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DATE: August 2, 2021
TO: Eric Holmes, City Manager
FROM: Jonathan Young, City Attorney 
RE: Supportive Campsite Pilot Program – Legal Considerations

Supportive Campsites Pilot Program: Legal Considerations

The prospect of establishing a City-sanctioned Supportive Campsite Pilot Program raises the following legal considerations, which are addressed in greater detail below:

- Recommended changes to VMC 8.22 Camping;
- Administrative Authority to Establish Supportive Campsites; and
- Constitutional scrutiny on themed campsites.

Recommended Changes to VMC 8.22 Camping

To establish City-approved Supportive Campsites (even on a pilot basis), certain minimum changes will be required to the Vancouver Municipal Code. Specifically, VMC 8.22.040 “Unlawful Camping” and VMC 8.22.050 “Unlawful Storage of Personal Property in Public Spaces” must be amended to provide an exception to allow camping 24-hours daily at City-approved locations. In consultation with the City’s Homeless Response Coordinator, the following additional changes (though not technically required to establish supportive campsites) are also recommended:

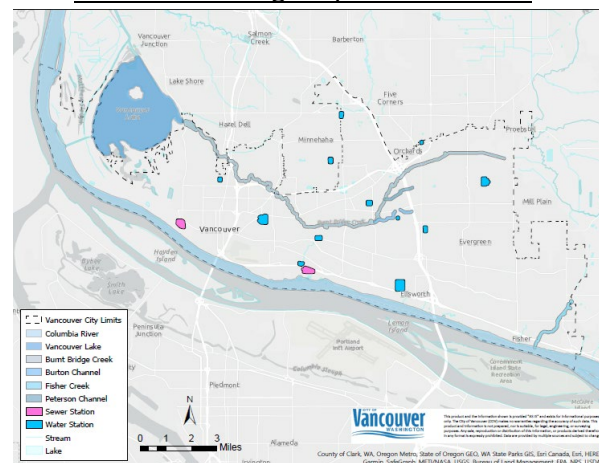
- Nighttime Employment: Staff recommends adding an exemption to the 6:30am-9:30pm prohibition on camping and storage of personal property for individuals who present satisfactory evidence of nighttime employment to the City Manager or designee.
- Camping Impact Areas: Staff recommends establishing ‘camping impact areas’ in which camping should be prohibited 24-hours daily (a) within 1000 feet of city-approved supportive campsites, and (b) within 200 feet of designated sensitive ecological areas.

1000-Foot Supportive Campsite Buffer: Staff's recommendation to prohibit camping within 1000 feet of city-approved supportive campsites is designed to avoid adverse secondary impacts of unlawful camping in the immediate vicinity of a city-approved Supportive Campsite. A 1000-foot buffer area is congruent with other dispersal requirements found elsewhere in the Vancouver Municipal Code¹ and is supported by the experience gleaned from the City's recent operation of the 2018 Grand Boulevard Navigation Center.

200-Foot Ecologically Sensitive Area Buffer: Staff recommends prohibiting camping within 200 feet of designated sensitive ecological areas. This recommendation is consistent with the policy underpinnings of [VMC 20.740](#) Critical Areas Protection, [VMC 20.760](#) Shoreline Management as well as this City Council's 2021-2022 biennial budget policy directive to further our community's environmental resilience. The selection of a recommended 200-foot buffer is designed to strike a delicate balance: on one hand being no larger than necessary (leaving ample public land available for camping between the hours of 9:30pm-6:30am) while on the other hand being sufficiently restrictive to achieve consistency with national environmental health standards. Notably, the [Leave No Trace Center](#) provides guidance for backcountry hikers indicating that disposal of human waste should never occur closer than 200' or 70 paces from water sources. A prohibition on camping within 200-feet of water sources is consistent with such guidance. The City's environmental health specialists have advised that specific locations that may be appropriate for designation as ecologically sensitive areas include: the Columbia River, Vancouver Lake, Burton Channel, Burnt Bridge Creek, Peterson Channel, Fisher's Creek as well as properties associated with the City's wastewater, water station and stormwater facilities:

Exhibit A – Ecologically Sensitive Areas

A full-size image of Staff-proposed ecologically sensitive areas accompanies this memorandum as Exhibit A.



In addition to prohibiting camping within 1000 feet of City-approved supportive campsites and within 200 feet of designated environmentally sensitive areas, City Staff also recommends expanding the Talkin' Trash and related litter removal services to provide services in these areas.

¹ See e.g., VMC 20.884.020 requiring 1000-foot disbursement of recreational marijuana facilities from specified locations.

Administrative Authority to Establish Supportive Campsites

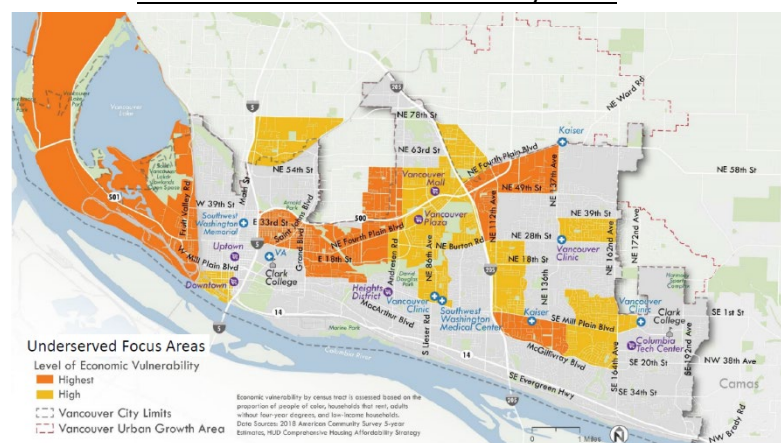
Supportive Campsites are not intended to remain in any single location permanently. Therefore, City Staff recommends that the Supportive Campsites be located at administratively selected sites in accordance with Council-approved placement guidelines. Allowing City Staff (i.e., the City Manager or designee) to select the specific locations of Supportive Campsites will increase flexibility and avoid legislative delays associated with the original placement, and subsequent relocation, of all City-approved Supportive Campsites. Meanwhile, the establishment of City Council-approved placement guidelines will provide policy-level direction as to appropriate criteria that should be considered when selecting locations for Supportive Campsites.

Policy Direction on appropriate locations: Staff proposes City Council's final approved placement guidelines might include criteria such as:

City Council-approved placement guidelines: (Proposed)
<ul style="list-style-type: none"> • Disperse Supportive Campsites equitably throughout the City • Avoid areas with heightened economic vulnerability * (See Exhibit B) • Ensure ADA accessibility to and within Supportive Campsites • Give preference to sites within 0.5 miles of public transit • Comply with all SEPA requirements

* Exhibit B – Economic Vulnerability Areas

A full-sized image of a map containing areas with a documented history of heightened Economic Vulnerability accompanies this memorandum as Exhibit B.



Administrative Authority: Once Council-approved guidelines have been established providing policy-level direction on the appropriate locations of City-approved Supportive Campsites, City Staff may initiate the process of setting up a Supportive Campsite using one of two processes that already exist within the Vancouver Municipal Code: (1) Right-of-way use permits issued under VMC 11.60.060 on City-owned rights-of-way; or (2) Temporary Use Permits issued under VMC 20.885 when Supportive Campsites are to be located outside of the public right-of-way.

Right-of-Way Use Permits: Chapter [11.60 VMC](#), the Right-of-Way Use Code, provides an existing mechanism that allows the City (or any member of the community) to submit an application to use the public right-of-way. Types of permitted uses include limited-term construction activities, longer-term activities such as the establishment of sidewalk cafés, bus stop shelters, street vending machines, and material encroachment permits for uses such as placement of billboards or cellular towers. In consultation with the Public Works Department, City Staff have determined that most applications for Supportive Campsites will likely be processed as a Type D Permit Application (similar to sidewalk cafés or bus stop shelters), since supportive campsites will include amenities such as:

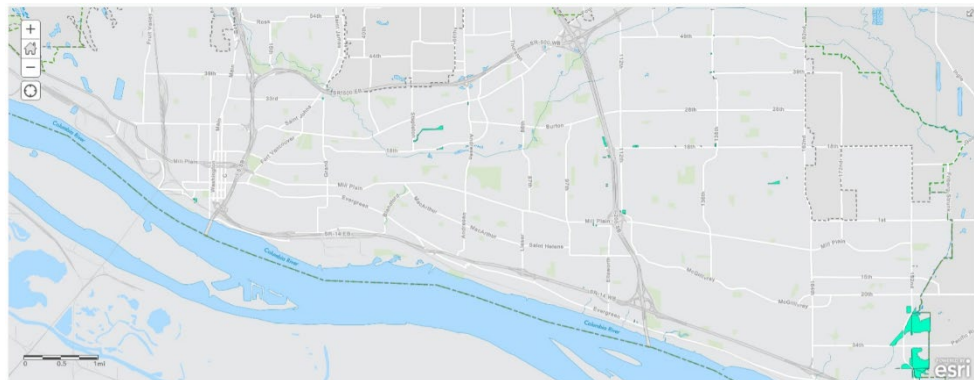
- Restrooms and sanitation stations;
- A camp host and community meeting structure;
- Perimeter fencing.

While there are (literally) miles of public right-of-way located within the City of Vancouver (e.g., all sidewalks), many people are surprised to learn that a considerable amount of the public right-of-way is not actually owned outright by the City. Instead, it is essentially an easement for public travel and other secondary purposes with legal ownership lying with the abutting property owners. (This is why streets, when vacated, generally become the property of the abutting property owner to the centerline of the right-of-way. More information on this topic can be found online courtesy of [MRSC](#).)

Notably, City Staff intends to only pursue right-of-way use permits for Supportive Campsites on land that is either leased, or owned outright, by the City of Vancouver – Staff is not proposing to use land owned by others for Supportive Campsites. As a result of this distinction, there are relatively few public rights-of-way that may be used for Supportive Campsites:

Exhibit C – City-owned rights-of-way

A full-sized image of a map containing City-owned rights-of-way accompanies this memorandum as Exhibit C.



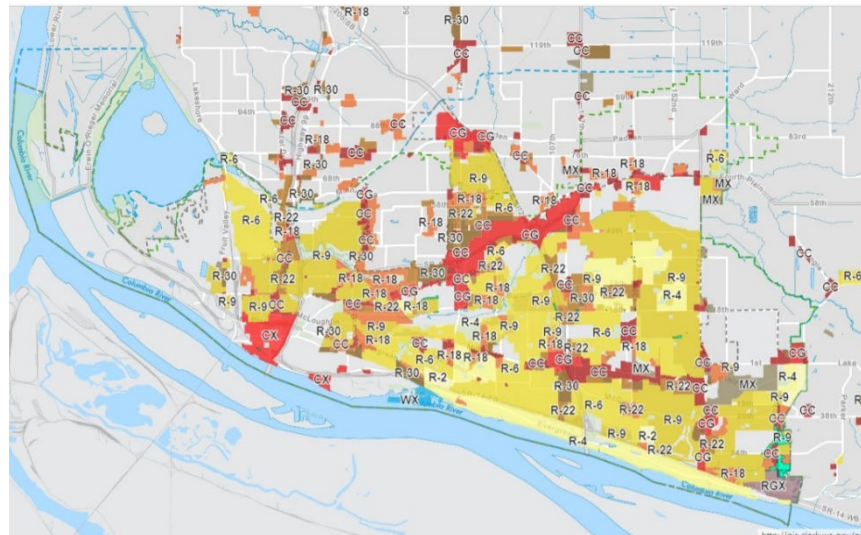
The application and review process for all administratively selected sites within the public right-of-way will necessarily include a review of potential environmental impacts under the State Environmental Policy Act (SEPA).

Temporary Use Permits: Given the relative scarcity of right-of-way land owned by the City, in some instances, Staff may choose to pursue a permit to establish a Supportive Campsite on land located outside of the public right-of-way. This is allowed under the City's existing land use and development code by virtue of a Temporary Use Permit.

To obtain a Temporary Use Permit, the City would submit an application to the City Planning Director and follow the process outlined in [Chapter 20.885 VMC](#). In general, temporary uses are generally allowed in higher-density residential and mixed-use commercial zones: R-2, R-4, R-6, R-9, R-18, R-22, R-30, R-35, CC, CG, CX, WX, MX, RGX:

Exhibit D – Zones where Temporary Uses Allowed

A full-sized image of a map containing areas zoned R-2, R-4, R-6, R-9, R-18, R-22, R-30, R-35, CC, CG, CX, WX, MX, RGX accompanies this memorandum as Exhibit D.



In pursuing a Temporary Use Permit the City would, again, comply with all applicable requirements of the State Environmental Policy Act (SEPA).

Constitutional Scrutiny on Themed Campsites

At the City's May 24, 2021 Workshop on Vancouver's Plan to Mitigate the Impacts of Unsheltered Homeless, City Council expressed interest in establishing 'themed campsites' such as camps dedicated to serving the needs of members of the LGBTQ community experiencing unsheltered homelessness. In response, Staff has explored three options for themed campsites:

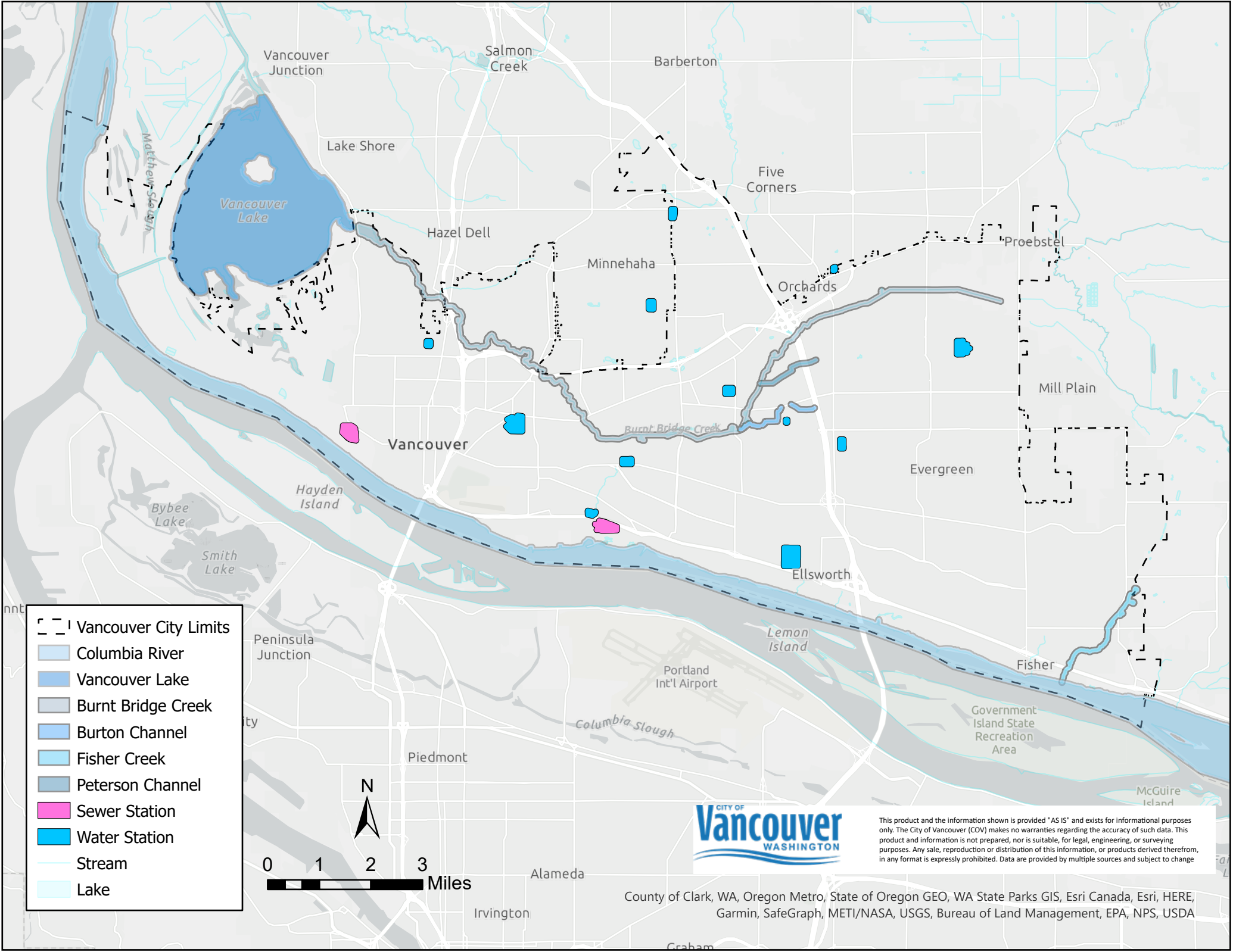
- ☐ Families with Children;
- ☐ Single-occupant female;
- ☐ Members of the LGBTQ community.

Legally, when public programs or services are made available to different people on the basis of sex, or family status,² those differentiations must be accomplished for a purpose, and in a manner, that passes Constitutional scrutiny. The United States Constitution requires that sex-based distinctions: (1) be drawn in response to an exceedingly persuasive purpose coupled with statistical (rather than anecdotal) information; (2) serve an important government objective; and (3) be substantially related to achieving those objectives.

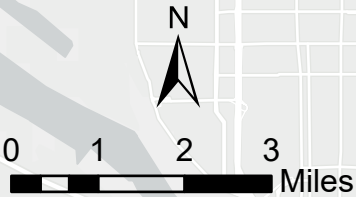
² Differentiations made on the basis of familial status raise a slightly lower level of Constitutional scrutiny.

The Vancouver Police Department (VPD) has been asked to undertake an analysis of crime trends among community members experiencing unsheltered homelessness to assist in preparing for Council's discussion of themed campsites. As will be discussed in greater detail at Council's August 2, 2021 Workshop, while VPD is able to analyze data concerning crimes against females experiencing homelessness versus crimes against males experiencing homelessness, there is a shortage of meaningful data regarding crimes against members of the LGBTQ community who are experiencing homelessness. This may be caused in part by underreporting, as well as the fact that for most crimes VPD does not distinguish victims by sexual orientation. City staff is considering whether there is available data on a regional or national level that would support themed campsites. City staff is also gathering input from our community members experiencing homelessness to determine which themed camps are most appropriate for our community. Accompanying these materials is a memorandum dated July 26, 2021, from VPD Crime Analysts J. Elliot and T. Michelson containing information that may assist Council in preparing for the August 2, 2021 workshop.

Exhibit A – Ecologically Sensitive Areas



- Vancouver City Limits
- Columbia River
- Vancouver Lake
- Burnt Bridge Creek
- Burton Channel
- Fisher Creek
- Peterson Channel
- Sewer Station
- Water Station
- Stream
- Lake



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County of Clark, WA, Oregon Metro, State of Oregon GEO, WA State Parks GIS, Esri Canada, Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

Exhibit B – Economic Vulnerability Areas

Exhibit C – City-owned rights-of-way

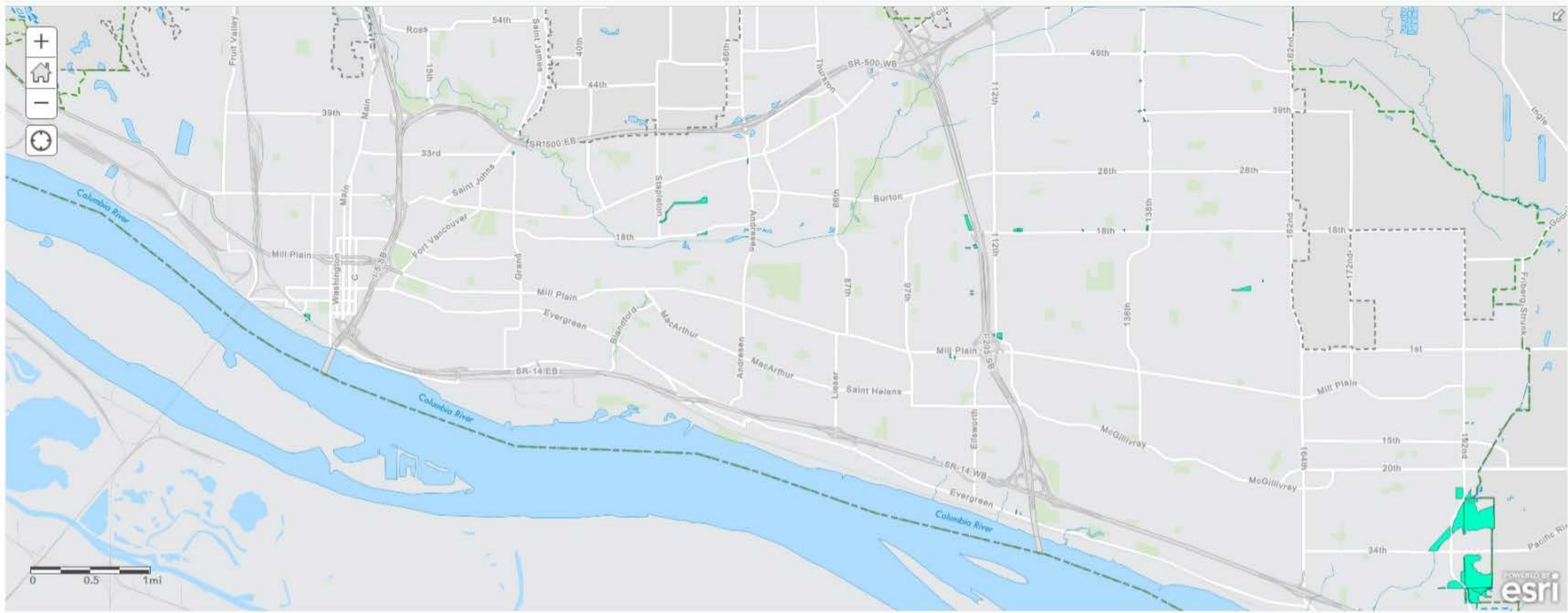


Exhibit D – Zones where Temporary Uses Allowed

