CITY OF SPOKANE VALLEY
Request for Council Action

Meeting Date: November 12, 2019

Department Director Approval: ☑

Check all that apply:
- ☐ consent
- ☐ old business
- ☑ new business
- ☐ public hearing
- ☐ information
- ☐ admin. report
- ☐ pending legislation
- ☐ executive session

AGENDA ITEM TITLE: Second Reading Proposed Ordinance 19-019, regulating camping on public property.

GOVERNING LEGISLATION: RCW 35A.11.020; Martin v. Boise, 920 F.3d 584 (9th. Cir. 2019).

PREVIOUS COUNCIL ACTION TAKEN: March 26, 2019 discussion on funding for homeless issues; June 4, 2019 discussion on 2019 Point-In-Time Homeless count for Spokane County; July 9, 2019 discussion on no-camping enforcement, HB 1406, and proposed Spokane homeless shelter; October 15, 2019 Administrative report on proposed code to regulate camping on public property; October 29, 2019 first reading of the proposed ordinance.

BACKGROUND: Like many of the larger communities on the west coast, Spokane Valley has been experiencing significantly more impacts from the increasing issue of homelessness over the past several years. The causes of homelessness are complex and varied. City staff continues to engage in discussions with staff from Spokane and Spokane County regarding potential regional approaches and staff will report back to Council at an appropriate time regarding those issues. At this time, however, there are no homeless shelter beds available in the City of Spokane Valley. As previously discussed with Council on March 26 and July 9, the City contributes at least $1.2 million annually to address homelessness issues in the region, with those funds being routed through Spokane County, which then allocates them to various public and private providers.

The City is experiencing a number of consequences of the increase in homeless individuals within the City. As many residents have noted, there are two City parks that have recently experienced people camping or squatting on park property, specifically Balfour Park and Sullivan Park. Councilmembers and staff have received comments that residents don’t feel safe using those parks because individuals are there with large amounts of personal belongings. Police have noted individuals using park restrooms as temporary housing, which precludes their use by the public as restrooms. The police recently noted that the sink in one restroom was being used as a fire bin, causing significant risk of property damage and personal injury. Park staff have stopped issuing park reservations for Sullivan Park because removing homeless people from the rental facilities have proven too difficult.

The City has also noted a number of instances where people are camping in RVs and camp trailers along roadways. This is unsafe for a number of reasons, including risk of significant injury or death if another vehicle hits the RV/trailer. Further, the lack of sanitary waste disposal facilities creates a significant risk of disease and contamination.

Parks and rights-of-way are intended for shared use by the public for park or transportation purposes, and are not intended for use for habitation. Like many communities, Spokane Valley seeks to further exercise its police powers to regulate these public areas within the constraints of the law. As identified in the recent case of Martin v. Boise, 920 F.3d 584 (9th. Cir. 2019), cities have authority to preclude such public camping, with some constraints. The primary holding in the Martin case was that if there was no homeless shelter bed space available at the time enforcement was sought, then the person could not be cited. However, the Court went on to say that cities could identify certain areas where no public camping could occur, provided there was not a total ban.
Staff presented proposed regulatory language for City Council review on October 15, 2019. On October 29, 2019, City Council advanced proposed Ordinance 19-019 to a second reading.

The proposed ordinance will adopt the draft regulations as a new chapter 7.50 of the Spokane Valley Municipal Code. Some important components of the proposed regulations include the following:

1. Generally prohibits camping on public property, including rights-of-way (roadways, sidewalks), stormwater property, City Hall, parks and park facilities, and any other public property where camping would materially interfere with the intended public use of the property. Based on a comment from City Council during the administrative report, staff have modified the proposed regulations to allow camping where specifically allowed by the owner of the property. This will address instances such as the Spokane County Fairgrounds when the entity that owns the property specifically allows camping.

2. Prohibits encampments, which are characterized by accumulations and belongings typically associated with camping. If an encampment is found on non-park public property, a 48-hour notice to vacate would be issued, after which the belongings would be collected and stored for at least 60 days. For park property, there would be no 48-hour notice, and instead the person must remove the belongings immediately. If no person is present, then the City would collect and store the belongings for at least 60 days, with notice posted near where the belongings were collected and providing information on where they could be collected.

3. Consistent with Martin v. Boise, the Code provision would not be enforced if shelter bed space is not available. There would be certain areas where public camping is never allowed, including City Hall grounds, Balfour Park, and Mirabeau Meadow/CenterPlace grounds.

As mentioned above, the City continues to explore potential regional cooperation for access to shelter beds. Even if the City acquires a right to use a certain number of shelter beds, our Code will include a provision stating that enforcement of the public camping prohibition will be suspended if the City/law enforcement determine that a bed is not available at the time a citation is being considered. This will require good communication or a system that will allow immediate checks. If this verification is unable to be made, then a citation cannot be issued and the person would be allowed to camp in most public space provided they did not significantly limit the intended use of the space for public purposes.

Additionally, staff is working to identify how transportation of people and belongings could occur in an efficient manner. It is our intent not to use the police in this manner so they can continue to address other public safety issues.

OPTIONS: Move to approve Ordinance 19-019, with or without further amendments.

RECOMMENDED ACTION OR MOTION: Move to approve Ordinance 19-019 adopting regulations regarding camping on public property.

BUDGET/FINANCIAL IMPACTS: Unknown.

STAFF CONTACT: Erik Lamb, Deputy City Attorney.

ATTACHMENTS: Proposed Ordinance 19-019.
AN ORDINANCE OF THE CITY OF SPOKANE VALLEY, SPOKANE COUNTY, WASHINGTON, ADOPTING A NEW CHAPTER 7.50 TO THE SPOKANE VALLEY MUNICIPAL CODE REGARDING REGULATION OF CAMPING ON PUBLIC PROPERTY, AND OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Spokane Valley is a non-charter optional code city as provided in Title 35A RCW and incorporated under the laws of the state of Washington; and

WHEREAS, pursuant to Article XI, Section 11 of the Washington Constitution and RCW 35A.11.020, the City of Spokane Valley (City) is authorized to regulate public property, including City Hall, CenterPlace, parks, public rights-of-way, and all other public property within the City; and

WHEREAS, camping on public property, including City Hall, CenterPlace, parks, public rights-of-way, and other public property, is a public health and safety concern due to interference with other intended uses, such as daily operations of the City, events at CenterPlace, park recreational activities, pedestrian, bicycle and vehicular traffic, and other public uses; and

WHEREAS, camping without adequate sanitation services, such as sewer, water, and garbage, presents a public health and safety concern due to increased risk of spread of disease and potential for citizens contracting illnesses; and

WHEREAS, public property is intended for, and should be, available to the public for its intended purposes, including daily City operations, park recreational use, pedestrian, bicycle and vehicular transportation, and other public areas; and

WHEREAS, camping in such public areas does not allow the public to use those areas for the intended purposes; and

WHEREAS, camping should only occur in designated campgrounds with proper facilities; and

WHEREAS, pursuant to Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019) the Ninth Circuit Court of Appeals (1) determined that the United States Constitution prohibits imposition of criminal penalties for sitting, sleeping, or lying outside on public property, on homeless individuals who could not obtain shelter; and (2) identified that ordinances prohibiting sitting, lying, or sleeping outside at particular times or in particular locations may be constitutionally permissible since other public space would still be available, regardless of available shelter space; and

WHEREAS, the City Council hereby finds that the regulatory requirements established by the proposed amendments are necessary for the preservation of the public peace, health, safety, and welfare.

NOW, THEREFORE, the City Council of the City of Spokane Valley ordains as follows:

Section 1. Findings. The City Council hereby finds that the recitals set forth above are hereby adopted as findings for this Ordinance and incorporated herein as such.

Section 2. Adoption. Title 7 SVMC is hereby amended by adding a new chapter, to be designated “Chapter 7.50 Regulating Public Camping,” as set forth below:
7.05.010 Purpose.

It is the purpose of this chapter to prevent harm to the health and safety of the public and to promote the public health, safety and general welfare by keeping public streets, sidewalks, parks, and other public property within the City readily accessible to the public, and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for the purposes for which they were intended.

7.50.015 Definitions.

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

“camp” means to pitch, erect or occupy camp facilities, or to use camp paraphernalia or both for the purpose of, or in such a way as will facilitate remaining overnight, or parking a camper, recreational vehicle, trailer, or other vehicle for the purpose of remaining overnight.

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

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

“contraband” means any property that is unlawful to produce or possess.

“litter” shall have the same meaning as used in RCW 70.93.030(6) and (11) as adopted or may be amended.

“park or park facility” means any real property, building, structure, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks and pools.

“personal property” means an item that is:
1. reasonably recognizable as belonging to a person;
2. in its present condition has apparent utility and/or value; and
3. is not hazardous or unsanitary.

“right-of-way” shall have the same meaning as is stated in SVMC Appendix A.

“solid waste” shall have the same meaning as used in RCW 70.95.030(22) as adopted or may be amended.

“store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

“trail” means a public path constructed for the primary purpose of allowing recreational non-motorized transportation. The City currently has two trail systems, the Centennial Trail and the Appleway Trail.

“unauthorized encampment” means two or more camp facilities in an identifiable area which appear to be used for unlawful camping. For purposes of this chapter an identifiable area includes areas where the camp facilities are in sight of each other and/or areas where each camp facility is located within 300 feet of another structure.
7.50.020 Unlawful camping.

It is unlawful for any person to camp in the following areas, except as otherwise provided by the Spokane Valley Municipal Code or where specifically designated by the owner of such property:

A. Any right-of-way;
B. Any trail, park, or park facility;
C. Any publicly-owned parking lot or publicly-owned area, improved or unimproved; or
D. Any public area where camping obstructs or interferes with the intended public use of the property.

7.50.025 Storage of personal property in public places.

It is unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following areas, except as otherwise provided by the Spokane Valley Municipal Code:

A. Any right-of-way;
B. Any trail, park, or park facility;
C. Any publicly-owned parking lot or publicly-owned area, improved or unimproved; or
D. Any public area where storage of personal property obstructs or interferes with the intended public use of the property.

This section shall not apply to vehicles, including trailers, recreational vehicles, and campers, which are unoccupied and parked in rights-of-way, unless otherwise prohibited by law.

7.50.030 - Unauthorized encampments.

Upon a determination by law enforcement that an area constitutes an unauthorized encampment, the personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste may be removed subject to the following provisions:

A. If the unauthorized encampment is on park or park facilities, City Hall, or is at a location which results in a significant risk of harm to any person, then police may immediately remove any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste, which shall be stored in the same manner as set forth in SVMC 7.50.030(B)(2).

B. Prior to removing property from an unauthorized encampment on public property other than park property or park facilities, City Hall, or at a location which results in a significant risk of harm to any person, the following shall occur:

1. The City shall post at least a 48-hour advanced notice, which shall include the following:
   a. The address or location of the unauthorized encampment;
   b. A statement that camping in the area is prohibited by SVMC 7.50.020, 7.50.025, and/or 7.50.030;
   c. A statement that any individual continuing to use the area for unlawful camping may be subject to criminal penalties pursuant to chapter 7.50 SVMC.
   d. A statement that any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste remaining at the encampment after the notice period is subject to removal by the City.

2. At the end of the 48-hour notice period, any personal property, camping paraphernalia, camp facilities, and all other property, contraband, litter, and solid waste may be removed by City personnel or agents thereof.
a. Any personal property that is removed shall be stored by the City for at least 60 days prior to being disposed.
b. Notice of where personal property removed from the encampment may be claimed shall be posted at the location.
c. If the name and contact information for the owner of a particular item of personal property can reasonably be identified, the City shall attempt to contact the identified owner and provide notice that the item has been removed and how to claim the item.
d. Any contraband located at the encampment shall be seized and properly disposed or retained as evidence of criminal activity.
e. Any litter or solid waste found at the encampment shall be properly disposed.

C. Any individual who receives a notice under this section, or whose property is removed from an encampment, has a right to meet with the City Manager or designee to raise any concerns, objections, or extenuating circumstances. At the conclusion of the meeting, the City representative shall prepare a written decision detailing the individual's concerns, as well as the City’s response. Notice and procedure to set up a meeting shall be posted at or near the encampment site.

7.50.040 - Penalty for violations.

Violation of any of the provisions of chapter 7.50 SVMC is a misdemeanor, and shall be punished upon conviction of such violation by a fine of not more than $1,000 or by confinement not to exceed 90 days, or by both such fine and confinement.

7.50.050 Enforcement suspended.

Except as otherwise provided in this section, enforcement of criminal provisions of this chapter shall be suspended any time there is no space or beds available in regional homeless shelters that accept patrons from the City, to the extent such available space or beds are required by law. In such circumstances, all provisions of this chapter shall continue to apply to camping, storage of personal property, including camp facilities and camp paraphernalia, and unauthorized encampments at the real property containing City Hall (Spokane County parcel number 45201.0122) Balfour Park (Spokane County parcel numbers 45174.9061, 45174.9062, 45174.9031, and 45174.9059), and CenterPlace/Mirabeau Meadows (Spokane County parcel number 45105.9010).

7.50.060 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

Section 3. Other sections unchanged. All other provisions of Title 7 SVMC not specifically referenced hereto shall remain in full force and effect.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall be in full force and effect five days after publication of this Ordinance or summary thereof in the official newspaper of the City of Spokane Valley as provided by law.
Passed by the City Council this ___ day of November, 2019.

L.R. Higgins, Mayor

ATTEST:

Christine Bainbridge, City Clerk

Approved as to Form:

Office of the City Attorney

Date of Publication: _______________________
Effective Date: _________________________

Ordinance 19-019 Regulating Public Camping