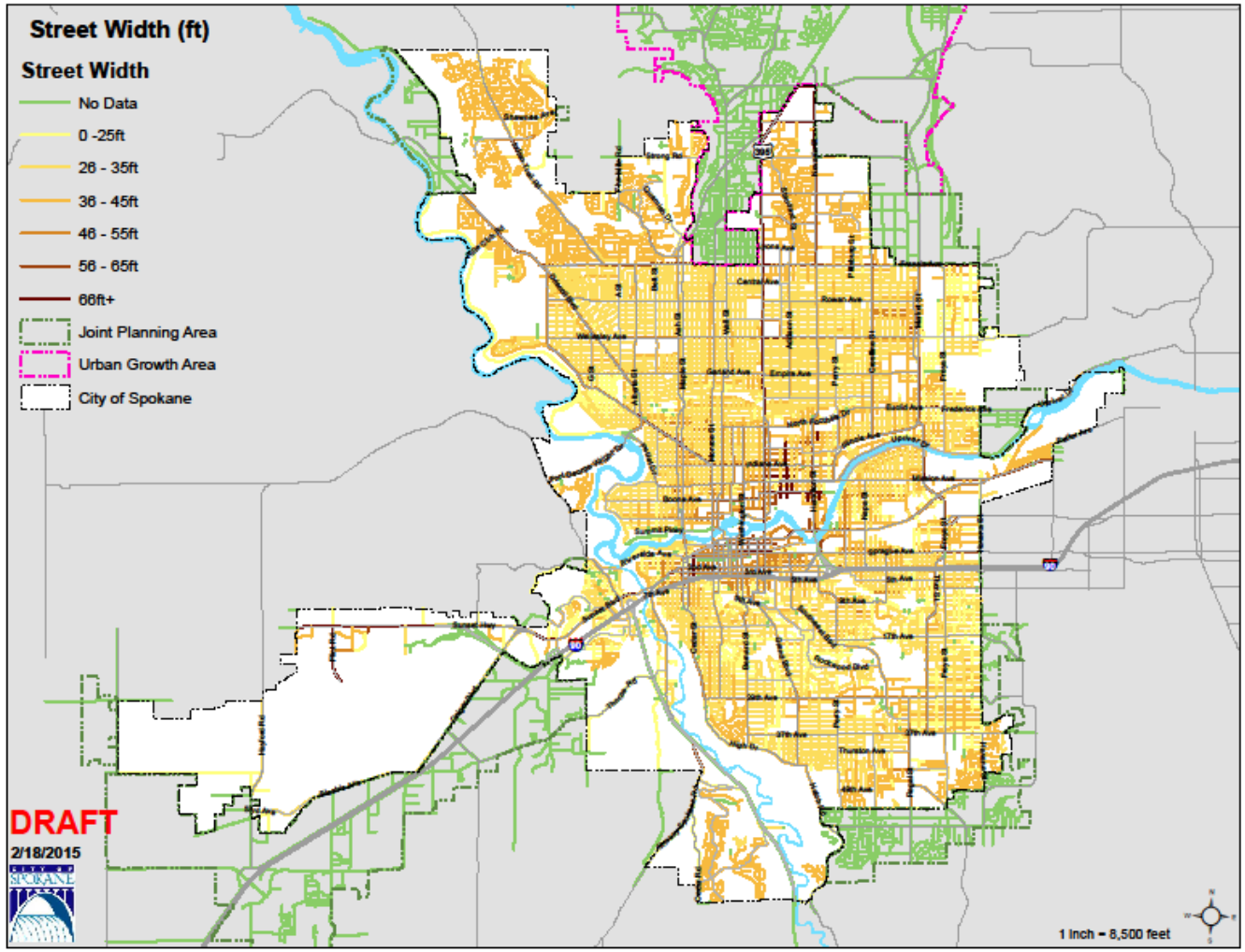


Figure 23 - Street Segment Length

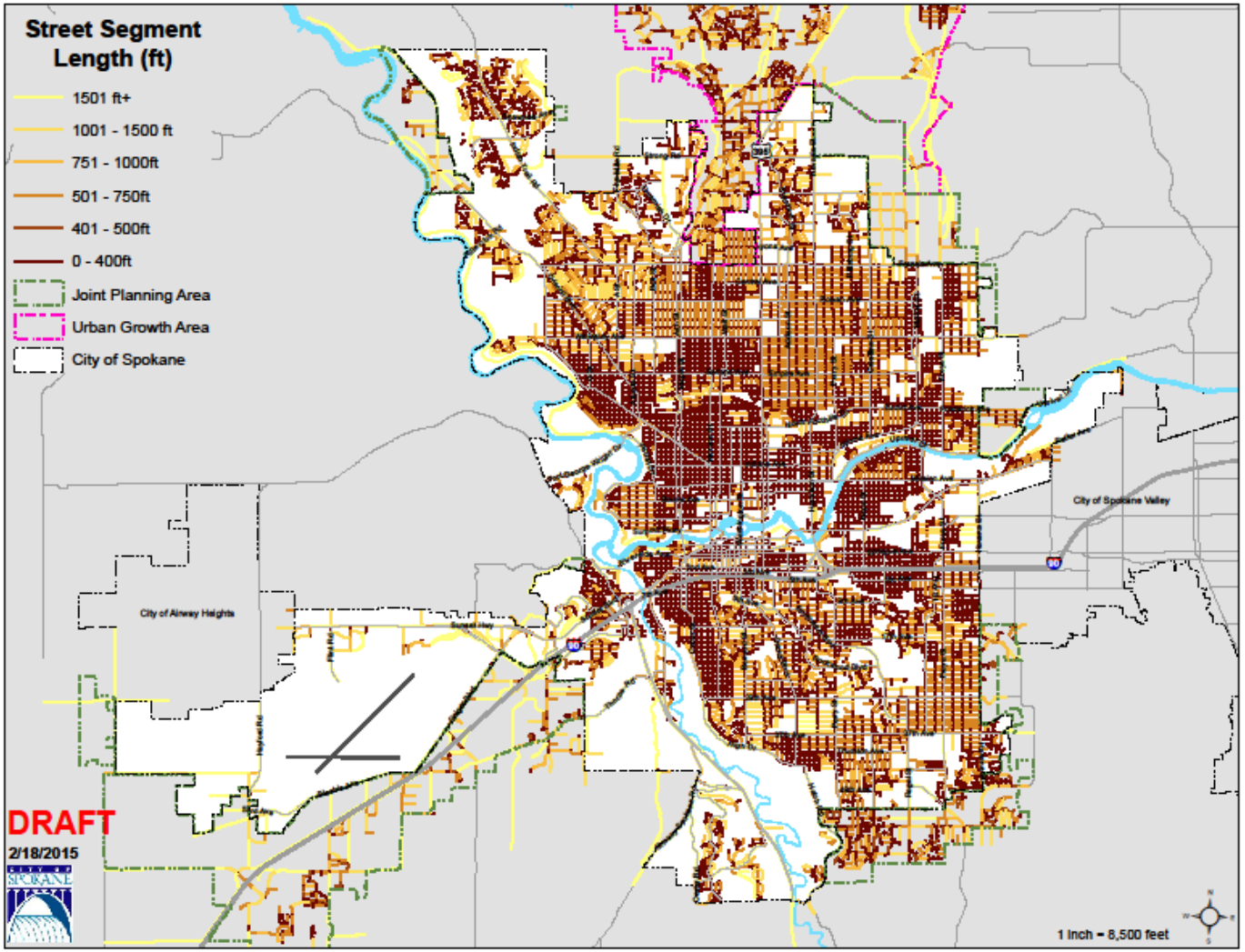


Figure 24 - Social Services

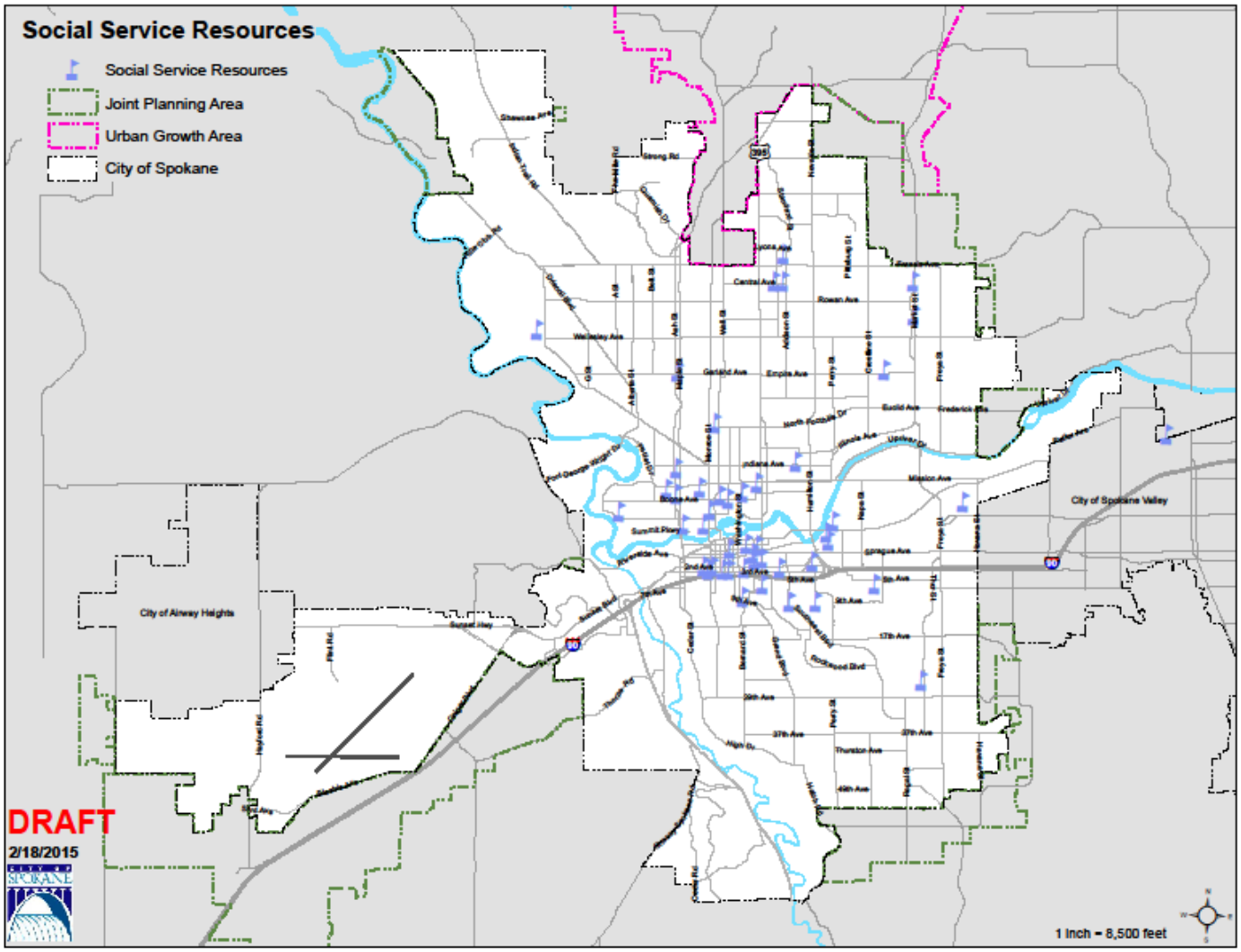


Figure 25 - Sidewalk Coverage

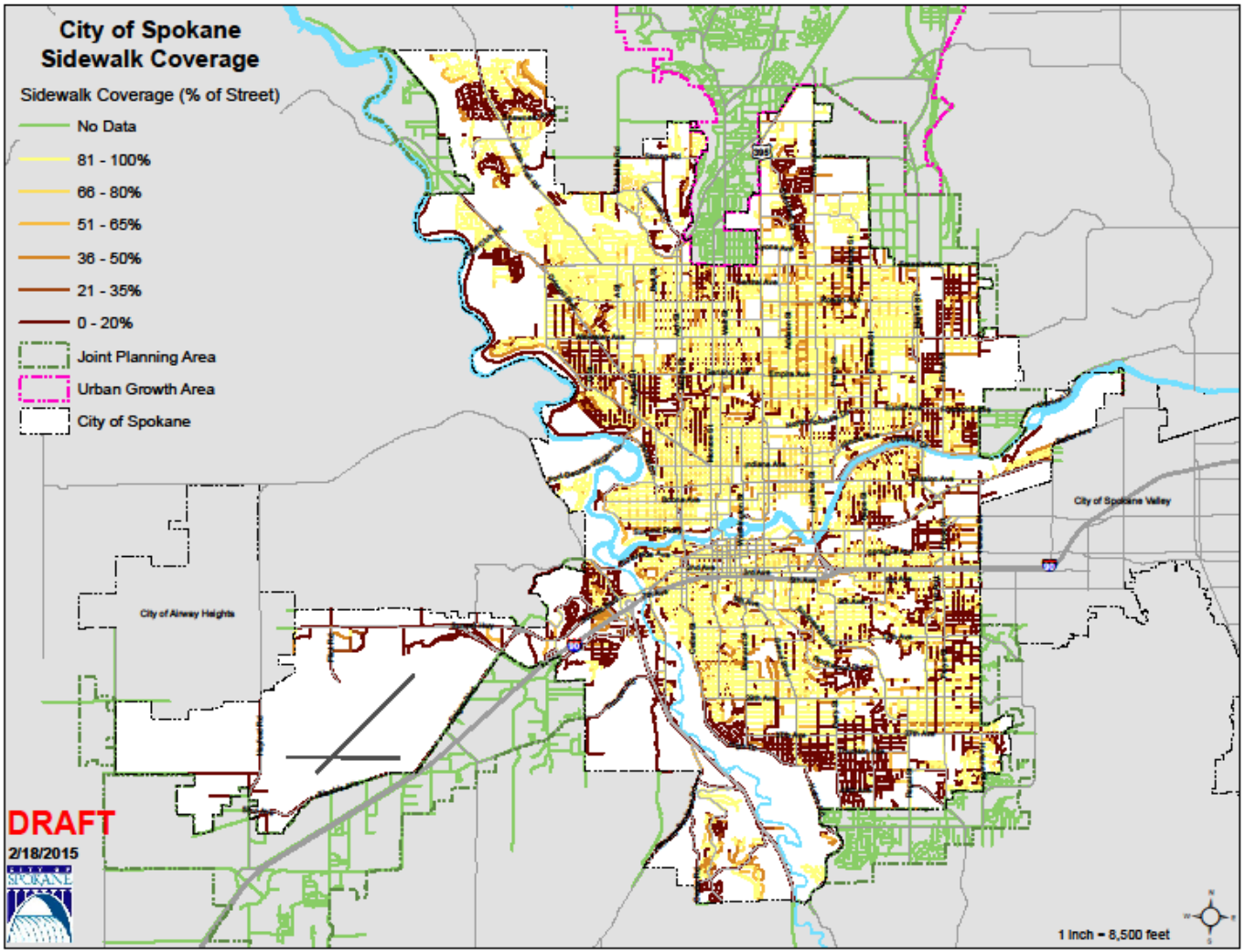


Figure 26 – Schools and Community Centers.

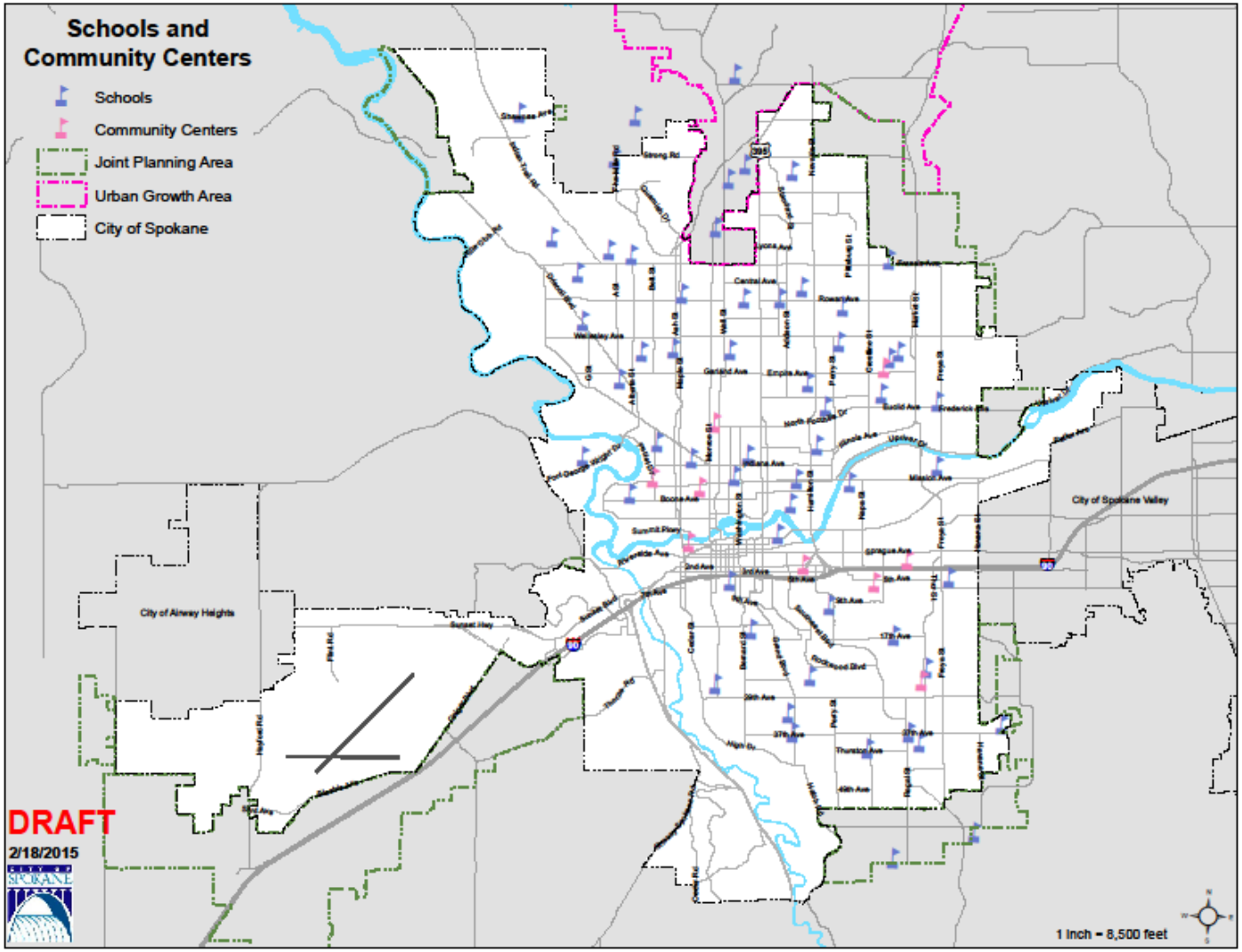


Figure 27 - Percentage of Population Below Poverty Level

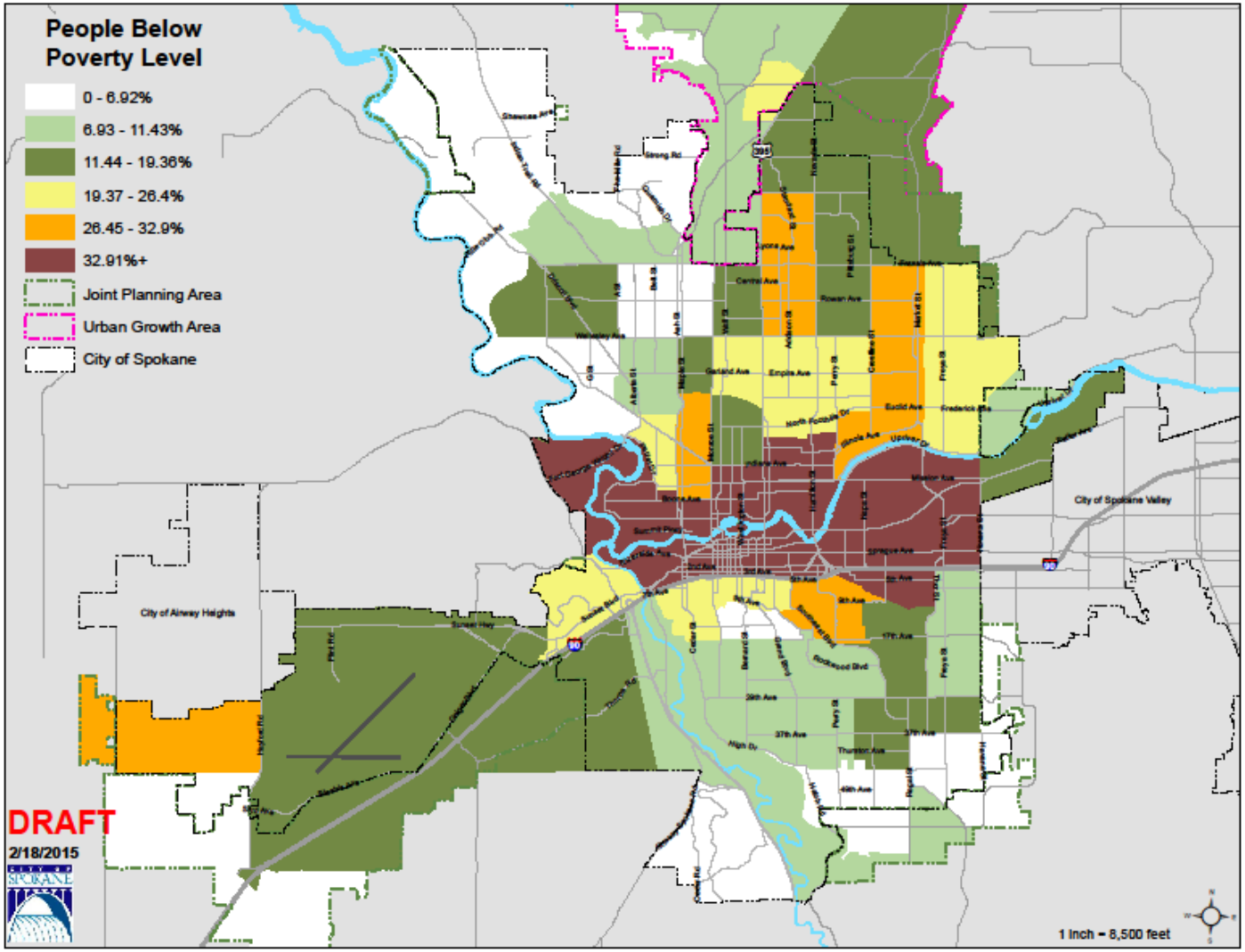


Figure 28 - Population Density

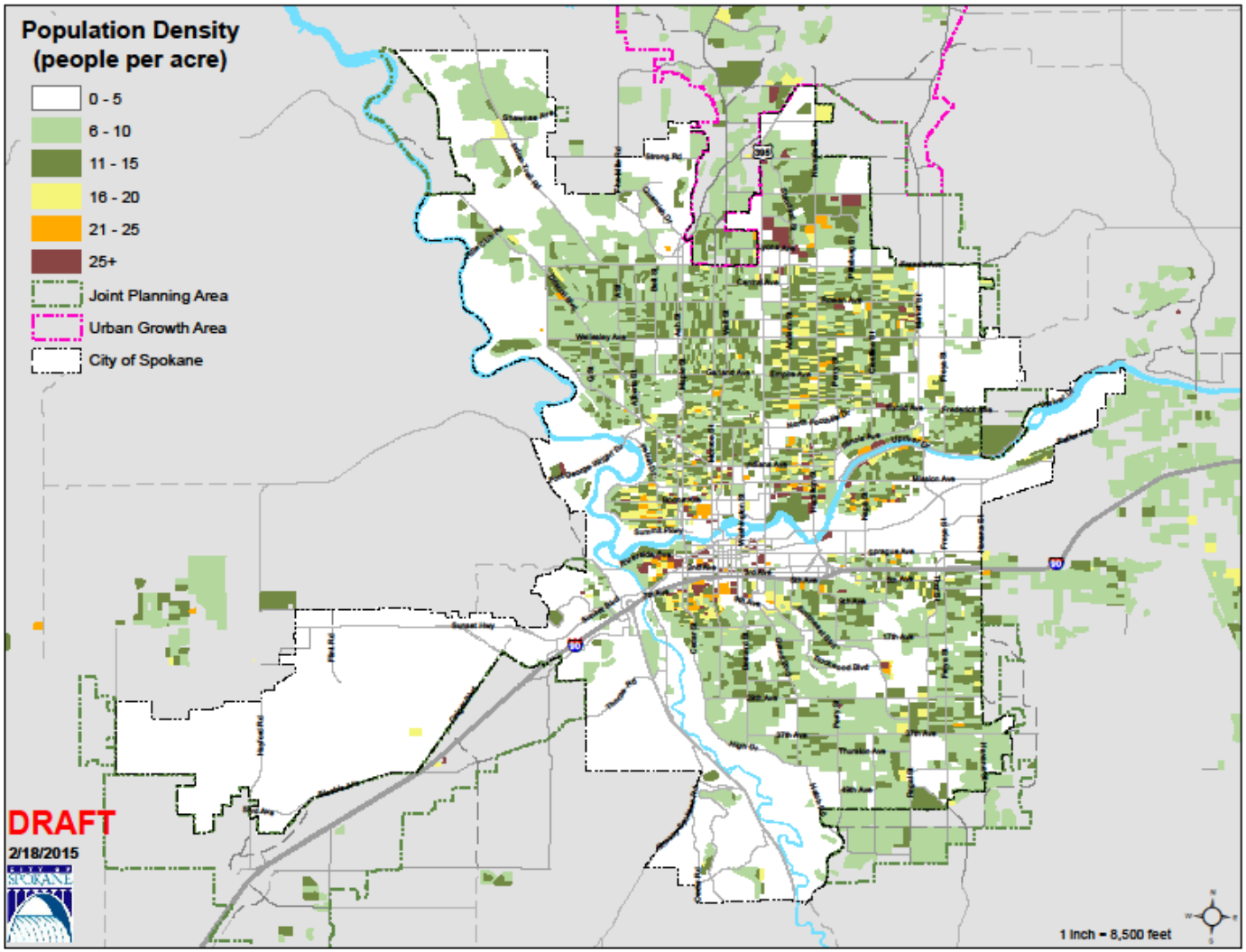


Figure 29 - Percentage of Population with No Vehicle Available

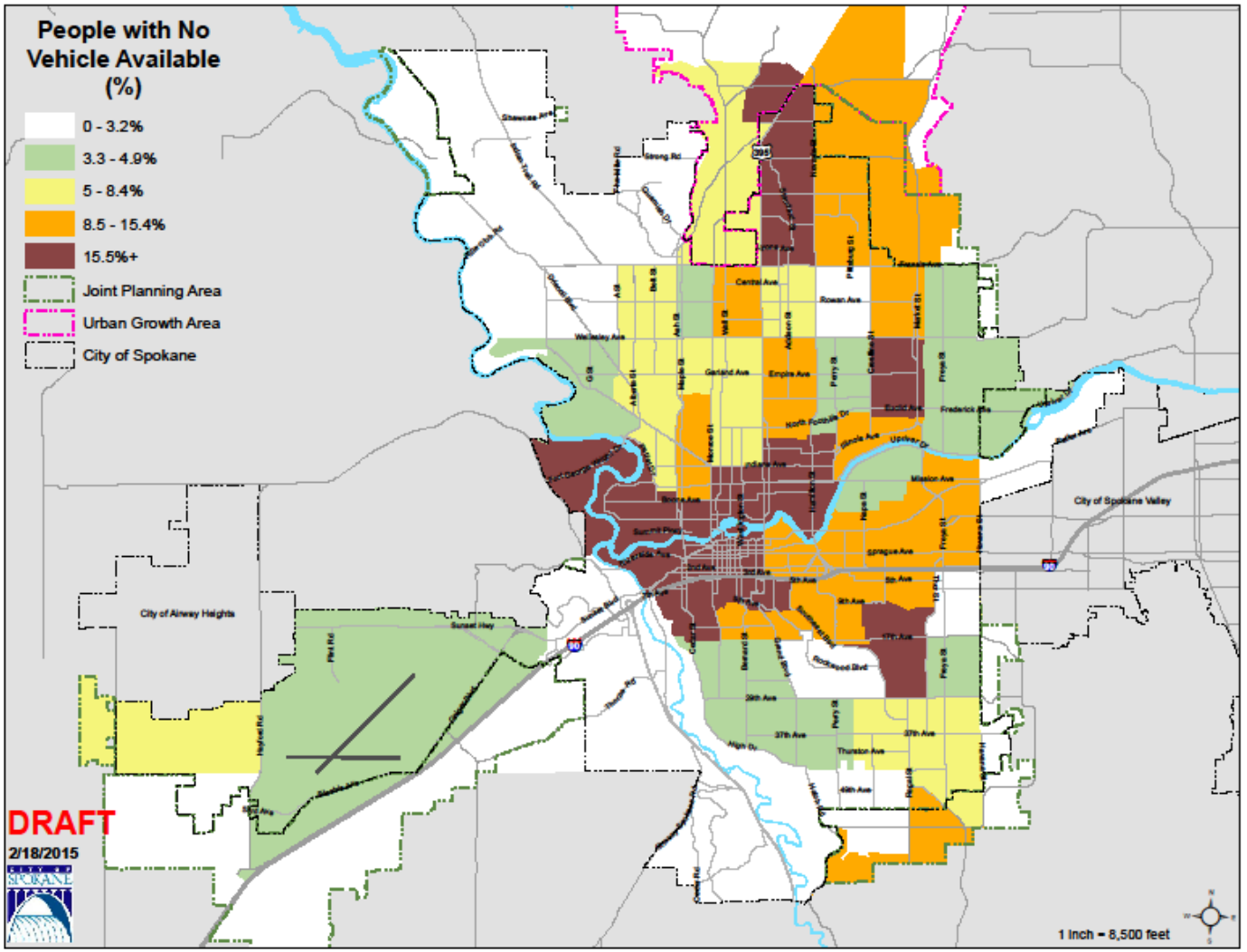


Figure 30 – Parks

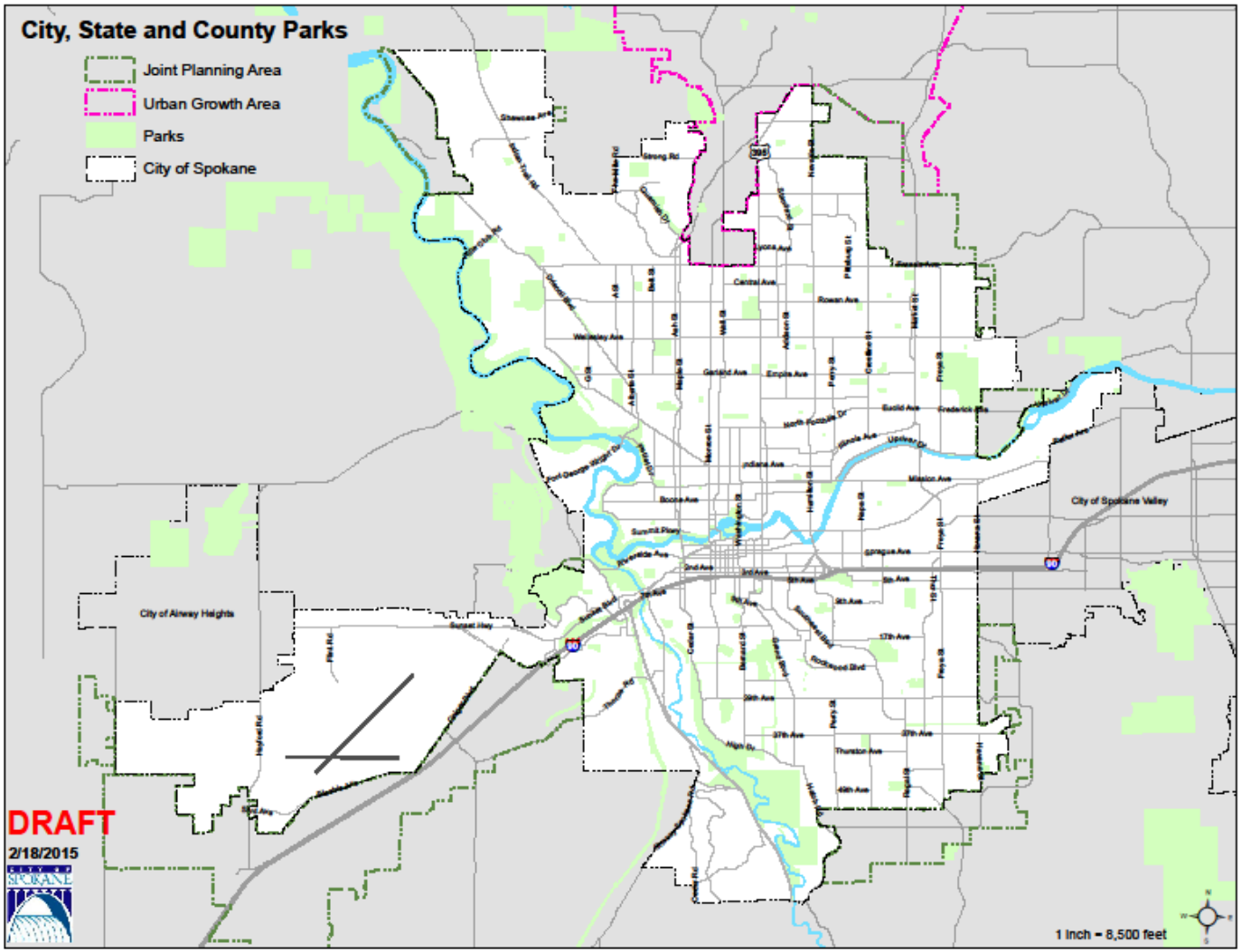


Figure 31 - Neighborhood Retail Zoned Areas

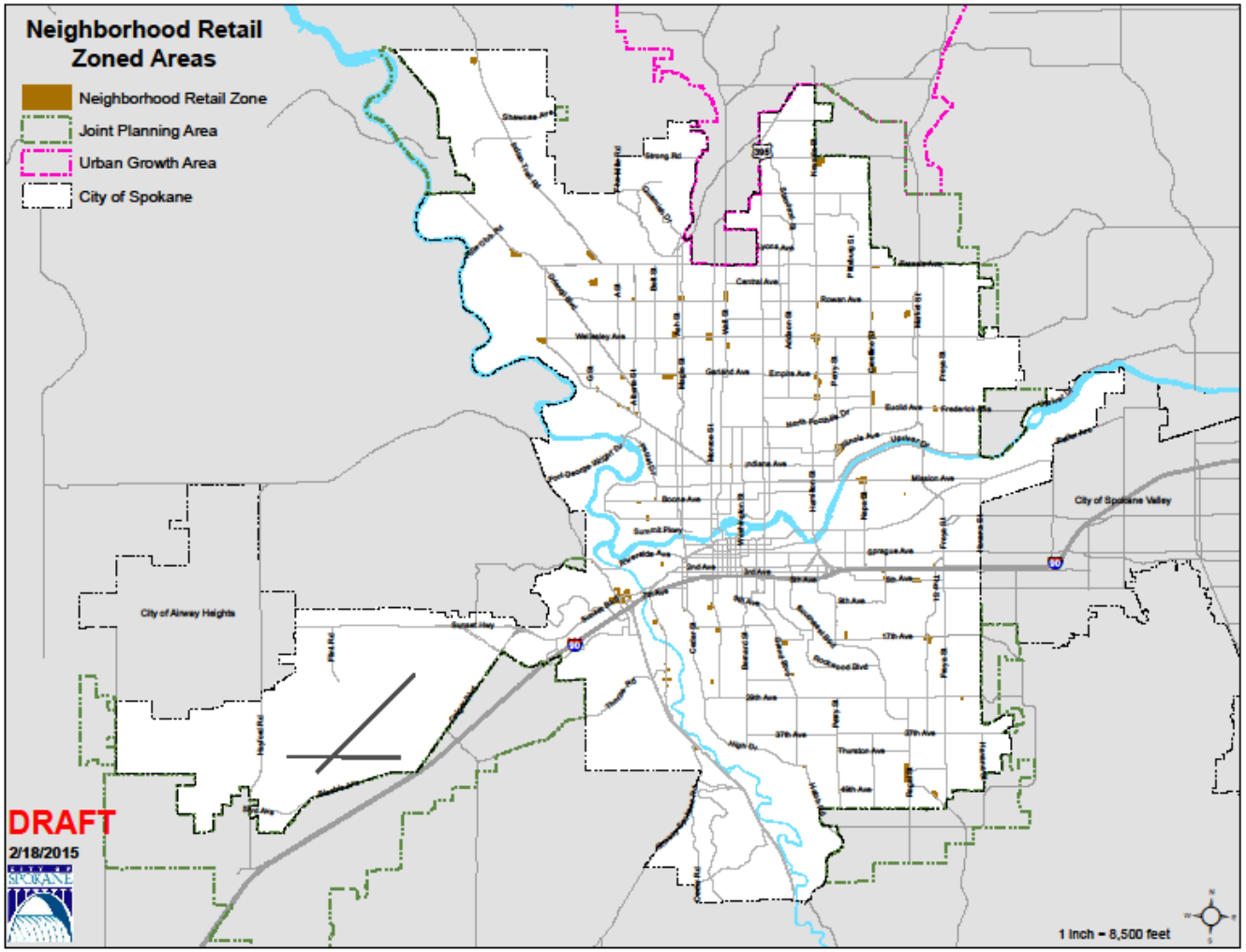


Figure 32 - Employment Density

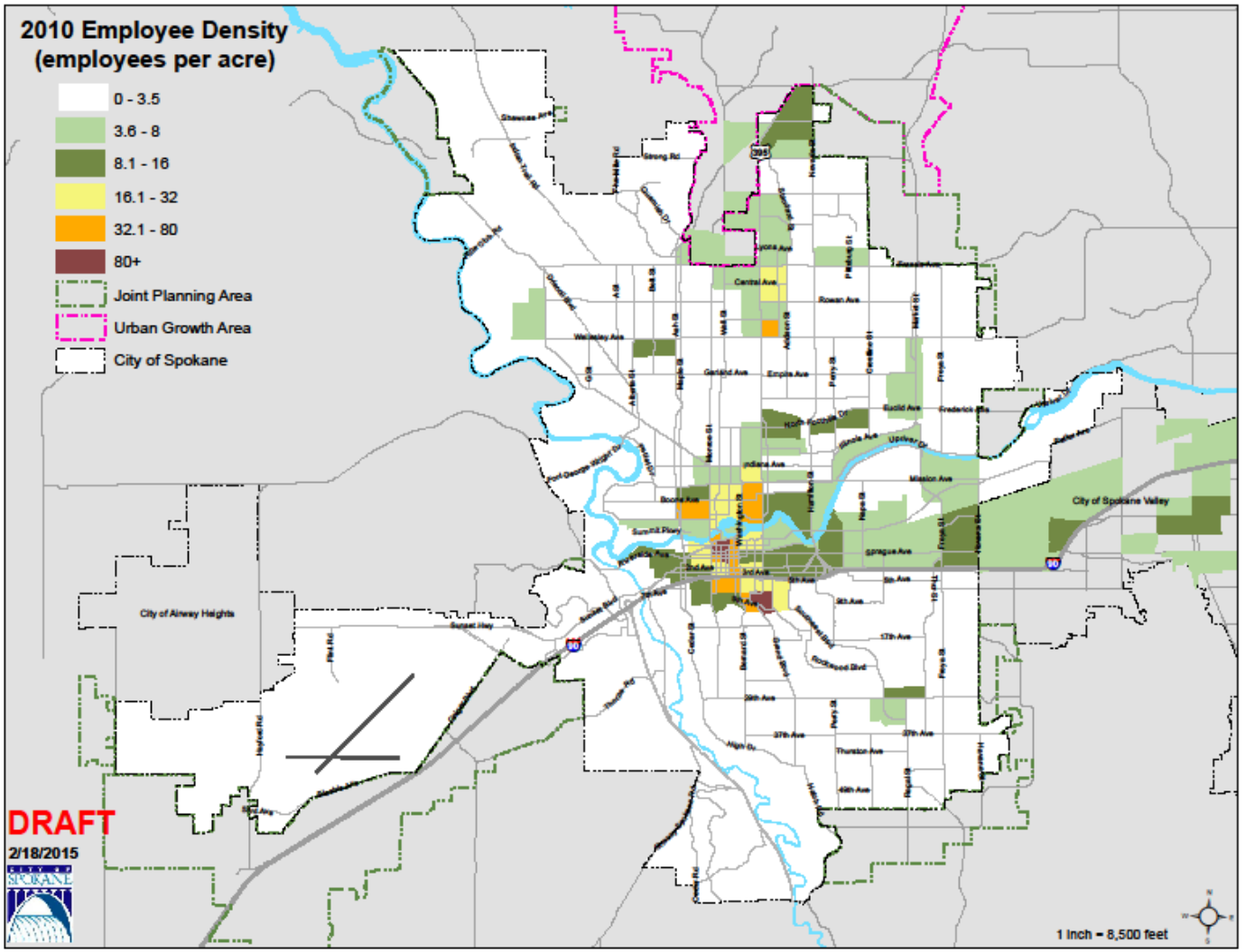


Figure 33 - Center and Corridor and Downtown Zoning

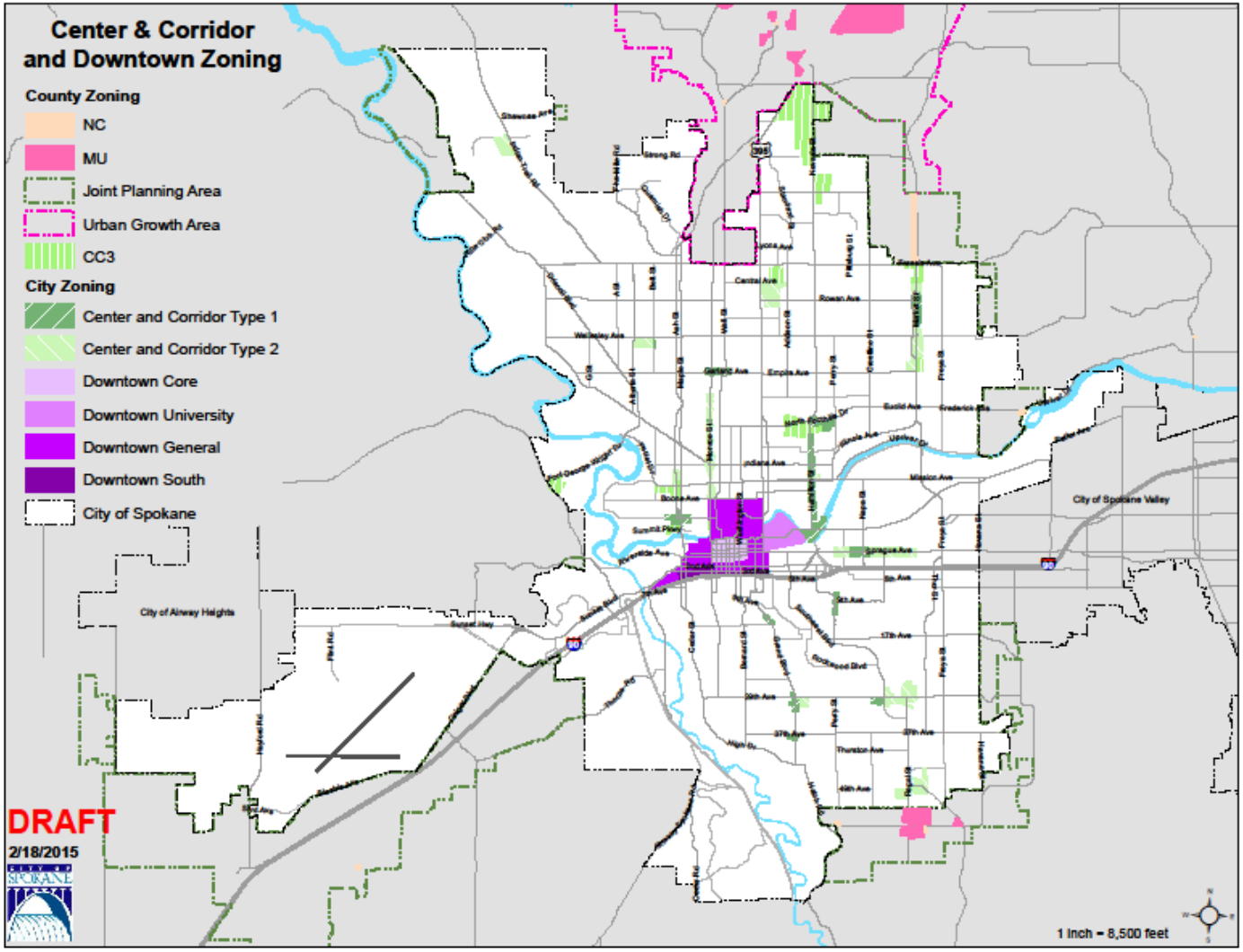
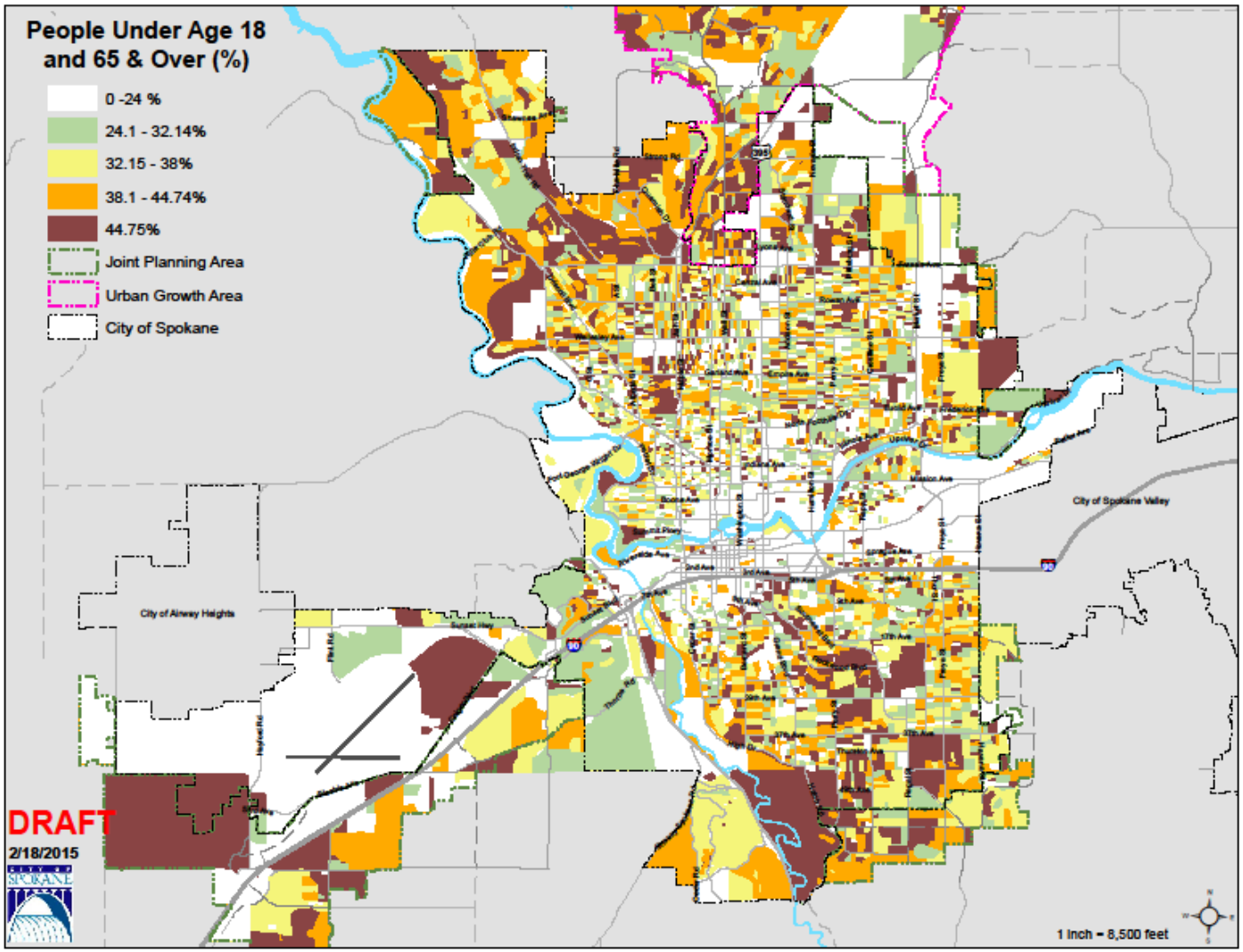


Figure 34 - Percentage of the Population Under 18 and 65 and Over



Draft 8-19-15

CITY OF SPOKANE
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SPOKANE, WASHINGTON, AMENDING CHAPTER 17C.355 OF THE SPOKANE MUNICIPAL CODE RELATED TO WIRELESS COMMUNICATION FACILITIES

WHEREAS, Chapter 17C.355 currently governs the City's regulation of wireless communication facilities; and

WHEREAS, some of the existing regulations for wireless communication facilities are more than ten years old and federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which Wireless Communications Facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted Chapter 17C.355; and

WHEREAS, the City Council of the City of Spokane desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the City of Spokane community, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the unique City character in a manner consistent with State and federal laws and regulations; and

WHEREAS, on August __, 2015, the City Council conducted a lawfully-noticed public hearing and received the report and recommendation of the Plan Commission regarding the Ordinance which modifies the code sections relating to wireless communication facilities. ***[Adjust date.]***

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SPOKANE, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Chapter 17C.355

Wireless Communication Facilities

[Will create Table of Contents when edits are completed.]

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SECTION 1. Chapter 17C.355 of the Spokane Municipal Code is hereby repealed.

SECTION 2. Chapter 17C.355 of the Spokane Municipal Code is hereby amended to read as follows:

Section 17C.355.010 Purpose

The purpose of this Chapter is:

A. To protect the community's natural beauty, visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it

is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zones;

B. To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Spokane community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under State and federal law;

C. To minimize the impact of WCFs by establishing standards for siting design and screening;

D. To encourage the collocation of antennas on existing structures and the use of distributed antenna systems or small cells, thereby minimizing new visual impacts and reducing the potential need for new towers that are built in or near residential zones by encouraging that WCFs first be located on buildings, existing towers or utility poles in public rights-of-way;

E. To protect residential zones from excessive development of WCFs;

F. To ensure that towers in or near residential zones are only sited when alternative facility locations are not feasible;

G. To preserve the quality of living in residential areas which are in close proximity to WCFs;

H. To preserve the opportunity for continued and growing service from the wireless industry;

I. To preserve neighborhood harmony and scenic viewsheds and corridors;

J. To accommodate the growing need and demand for wireless communication services;

K. To establish clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and community at large;

L. To ensure City zoning regulations are applied consistently with federal telecommunications laws, rules, regulations and controlling court decisions; and

M. To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate WCFs and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Section 17C.355.020 Exempt Facilities.

The following are exempt from this Chapter:

A. FCC licensed amateur (ham) radio facilities;

B. Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;

C. A government-owned or temporary, commercial WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and state requirements. The WCF shall be exempt from the provisions of this Chapter for up to one week after the duration of the state of emergency; and

D. A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to approval by the City. The WCF shall be exempt from the provisions of this Chapter for up to one week before and after the duration of the special event.

E. Eligible Facilities Requests permitted under Chapter 17C.356.

Section 17C.355.030 Definitions

A. "Alternative Tower Structure ("Stealth" Technology)" means manmade trees, clock towers, bell steeples, light poles, flag poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also "Low Visual Impact Facility" – SMC 17A.020.120).

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A. "Antenna" means one or more rods, panels, discs or similar devices used for wireless communication, which may include, but is not limited to, omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).

B. "Antenna Array" means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

"Antenna Array (Wireless Communication Antenna Array)" means:

1. One or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency (RF) signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).

2. Wireless communication antenna array shall be considered an accessory use provided they are located upon an existing structure.

"Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including the antenna.

C. "Antenna Support Structure" means a freestanding structure or device specifically designed, constructed or erected to support WCF antennas and may include, but is not limited to, a monopole.

"Antenna Support Structure" means any pole, telescoping mast, tower tripod, or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic waves.

D. "Base Station" means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a

communications network. The term does not encompass a tower as defined in this Chapter or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).

3. The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under Washington or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with Washington or the City under this section, does not support or house equipment described in this section.

"Cellular Telecommunications Facility" means they consist of the equipment and structures involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer that connects the mobile unit with the land-based telephone lines.

E. "Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Collocation" means the locating of wireless communications equipment from more than one provider on one structure at one site.

F. "Commission" means the Federal Communications Commission ("FCC").

G. "Distributed Antenna System" or "DAS" means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

"Low Visual Impact Facility", for the purposes of administration of this code, means a low visual impact facility includes a small diameter (three feet or less) antenna or antenna array located on top of an existing pole or on a replacement pole. (See also SMC 17A.020.010, Alternative Tower Structure.)

H. "Macrocell" means antenna mounted on ground-based masts, rooftops and other structures, at a height that provides a clear view over the surrounding buildings and terrain.

~~I. "Neutral Host" means deployments that can serve multiple wireless carriers/operators.~~

~~J~~I. "Non-Concealed" means a WCF that has not been treated, camouflaged, or disguised to blend with its surrounding and is readily identifiable.

~~K~~J. "Small Cells" mean compact wireless base stations containing their own transceiver equipment and function like cells in a mobile network but provide a smaller coverage area than traditional macrocells.

Small cells will meet the two parameters in subsections (a) and (b). For purposes of these definitions, volume is a measure of the exterior displacement, not the interior volume of the enclosures. Antennas or equipment concealed from public view in or behind an otherwise approved structure or concealment are not included in calculating volume.

(a) Small Cell Antenna: Each antenna shall be no more than three (3) cubic feet in volume.

(b) Small Cell Equipment: Each equipment enclosure shall be no larger than seventeen (17) cubic feet in volume. Associated conduit, mounting bracket or extension arm, electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of equipment volume.

[Jonathan to review this definition and the metrics. Also, this needs to be clearly understandable.]

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"Stealth Facilities" means any cellular telecommunications facility that is designed to blend into the surrounding environment. Examples of stealth facilities include:

1. Architecturally screened roof-mounted antennas;

2. Building-mounted antennas painted to match the existing structure;

3. Antennas integrated into architectural elements; and

4. Antenna structures designed to look like light poles, trees, clock towers, bell steeples, or flag poles.

K. "Stealth design" means a tower designed to resemble a less visually impactful structure in order to camouflage the appearance of the tower to reduce its visual impact. Stealth camouflage technology includes but is not limited to disguising the tower as trees, flagpoles, and buildings. Stealth design technology must account for the scale and surrounding architectural designs in order to effectively camouflage a tower.

[Jake to revise with respect to vegetation, screening, settings, scale and other issues.]

L. "Tower" means any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

"Tower (Wireless Communication Support Tower)" means any structure that is designed and constructed specifically to support a wireless communication antenna array. Towers include self-supporting towers, guyed towers, a single pole structure (monopole), lattice tower, and other similar structures.

"Tower Compound" means the area containing support tower and ground equipment. The fence surrounding the equipment is the outer extent of the compound.

"Tower Height" means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna.

M. "Transmission Equipment" means equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

N. "Utility Support Structure" means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities; street light standards; pedestrian light standards; traffic light structures; traffic sign structures; or water towers.

O. "Wireless Communication Facilities" or "WCF" means a staffed or unstaffed facility or location for the transmission and/or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, an antenna support structure or attachment support structure, transmission cables, and an equipment enclosure or cabinets.

"Wireless Communication Facility" means any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or any other spectrum-based transmissions/receptions.

17C.355.040 Third Party Review ~~General Application and Permitting~~

~~B~~A. ~~Application Submission Requirements~~Third Party Review.

1. With respect to third party reviews, the City shall make a determination as to whether third party review is warranted or whether the review can be done by City Staff. It is the intent of this subsection to have City Staff review administrative matters to the extent reasonably feasible. However, where consulting assistance is needed in the context of administrative reviews with respect to technical or other matters, and in the context of Conditional Use Permit reviews, then the City may retain consulting assistance as follows: ~~All~~ WCF applications which necessitate a third party review must be accompanied with contemporaneous payment of the applicable non-refundable review fees. Any such application lacking such payment will not be accepted. As provided herein, ~~i~~in addition to the application fee, the City, at its discretion, may require a technical review by a third party expert, the actual cost of which shall be borne by the applicant. The technical expert review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this Chapter. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, paid at the time the applicant submits an application. To the extent consultant

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fees are required as provided herein, ~~T~~the applicant shall pay all consultant fees before the City may act on a permit application. In the event that such costs and/or fees do not exceed the deposit amount, the City shall refund any unused portion within sixty (60) days after the final permit is released or, if no final permit is released, within sixty (60) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

2. All WCF applications must receive an initial inspection to ensure that all required forms, documents, and other required materials have been included. This initial inspection shall either occur automatically via electronic, computerized process or manually using a checklist filled out by City personnel in the presence of the applicant. Any application failing this initial inspection shall be deemed incomplete.

17C.355.050 Tower Location Requirements

[Subsections A and B have been moved to .080. Meridee to rework former A and B.]

[Ken to rewrite the intro paragraph with respect to a provider showing that before a new tower can be built it must show that it cannot collocate and address providers first looking for locations which are outside of residential zones and 300' from residential zones]

A. Preferred locations. To minimize aesthetic and visual impacts and to the maximum extent feasible, all new ~~WCFs~~ towers shall be located according to the following preferences, ordered from most-preferred (1) to least-preferred (~~11~~9), whether subject to administrative review or requiring a conditional use permit:

1. collocation to existing facilities located in ~~non-residential~~ all zones;

2. City-owned or operated property and facilities not in residential zones or not on property or facilities which are located within 300 feet of residential zones; ***[Address distance with respect to consistency issue.]***

~~7~~3. industrial zones ~~and business park zones~~;

4. downtown zones;

5. office zones;

~~8~~6. other commercial zones;

~~9~~7. mixed use zones; ***[City wants to review.]***

~~10. community facilities in residential zones (such as places of worship, community centers, etc.);~~

8. City-owned or operated property and facilities which are in residential zones or within 300 feet of residential zones; ***[Address distance with respect to consistency issue.]***

[Jake to rework D and then it will be moved to here]

~~11~~9. parcels of land in residential zones ~~and public right-of-way within residential zones~~.

[Does public right-of-way (camouflaged or non-camouflaged) need to be on the list?]
[Address use of lighting standards at ball fields versus play fields, playgrounds, etc.]

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B. Notwithstanding anything noted in the location or hierarchy sections, if the applicant demonstrates through engineering analysis certified by a professional engineer licensed in the State of Washington who specializes in RF engineering that strict adherence to the preferred location or structural hierarchy results in a significant gap in service coverage, then the preferred location or structure next on the hierarchy shall be preferred.

[Note: This was formerly subsection G in .050. This language is still under discussion.]

[Former D (1) and (4) may be moved to Conditional Use Permit Section.

1. Inside the boundary of a historic district, or within 500 feet of the boundary of a historic district or structure that is either listed or eligible for listing as a historic property, structure, or landmark

4. Within any nonresidential zone on a site that contains a legally established residential use]

~~C. *[Much of former C. has been deleted because the focus is on towers.]*Structural preference for new towers. Locating towers shall be in accordance with the following structural preference, (1) being the highest priority and (3) being the lowest priority:~~

~~1. new concealed freestanding towers;~~

~~2. new non-concealed freestanding towers;~~

~~3. any lighted freestanding towers requiring air navigation lighting.~~

[Please see note on prior page re Jake reworking D and moving it between 8 and 9 on the prior page]

D. Exception for facilities proposed based on proximity to residential uses. Notwithstanding the preferences listed in Section _____, a proposed facility that is not a stealth facility within five hundred (500) feet from a residential use measured from the nearest point of the proposed facility to the property line of the parcel inclusive of the residential use shall be defined as a least preferred location. Notwithstanding the preferences listed in Section _____, a proposed facility that is a stealth facility within three hundred (300) feet from a residential use measured from the nearest point of the proposed facility to the property line of the parcel inclusive of the residential use shall be defined as a least preferred location.

~~G. Notwithstanding anything noted in the location or hierarchy sections, if the applicant demonstrates through engineering analysis certified by a professional engineer licensed in the State of Washington who specializes in RF engineering that strict adherence to the preferred location or structural hierarchy results in a significant gap in service coverage, then the preferred location or structure next on the hierarchy shall be preferred.~~

Section 17C.355.0~~2~~60 Wireless Communication Antenna~~s Arrays~~ – Permitted

[Meridee is going to rework this Section using the language included in a document attached to her e-mail from 8-14-15 which is included below and including concepts discussed during the Phone Meeting on 8-17]

New wireless communication antenna~~s arrays~~ part of a WCF are permitted in all zones provided that they are attached to or inside of an existing structure (except on the exterior of pole signs or anywhere on a billboard) that provides the required clearances for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen

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feet above the structure. Installation requires the granting of development permits prescribed by chapters 17G.010 and 17G.060 SMC. For arrays on City-owned property, the execution of necessary agreements is also required. However, if any support structure must be constructed to achieve the needed elevation, the provisions of SMC 17C.355.~~030~~ apply. Any equipment shelter or cabinet and other ancillary equipment is subject to the site development standards of SMC 17C.355.~~040~~.

Section 17C.355.060 Permitted Collocations and Attachments~~Wireless Communication Antenna Arrays – Permitted~~

A. To the extent not otherwise covered by Chapter 17C.356 (Eligible Facilities Requests), n~~N~~ew wireless communication antenna arrays are permitted in all zones provided that they are attached to or inside of an existing structure (except on the exterior of pole signs or anywhere on a billboard) that provides the required clearances for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than fifteen feet above the structure.

B. Installation requires Type I approval and the granting of development permits prescribed by chapters 17G.010 and 17G.060 SMC.

C. For arrays on City-owned property, the execution of necessary agreements is also required.

D. I~~However, i~~f any support structure must be constructed to achieve the needed elevation or if the attachment adds more than 15 feet above the existing structure, the provisions of SMC 17C.355.XXX (Wireless Communication Support Towers)~~030~~ apply.

E. Any equipment shelter or cabinet and other ancillary equipment is subject to the site development standards of SMC 17C.355.XXX.~~040.~~

F. Distributed Antenna Systems and Small Cells.

1. Distributed Antenna Systems (DAS) networks and other small cell systems use components that are a small fraction of the size of macrocell deployments, and can be installed with little or no impact on utility support structures, buildings, and other existing structures. As such, these systems are allowed in all land use zones, regardless of the siting preferences listed in SMC 17C.355.050.

2. DAS and small cells are subject to approval via Type I administrative review only.

3. Multiple Site DAS and Small Cells.

   a. A single Type I or II permit may be used for multiple distributed antennas that are part of a larger overall DAS network.
   b. A single Type I or II permit may be used for multiple small cells spaced to provide wireless coverage of a contiguous area.

Section 17C.355.070 Regulations for Facilities Subject to a Conditional Use Permit

A. Conditional use permit application materials.

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1. *Site plans.* Complete and accurate construction-quality plans drawn to scale, prepared, signed and sealed by a Washington-licensed engineer, land surveyor and/or architect, including (1) plan views and all elevations before and after the proposed construction with all height and width measurements called out; (2) a depiction of all proposed transmission equipment; (3) a depiction of all proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights-of-way and/or easements for access and utilities in plan view.

2. *Visual analysis.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same or similar design and in roughly the same setting as the proposed WCF, or a statement that no such completed facility exists.

3. *Statement of Purpose.* A clear and complete written Statement of Purpose shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; ~~(3) the estimated number of users in the targeted service area;~~ and (3~~4~~) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

4. *Design justification.* A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this Chapter to the maximum extent feasible. A complete design justification must identify all applicable design standards under this Chapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

5. *Alternative sites analysis.* If a proposed location is not the highest priority listed above, then a detailed explanation justifying why a site of higher priority was not selected must be submitted with the WCF application. A clear and complete written alternative site analysis that shows at least five (5) technically feasible and potentially available alternative sites considered, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate, for reasons including, but not limited to, preclusion by structural limitations; inability to obtain authorization by the owner of an alternative location; failure to meet the service objectives of the applicant [THIS IS STILL BEING DISCUSSED]; failure to meet other engineering requirements for such things as location, height and size; and/or being a more intrusive location despite the higher priority in this Chapter. A complete alternative sites analysis may include less than five (5) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least five (5) technically feasible and potentially available alternative sites.

[Jake wants to add a new No. 6 – Alternative technologies analysis. A clear and comprehensive written analysis of the ability to use DAS or small cell technology to address the applicant's needs. – This is still being discussed]

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6. *Radio frequency emissions compliance report.* A written report, prepared, signed and sealed by a Washington-licensed professional engineer or a competent employee of the applicant, [whether the rest of this No. 6 remains is still being discussed] which assesses whether the proposed WCF demonstrates compliance with the exposure limits established by the FCC using the Uncontrolled/General Population standard. The report shall also include a cumulative analysis that accounts for all emissions from all WCFs located on or adjacent to the proposed site, identifies the total exposure from all facilities and demonstrates planned compliance with all maximum permissible exposure limits established by the FCC. The report shall include a detailed description of all mitigation measures required by the FCC.

7. *Structural analysis.* A structural analysis, prepared, signed and sealed by a Washington-licensed professional engineer, which assesses whether the proposed wireless communication facility demonstrates planned compliance with all applicable building codes will be required with the application for building permit.

8. *Noise study.* A noise study, prepared, signed and sealed by a Washington-licensed engineer, for the proposed WCF and all associated equipment in accordance with Spokane Municipal Code _____, ~~which shall include without limitation all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators. The noise study shall include without limitation the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines~~.

9. *Collocation consent.* A written statement, signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

10. *Other published materials.* All other information and/or materials that the City may, from time to time, make publically available and designate as part of the application requirements.

[Meridee to propose language in lieu of the next paragraph below. This paragraph below will be moved to another location in this document.]

[If the proposed location is not the highest priority listed above, then a detailed explanation justifying why a site of higher priority was not selected must be submitted with the WCF application. Any application seeking approval to locate a WCF in a lower-ranked location may be denied unless the applicant demonstrates to the satisfaction of the City by technically sufficient proof that (a) a significant gap in the provider's service exists, and (b) that the proposed WCF is the least intrusive means visually to close the significant gap, and (c) no feasible alternative exists to close the significant gap by the installation of one or more other WCFs.]

B. Applicable criteria for conditional use permit approval. In addition to all the guidelines and standards contained in this section, the Hearing Examiner may specifically consider the following factors in determining whether to issue a conditional use permit, although the Hearing Examiner may waive or reduce the burden on the applicant of one (1) or more of these criteria if the Hearing Examiner concludes that the goals of this chapter are better served by the waiver: [This paragraph is still under discussion including use of the word "criteria"]

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1. Height above ground level of the proposed facility, taking into consideration the permitted maximum height in the applicable zone;

2. Proximity of the facility to residential structures and residential district boundaries;

3. Nature of uses on adjacent and nearby properties;

4. Surrounding topography;

5. Surrounding tree coverage and foliage;

6. Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

7. Proposed ingress and egress;

8. Availability of existing facilities for collocation and other existing structures; and

9. Alternative sites listed by the applicant.

C. Allowed by Conditional Use Permit. The following wireless communication support towers require granting of a conditional use permit:

1. For residential, OR and NR zones, towers up to sixty feet that are ~~outside~~ within the right-of-way. ~~that do not use s~~ Stealth ~~technology.~~ design is required in these zones.

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2. For residential, OR and NR zones, towers up to sixty feet that are outside the right-of-way when they use stealth design.

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~~2~~3. For downtown, GC, or industrial zones, towers that are within three hundred feet of a residential zone.

~~3~~4. The notification boundary shall be extended to all properties within ~~six~~ five hundred feet of the subject parcel. The hearing examiner shall utilize the decision criteria prescribed in SMC 17G.060.170. Administrative review shall also be based on review criteria from this section. Towers are subject to the site development standards of SMC 17C.355.~~040~~ .

5. Macrocells. The installation of a new macrocell WCF in a residential zone will not be allowed unless the applicant first demonstrates that the use of either DAS or small cells will not close a significant gap in service coverage through engineering analysis certified by a professional engineer licensed in the State of Washington specializing in radio frequency engineering or that suitable locations for DAS or small cell deployment are not available.

6. Use of cell tower sites within any residential zone is strongly disfavored in order to protect residential aesthetics. Cell tower siting within residential zones is allowed only if it is technically and economically proven that no alternate site or design in another zone can feasibly close a significant gap in the radio frequency coverage of the project applicant using the least intrusive means to close that gap from any other zone.

D. Public Notice. Applicants of all conditional use permits for WCFs must provide prompt public notification upon submitting an application according to the following:

1. As part of the initial application, the applicant must include, with all other application documents, a list of all parcel numbers for all parcels located within 500 feet of the proposed WCF site. This list shall also include the addresses associated with the parcel's physical location and the address for the registered property owner.

2. The City shall provide the applicant with a public notification letter at the time of application submission. The provider shall select the photograph and photo simulation combination that depicts the largest visual impact of the WCF at the time of application. The provider may select more than one photograph and photo simulation combination to accurately depict the visual impact in the public notification.

3. Within 10 days of submitting an application, the applicant must provide public notification through mailing copies of the notification letter and selected color photograph and color photo simulation combination(s) to both residents and owners of all parcels within 500 feet of the proposed WCF site. Applicant must pay for all mailing costs, and include in the mailing a pre-addressed envelope and form that may be used for comments. This form is not required to be used by those submitting comments. A statement attesting that this requirement has been met must be submitted by the applicant no later than 15 days after submitting the application.

4. While comments from both official agencies and the public shall be accepted throughout the entire application process, including all appeals, a minimum of 15 days shall be provided for comments from the date the public notification statement is submitted to the City. This 15-day comment period shall in no way prevent the City from reviewing the application during this time.

5. If the City intends to approve the application and grant a permit to the applicant, notification must be mailed to every individual, entity, or agency who submitted a written comment. Notification must be mailed a minimum of 15 days prior to the issuance of a permit so that those who submitted comments may be provided adequate time to appeal any such decision.

E. Construction Drawings. A complete set of construction documents including drawings and specifications for all aspects of work being performed shall be provided as part of all WCF conditional use applications. Each drawing shall be signed and sealed by a licensed professional engineer, architect and land surveyor as required in the State of Washington.

F. Visual Impact Analysis. All WCF conditional use applications shall include sufficient documentation for the evaluation of the visual impact for the installation. The applicant shall include the following documentation in both paper and digital format:

1. Color photographs of the existing site from four different directions as will be visible from the closest public streets, alleys, or pedestrian walkways.

2. A key map must be provided noting where each photograph was taken with an angle arrow pointing to the WCF site.

3. Color photo simulations showing the proposed WCF in its completed state, including all visible components including, but not limited to, all wires, cables, cabinets and all

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other above-ground elements of the WCF, shall be provided from the same location and perspective as each color photograph.

4. A site development plan shall be submitted showing at a minimum the location, size, screening and design of all WCF structures and enclosures, including fences, and the location, number, and species of all proposed landscaping.

5. At the City's discretion, an on-site mock-up may be required for WCFs proposed in or adjacent to any residential zone, or in any sensitive areas to allow for adequate assessment of the WCF's visual impact.

G. RF Justification. As part of a WCF conditional use permit review process, the applicant shall provide a RF technical analysis performed by a professional engineer licensed in the State of Washington specializing in RF engineering that states that the proposed WCF will be in compliance with FCC Uncontrolled/General Population guidelines and standards.

17C.355.080 General Requirements for WCFs

[A and B were moved to here from .050 and will be reviewed by Meridee.]

A. Collocation.

1. The City encourages deployments on existing towers and structures rather than entirely new towers in recognition that collocations almost always result in less impact or no impact.

2. Collocation on existing towers, structures and WCFs are subject to approval via administrative review only.

B. Distributed Antenna Systems and Small Cells.

1. Distributed Antenna Systems (DAS) networks and other small cell systems use components that are a small fraction of the size of macrocell deployments, and can be installed with little or no impact on utility poles, buildings, and other existing structures. As such, these systems are encouraged in all land use zones.

2. DAS and small cells are subject to approval via administrative review only.

3. Multiple Site DAS and Small Cells.

   a. A single administrative permit may be used for multiple distributed antennas that are part of a larger overall DAS network.
   b. A single administrative permit may be used for multiple small cells spaced to provide wireless coverage of a contiguous area.

C. Visual Impact. WCFs, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent possible, consistent with the proper functioning of the WCF. WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized.

D. WCF construction shall be consistent with the design standards of the zoning district in which it is located.

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E. Stealth and concealment techniques. All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment and nearby uses and structures. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened with concrete walls not less than six (6) feet above ground. All wires, cables and any other connections shall be completely concealed from public view to the maximum extent feasible. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees.

F. Landscaping. All facilities shall include a landscaped buffer at least four (4) feet wide outside the perimeter of the ground-mounted equipment. All landscaping shall be maintained in accordance with this chapter. The Plan Commission may increase, reduce or waive the required landscaping when it finds that a different requirement would better serve the public interest.

G. Height Requirements. The height of a WCF or an attached WCF shall not exceed the greater of (1) the maximum building height allowed for the underlying zoning district or (2) the height of the structure to which it is attached or which it replaces; provided, that in no event shall the WCF add more than 15 feet of height to the existing structure.

H. Noise. At no time shall transmission equipment or any other associated equipment (including, but not limited to, heating and air conditioning units) at any wireless communication facility emit noise that exceed the applicable limit(s) established in the Code.

I. Signage. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.

J. Code compliance. All facilities shall at all times comply with all applicable federal, State and local building codes, electrical codes, fire codes and any other code related to public health and safety.

K. Aesthetics. WCFs shall use the smallest, least visually intrusive configuration, including, but not limited to, antennas, components and other necessary WCF-related equipment and enclosures. The applicant shall use all reasonable means to conceal or minimize the above-ground visual impacts of the WCF through integration or underground construction for the base station. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape and siting solutions.

L. Equipment and Installation Standards.

1. All equipment shall be located or placed underground to the maximum extent feasible.

2. When equipment enclosures cannot be located inside of existing buildings or underground, they shall be (a) designed to blend in with existing surroundings, using compatible or neutral colors and/or vegetative or other screening at least as tall as the enclosure; (b) consistent with relevant design standards for the underlying zoning district; and (c) located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

3. The applicant shall submit installation standards for the visible equipment, including that which will be camouflaged. This will include at a minimum images and

dimensions drawings of all transmission equipment, typical installation details and the types of structures to which equipment will be attached.

M. Guidelines and standards specific to base stations.

1. All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible.

2. All new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

3. All transmission equipment shall be mounted at the lowest height and set back from all roof edges to maximum extent feasible.

N. Guidelines and standards specific to facilities in the public rights-of-way.

1. *Preferred locations.* Facilities shall be located as far from residential uses as feasible, and on main corridors and arterials to the extent feasible. Facilities in the rights-of-way shall maintain at least a two hundred (200) foot setback from other facilities, except when collocated or on opposite sides of the same street.

2. *Pole-mounted or tower-mounted equipment.* All pole-mounted and tower-mounted transmission equipment shall be mounted as close as possible to the tower so as to reduce the overall visual profile to the maximum extent feasible. All pole-mounted and tower-mounted transmission equipment shall be painted with flat, non-reflective colors that blend with the visual environment.

Section 17C.355.90 Maintenance

A. All wireless communication facilities must comply with all standards and regulations of the FCC and any other State or federal government agency with the authority to regulate wireless communication facilities.

B. The site and the wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification by the public to the City.

D. A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any City property or the public right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other City or public utilities.

E. If any FCC, State or other required license or any other approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within ten (10) days of receiving notice of such revocation.

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Section 17C.355.100 Ownership Transfers

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the City of the date of the transfer and the identity of the transferee. The City may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the City, FCC and State.

Section 17C.355.110 Exception from Standards

Notwithstanding the provisions of this Chapter, one or more specific exceptions to the standards contained within this Chapter may be granted if a denial would prohibit or have the effect of prohibiting the provision of wireless communications services by the applicant. As such, the City may grant special permission or exception, on such terms as the City may deem appropriate, in cases where the City determines that the grant of the special permission is necessary to comply with State and federal law or regulations and where the applicant shows that no other location or combination of locations in compliance with this Chapter can provide comparable communications. Prior to the issuance of an exception, the applicant shall be required to submit to the City a written explanation setting forth evidence that the location or locations and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close a significant gap or to reduce it to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than significant in service. Exceptions shall be subject to the review and approval of the Plan Commission. The burden is on the applicant to prove significant gaps and lease intrusive means as required herein.

Section 17C.355.~~030~~120 Wireless Communication Support Towers – Permitted

A. By Type II Permit.

1. Wireless communication support towers are allowed in downtown, GC, and industrial zones if the tower compound, or tower with a remote equipment station, is located at least ~~three~~ five hundred feet from the nearest existing residential zone. Such towers are also allowed on City-owned property if the tower compound is located at least ~~three~~ five hundred feet from a residential zone. Installation requires only the granting of development permits prescribed by chapter 17G.010 SMC and chapter 17G.060 SMC, and if on City-owned property, the execution of necessary agreements. Towers are subject to the site development standards of SMC 17C.355.~~040~~___. Any regulation of wireless communication facilities in the right-of-way shall ~~require approval of the developer services, engineering services~~ involve review by the planning department as well as review by the city attorney's office.

2. Wireless communication support towers are allowed in the following zones by an administrative decision, provided that the tower employs ~~low visual impact technology~~ stealth design or some other ~~technology~~ configuration that may become available in the future that renders the antenna array unobtrusive or generally unnoticeable:

   a. ~~Residential and~~ O ~~and OR~~ zones within the right-of-way of principal and minor arterials; provided, that the maximum height of the tower including the antenna is sixty feet in height or less.

b. ~~NR and~~ NMU zones, provided that the maximum height of the tower including the antenna is sixty feet in height or less; and
c. CB and GC zones, provided that the maximum height of the tower including the antenna is seventy feet in height or less.

3. Wireless communication support towers are also allowed in ~~residential and~~ O ~~and~~ ~~OR~~ zones outside of rights-of-way when they utilize stealth ~~technology~~ design, to a maximum height of sixty feet.

4. Installation requires only the granting of development permits prescribed by chapter 17G.010 SMC and chapter 17G.060 SMC, and if on City owned property the execution of necessary agreements. Towers are subject to the site development standards of SMC 17C.355.~~040~~___. ~~Any regulation of wireless communication facilities in the right-of-way shall require approval of the developer services, engineering services department as well as review by the city attorney's office.~~

5. The applicant shall inform all property owners or residents within ~~four~~ five hundred feet of a proposed facility by letter that a structure is proposed at least fifteen days prior to the City of Spokane issuing a building permit. The notification shall be conducted as provided in SMC 17G.060.120 for a Type I permit and the applicant shall provide the City with a declaration of mailing prior to the issuance of a building permit.

B. General Provisions for All Facilities. Wireless communication support towers may be approved provided that they meet the criteria in Table A.1 or Table A.2, and the following provisions:

1. Requirement for FCC Documentation. The applicant shall provide a copy of:

a. its documentation for FCC license submittal or registration, ~~and~~ or
b. the applicant's FCC license or registration.

2. Requirement for Municipal Master Permits for Right-of-way Facilities. For facilities to be located within the right-of-way, prior to submitting for individual applications, the applicant must have a valid municipal master permit, municipal franchise, or exemption otherwise granted by applicable law.

3. Requirement for Documentation of Visual Simulation. The applicant shall have performed and provided documentation of a visual simulation of the site plan. The documentation shall include photographs of the site.

4. Site Design Flexibility. Individual ~~antenna~~ WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the antenna array and supporting equipment shall be installed so as to best camouflage, disguise or conceal them, to make the equipment compound more closely compatible with and blend into the setting and/or host structure.

5. Prohibition for Logos ~~, Signs,~~ or Displays. No logo ~~, sign~~ or display shall be located on any antenna array or support structure.

~~6. Requirement for Antenna Compound Fencing.~~

~~The use of fencing is not required, but if installed shall meet the requirements of SMC 17C.355.040. The use of barbed wire is not allowed except as specified under SMC 17C.120.310(D)(1). Razor or concertina wire is not allowed.~~

~~7.~~6. Requirement for Materials for Replacement Poles. In such instances where a new facility that is allowed by an administrative permit is to be achieved by changing out an existing pole, the replacement pole shall be of the same material, e.g., wood for wood, metal for metal. However, in order to achieve the lowest visual impact, the provisions of subsection (~~C~~)(4) of this section, Site Design Flexibility, should be applied.

~~Date Passed: Monday, July 23, 2012~~

~~Effective Date: Thursday, August 30, 2012~~

~~ORD C34888 Section 23~~

Section 17C.355.~~040~~130 Wireless Communication Facilities Site Development Standards

A. Tower Sharing. New facilities must, to the maximum extent feasible, collocate on existing towers or other structures to avoid construction of new towers, unless precluded by structural limitations, inability to obtain authorization by the owner of an alternative location, or where an alternative location will not meet the service coverage objectives of the applicant. Requests for a new tower must be accompanied by evidence that application was made to locate on existing towers or other structures, with no success; or that location on an existing tower or other structure is infeasible.

B. Visibility.

1. WCFs shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape and adjacent properties and shall be maintained in accordance with the requirements of this Chapter.

2. WCFs shall be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the urban, built environment, through matching and complimenting existing structures and specific design considerations such as architectural designs, height, scale, color and texture.

~~1.~~C. Structural and Other Assessments. The owner of a proposed freestanding WCF tower shall have a structural assessment of the tower conducted by a professional engineer, licensed in the State of Washington. The owner shall submit the structural assessment report required by this subsection, signed by the engineer who conducted the assessment to the Plan Department by February 1st every third year from the date of the issuance of the building permit. At the request of the City, the owner of a proposed freestanding WCF tower shall also have a grading, drainage and environmental review, power systems review and HVAC review performed by professional engineers licensed in the State of Washington.

D. Landscaping and Screening

~~2.~~1. Wireless communication support structure bases, when fenced (compounds), or large equipment shelters (greater than three feet by three feet by three feet), shall be

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landscaped following the provisions of this section. In all residential, O, OR, NR, NMU, CB and GC, and other commercial zones, landscaping shall consist of a six-foot wide strip of L2 landscaping, consisting of eighty percent evergreen trees and shrubs. At the time of planting, evergreen trees shall be a minimum of fourteen feet in height, deciduous trees shall be a minimum of three-inch caliper (measured at four feet above the root ball), and shrubs shall have a minimum spread of eighteen to twenty-four inches.

~~3.~~2. If fencing is installed, it shall consist of decorative masonry or wood fencing and is limited in height to six feet. Chain link, barbed wire, razor or concertina wire is not allowed in residential, O, OR, NR, NMU, CB, GC and other commercial zones. No electrified fences are permitted in any zone.

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3. In industrial zones other than limited or design zones or on sites that do not adjoin a residential, O or OR zone, landscaping shall be provided as required for the zone in which located.

E. Design Compatibility and Lighting

1. Antenna arrays and supporting electrical and mechanical equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting and/or host structure.

2. For new wireless communication support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. All FCC-required lighting shall use lights that are designed to minimize downward illumination. Security lighting for the equipment shelters or cabinets and other on-the-ground ancillary equipment is also permitted as long as it is down shielded to keep light within the boundaries of the site. Motion detectors for security lighting are ~~encouraged~~ required in residential, O and OR zones or adjacent to residences.

F. Setback Requirements. See Table A.1 for setback requirements for towers and support structures. All equipment shelters, cabinets or other on-the-ground ancillary equipment shall be buried or meet the setback requirement of the zone in which located. The minimum side setback from the lot line for a WCF support structure must be equal to the height of the proposed WCF structure. In all instances, a support tower shall set back a minimum of ~~thirty~~ _____ feet from a residential structure.

G. Use of Stealth ~~Technology~~ Design and the ~~Co-location~~ Collocation of Antenna and Arrays. It is the policy of the City of Spokane to minimize the number of wireless communication support towers and to ensure that all reasonable efforts are made to obscure these support towers from view. As such, as a condition of the granting of the conditional use permit by the hearing examiner or as a part of the application for an administrative permit, the petitioner or applicant as the case may be, shall make an affirmative showing as to why they are not employing stealth ~~technology~~ design~~, or at least proposing a low visual impact facility~~, and what efforts were made or negotiations undertaken to ~~co-locate~~ collocate the antenna arrays of more than one wireless communication service provider on a single support tower. In addition, the City will pursue all reasonable strategies to promote ~~co-location~~ collocation and the use of stealth ~~technology~~ design and will act as facilitator to bring about ~~co-location~~ collocation agreements between multiple wireless communication service providers.

17C.355.140 Discontinuation of Use

A. Any wireless communication facility that is no longer needed and its use is discontinued shall be reported immediately by the service provider to the planning director. Discontinued facilities shall be completely removed within six months and the site restored to its pre-existing condition.

B. If the facility is not removed within the six month period, the City may remove the facility at the permittee's, facility owner's or landowner's expense.

C. If there are two (2) or more users of the permitted facility, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the wireless tower.

D. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the City and approved as to form by the City Attorney, with provision for inspection and City removal of the facility in the event of failure to perform by the responsible parties.

E. Liability for Failure to Remove. In the event the City removes an abandoned or unused WCF, upon the failure of the operator or owner to do so in a timely manner, the operator and owner shall be jointly and severally liable for the payment of all costs and expenses the City incurs for the removal of the facilities, including legal fees and costs.

~~B.~~17C.355.150 ~~Electromagnetic Field/Radio-frequency Radiation and other Standards~~Submittal

At the time of application for ~~building~~ a permit, the ~~proponent~~ applicant shall provide the City of Spokane with copies of the approved FCC permit application or license, a visual impact analysis, or other visual representation, and all supporting documents.

17C.355.160 Spacing of Antenna Support Structures

~~1.~~A. In Residential, O, OR, NR and NMU Zones. Towers that are allowed ~~by administrative permit~~ in residential, O, OR, NR and NMU zones shall maintain a minimum spacing of one-half mile, unless it can be demonstrated that physical limitations (such as topography, terrain, tree cover or location of buildings) in the immediate service area prohibit adequate service by the existing facilities.

~~2.~~B. In All Other Zones. No new wireless communication support towers over sixty feet in height may be constructed within one-half mile of an existing support tower unless it can be demonstrated to the satisfaction of the City or hearing examiner that the existing support tower is not available for ~~co-location~~ collocation of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant.

17C.355.170 As-Built Submittal and Final Permit Release

A. All WCF permits require that the applicant submit as-built photographs in both paper and digital format of the WCF within 30 days of the completion of the WCF installation, visually detailing all of the installed equipment. Said photographs will be used in conjunction with physical site inspection to substantiate compliance with the approved plans and photo simulations. A permit will only be granted upon satisfactory evidence the WCF was installed in compliance with the approved plans and photo simulations.

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B. Complaints. If any complaints are received by the City either during construction or within 30 days of the completion of the WCF installation, the City shall fully and promptly investigate the complaint to ensure compliance with approved plans, photo simulations, equipment, and standards.

C. Failure to Comply

1. If it is found that the WCF installation does not comply with the approved plans, photo simulations, equipment, and standards, the applicant immediately shall make any and all such changes required to bring the WCF installation into compliance.

2. There shall be no waiver of approved plans or photo simulations under any approved permit. The applicant must choose one of two courses of action:
   a. Apply for a new permit for the installation. Any new permit shall follow all of the requirements and process noted herein.
   b. Completely remove the WCF installation and return the site to its original condition.

17C.355.180 Indemnification

Each permit issued shall have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damage, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

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Table A.1
New Wireless Communication Support Structures Criteria
Facilities Allowed by Ministerial (Administrative) Permit

Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	~~Low Visual Impact~~	Stealth ~~Technology~~Design	Setback from Property Lines (does not apply within ROW)	Public Notification
~~All R,~~ NMU & O~~ & OR~~	Yes	60'	~~Required~~	Optional	~~N/A~~20'	Yes
	No	60'	~~N/A~~	Required	20'	Yes
~~NR~~	~~Yes~~	~~60'~~	~~Required~~	~~Optional~~	~~N/A~~	~~Yes~~
	~~No~~	~~60'~~	~~Required~~	~~Optional~~	~~20'~~	~~Yes~~
CB & GC	Yes or No	70'	~~Required~~	Optional	20'	Yes
All DT*	Yes or No (allowed only if less than or equal to 70')	150' Conflicting?	~~Optional~~	Optional	20'	No
Industrial*	Yes or No (allowed only if less than or equal to 70')	150' Conflicting?	~~Optional~~	Optional	20'	No

*Where located at least three hundred feet from a residential, O or OR zone.

[These two charts are still being discussed. Zones CC and CA will be added to R and NMU. If there are any other zones, they will need to be added as well. The following footnote – which needs to be discussed and modified - is going to be added: If an applicant wants to construct a tower in a residential zone or within 50' of a residential zone, then a Type III process and stealth are required. If an applicant wants to construct a tower within 51' – 150' of a residential zone, then a Type II process and stealth are required. If an applicant wants to construct a tower beyond 150' of a residential zone, then the review process is that which is required in the zone in which the tower is to be located.]

Table A.2
New Wireless Communication Support Structures Criteria
Facilities Allowed by Discretionary Hearing Examiner Conditional Use Permit

Zone Category	Located in Public Right-of-way (ROW)	Maximum Tower Height	~~Low Visual Impact~~	Stealth ~~Technology~~Design	Setback from Property Lines (does not apply within ROW)	Public Notification and Public Hearing

All R, NR O & OR	NoYes	60'	Required	OptionalRequired	20' Need to discuss	Yes/Yes
All R, NR & OR	No	60'		Required	Need to discuss	Yes/Yes
O	Yes or No	60'		Optional	20'	Yes/Yes
NR & NMU	Yes or No	61' - 70'	Required	Optional	20'	Yes/Yes
CB & GC	Yes or No	71' - 90'	Required	Optional	20'	Yes/Yes

[For All R, O and OR, AT&T wants maximum tower height to be 60', except that up to 80' is allowed; (a) in the RMF, RHD, O and OR zones; and (b) for a stealth facility in all of the R zones.]

[For NR and NMU zones, AT&T wants stealth to be optional; provided that if stealth design is employed, the maximum height may increase by up to 90']

[For CB and GC zones, AT&T wants stealth to be optional; provided that if stealth design is employed, the maximum height may increase by up to 120']

Date Passed: Monday, July 23, 2012

Effective Date: Thursday, August 30, 2012

ORD C34888 Section 24

SECTION 3. Conflicts with Other Ordinances or Regulations. In the event that any City ordinance or regulation, in whole or in part, conflicts with any provisions in this Chapter, the provisions of this Chapter shall control.

SECTION 4. Severability. In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this Chapter unconstitutional, preempted or otherwise invalid, that portion shall be severed from this Chapter and shall not affect the validity of the remaining portions of this Chapter.

SECTION 5. This Ordinance shall become effective on the _____ (____) day after its passage.

CITY OF SPOKANE, WASHINGTON

_____

Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
James Richman, Assistant City Attorney