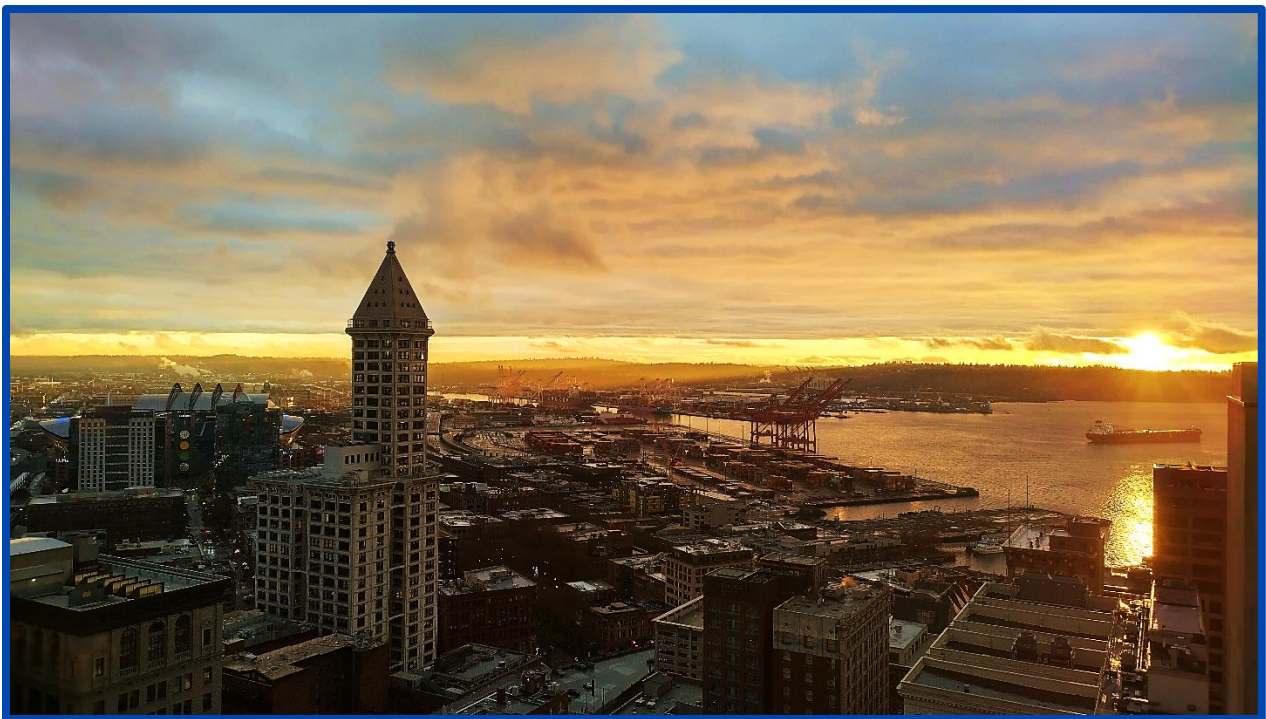




# 2022 Annual Report

SEATTLE CITY ATTORNEY'S OFFICE  
ANN DAVISON



March 2023

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# Letter from City Attorney Ann Davison

Dear Mayor and City Council of the City of Seattle:

Pursuant to Article XXII, Section 12 of the City Charter, I am hereby submitting the annual report of the City Attorney's Office for the year 2022.

When I took office as Seattle City Attorney in January 2022, I announced three major goals: (1) to improve public safety by restoring meaningful accountability in Seattle's municipal criminal justice system; (2) to provide the public with transparency into the operations of the Criminal Division; and (3) to provide first-rate legal representation of our city. After one year in office, I am proud of the progress our office has made on all three goals.

First, public safety must be a priority for Seattle's municipal government. For too many years, crime in Seattle increased and the public's confidence in the local government to address these serious challenges declined. The public correctly perceived that few consequences existed for involvement in misdemeanor criminal activity.

Now, we are beginning to change that. Under the stewardship of my Criminal Division Chief, Natalie Walton-Anderson, our office is filing more cases, making faster case-filing decisions, and is laser-focused on protecting victims as my aim has always been to re-center victims in the public safety dialogue. The numbers in this report reflect those achievements. In 2022, the City Attorney's Office filed twice as many cases compared to 2021 and made filing decisions in an average of 5 business days compared to 96 business days the prior year. In addition, the High Utilizer Initiative showed that a collaborative, focused effort on the persons committing the most crime could meaningfully reduce their impact on our neighborhoods, preventing thousands of crimes.

My second pledge to the residents of Seattle was to improve transparency about the operation of the Criminal Division. For too long, this office operated in a black box—with almost no public visibility into the function of the Criminal Division. With no visibility for the public or the Division, case filing decisions took months and the decline rate exceeded 50 percent. Today, the Criminal Division is a model of transparency thanks to our first ever data analytics manager and detailed quarterly reports on referrals, cases, and outcomes.

Third and finally, I committed to the public, elected officials, and city employees that Seattle would have one of the best municipal law departments in the country to handle the extraordinary breadth of complex legal matters that the City faces every day. With the leadership of my Civil Chief, Tom Kuffel, the City Attorney's Office continues to live up to its reputation for first-rate legal representation.

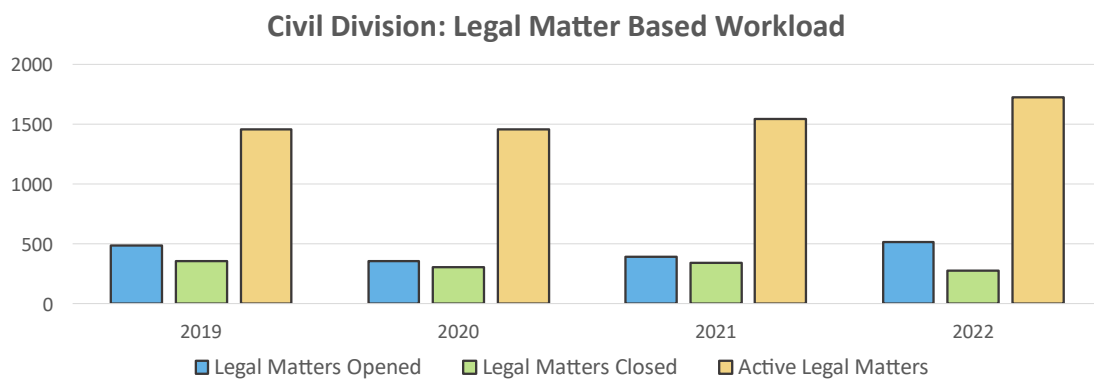
I wish to express my appreciation and gratitude to all members of the City Attorney's Office for their dedication, service, and professionalism.

Respectfully submitted,



# Civil Division Overview

The Civil Division provides comprehensive legal services to the City of Seattle government, including executive, judicial, and legislative branch officials, department heads, managers and staff, and City boards and commissions. In its role as an in-house law firm for the City, the Civil Division works closely with its clients to solve legal issues and represents the City in litigation and administrative proceedings in local, regional, state, and federal venues. The Civil Division consists of approximately 35 professional staff and 75 Assistant City Attorneys, organized into eight sections specializing in different areas of law: Civil Enforcement, Constitutional and Complex Litigation, Contracts and Utilities, Employment, Environmental Protection, Government Affairs, Land Use, and Torts.

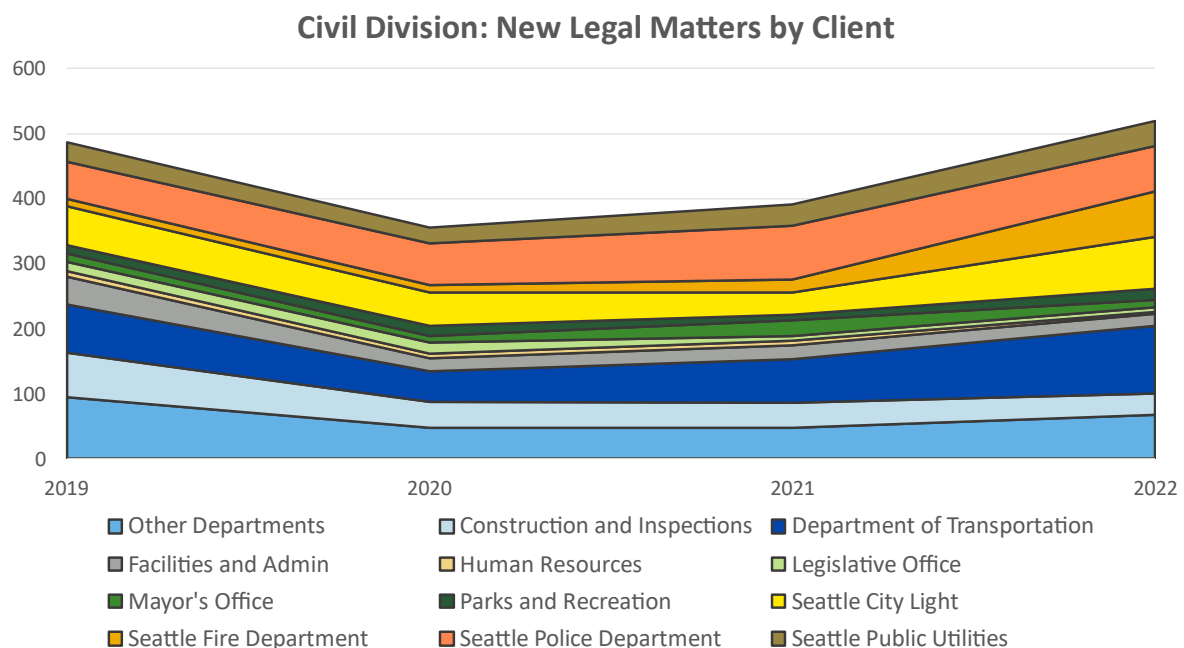


Civil Division attorneys track most of their legal work in legal matters. This chart shows the new legal matters created each year, the matters that were closed, and the total that are still active at some point in the year. Many cases, especially complex ones take years and some forms of advice can be ongoing for a very long time.

## Clients

The Civil Division served the following departments in 2022.

- **Seattle Department of Construction & Inspections (SDCI)** – permitting services, code compliance, design review, emergency management, land use, trade licensing, and other services
- **Department of Transportation (SDOT)** –streets, sidewalks, bike lanes, public spaces and other transportation system functions
- **Facilities and Administrative Services (FAS) (includes Finance)**–purchasing and contracting, Seattle Animal Shelter, real estate services, capital development, facilities operations, and other public facing and internal service divisions
- **Human Resources (SDHR)** – programs and services related to the City’s work force
- **Legislative Department (CC)** – City Council and related legislative services
- **Mayor’s Office (MO)** – directs and controls all City offices and departments except where the Charter provides otherwise.
- **Parks and Recreation (SPR)** – the City of Seattle park system
- **Seattle City Light (SCL)** – City electrical utility
- **Seattle Fire Department (SFD)**
- **Seattle Police Department (SPD)**
- **Seattle Public Utilities (SPU)** – water, sewer, drainage, and waste collection services, gas
- **Other Departments** – clients in other City departments not listed above



This chart shows the proportion and amount of new legal matters started each year by client.

# Civil Division Sections

## Civil Enforcement Section

The Civil Enforcement Section handles enforcement of all City regulations and collections. The Section litigates cases on behalf of the Department of Construction and Inspections (SDCI), Office of Labor Standards, Office of Civil Rights (SOCR), and many other departments. In 2022, Section attorneys obtained judgments and settlements amounting to \$335,461.88 and helped resolve non-compliance issues and educate owners and employers about compliance with City regulations.

Below are some examples of work done by the Civil Enforcement section:

### Civil Forfeitures

Section attorneys represent the Seattle Police Department (SPD) in civil forfeiture actions when an individual contests the department's seizure of personal and/or real property due to violation of the Uniform Controlled Substances Act or felony act. During 2022, the section settled real property cases totaling \$804,045.02, and personal property forfeitures totaling \$271,791.43. The real property cases included instances where single-family homes were used as sophisticated illegal marijuana grow operations involving hundreds of plants throughout multiple rooms. The operations threatened the integrity of Washington's regulated marijuana marketplace.

### Collections – *City of Seattle v. Rowe*

Once a Section attorney obtains a judgment in court, it is referred to the Collections Team for enforcement. The Section also receives direct referrals from City departments to recover damages owed to the City. In 2022, the section pursued and collected a total of \$909,467.77 on behalf of City departments. One example is *City of Seattle v. Rowe*, an SDCI matter involving twelve unkept, vacant, single-family properties in West Seattle. The owner did not maintain the vacant properties, and this affected the surrounding neighbors. The Section filed suit in Seattle Municipal Court on behalf of the City and, after trial, obtained judgments for civil penalties. The owner promptly sold the properties before the judgments were transferred to Superior Court and abstracts could be recorded with the King County Recorder. The owner then passed away. In the ensuing probate action Section attorneys negotiated an amended amount of \$255,000 that was paid by the estate.

### Seattle Animal Shelter - *Williams v. City of Seattle*

The section advises the Seattle Animal Shelter (Shelter) on dangerous animal declarations by the Director. This case involved a lawsuit challenging the constitutionality of Seattle Municipal Code (SMC) Chapter 9.25 related to Animal Control. Specifically, the owner argued that Seattle's definition of "dangerous dog" and "severe" were different and stricter than the state law on the same subject and therefore were preempted by state law. The owner's dog had a history of biting people and other animals. The Seattle Animal Shelter sent a preliminary determination of dangerous animal to the owner, and they sued in King County Superior Court. The judge granted the City's Motion for Summary Judgment and found the City's dangerous animal ordinance constitutional. The owner appealed, but the Court of Appeals affirmed the dismissal and later appeals were denied. The parties ultimately settled the case which included mandatory removal of the dog from the City and required notification of the dog's location.



### *City of Seattle v. 2113 Aurora Avenue North, LLC*

The Section prosecutes over a dozen different building and land use codes enforced by SDCI. In this case, SDCI received a complaint about construction in environmentally critical areas that included a steep slope and potential slide area next to Aurora Avenue North just south of the Aurora Avenue Bridge. Although the builder obtained a permit for the renovation, the permit allowed no ground disturbance in this sensitive area. The builder excavated significant areas of the steep lot between the house and the street and constructed large retaining walls with no permits or inspections. They also had a backhoe cut into the hillside south of the property, causing a neighbor to worry that their property was now unstable. This construction violated both the Seattle Residential Code and the Environmentally Critical Areas Code. Renovation, including work with heavy equipment, continued even after SDCI issued a Notice of Violation and both SDCI and the Seattle Department of Transportation (SDOT) issued Stop Work Orders. The Section filed suit against the homeowner for unpermitted renovations. While the case was pending, SDCI continued to work with the builder to obtain the proper permits and bring the property into compliance. After those discussions failed, the Court granted a Motion for Summary Judgment brought by Section counsel and entered judgements for the City in the amount of \$150,000.

### **Vacant Building Enforcement**

Vacant buildings, not maintained, can invite problems – including trespassers, drug activity, fire risk, and rodents – and affect the appearance of a neighborhood. Civil Enforcement attorneys serve on the City's interdepartmental workgroup to coordinate enforcement efforts and address the problems caused by these properties. The attorneys advise during the investigation into code violations and litigate these enforcement cases in the courts when the owners do not comply.

### *City of Seattle v. Pano Krokos (Churchill)*

This case involved junk storage and vacant building violations at a house owned by the defendant. The neighbors were frustrated with the owner due to the conditions on the property which continued for some time. The City sued, which ultimately convinced the owner to pay the civil penalties, clean up the conditions, and sell the house. Pictures of the before conditions are below.



### **Tree Protection Enforcement**

Section attorneys assist SDCI with its investigations and enforcement of Seattle's Tree Protection and Environmentally Critical Areas Ordinances. The City prohibits the removal of trees from Environmentally

Critical Areas such as steep hillsides, and removal or damage to “Exceptional Trees” that exceed a certain size. The Section works with SDCI, advising them on investigations and representing SDCI in Tree Protection enforcement in Seattle Municipal Court.

## Constitutional and Complex Litigation Section

The Constitutional and Complex Litigation Section (CCL) represents the City in litigation arising out of police action, legislation, or executive action. CCL attorneys also represents the City in Public Records Act (PRA) litigation, inquests, and affirmative litigation.

Below are some examples of work done by the Constitutional and Complex Litigation section:

### Inquests

CCL attorneys represent the City in the King County Executive’s revised and robust inquest process arising out of officer-involved fatalities that occur in jurisdictions within King County. In addition to the traditional inquiry into the facts and circumstances surrounding the fatality, the new inquest process requires discussions of policy and training. Each inquest requires significant commitment and resources by CCL.

### *Sinclair v. City of Seattle*

This case involved a federal due process claim brought by the mother of a young man shot and killed by a third party in the Capital Hill Occupied Protest zone in 2020. The District Court judge granted the motion to dismiss brought by CCL attorneys, agreeing that the plaintiff did not have a legally viable cause of action. In 2022, CCL attorneys successfully argued before the Ninth Circuit, which affirmed the District Court’s dismissal order.

### Complex Litigation Surrounding Public Records Law and the First Amendment

CCL attorneys continued to work on a multi-year litigation brought by SPD officers who were investigated for allegedly attending the riots on January 6, 2021, in Washington, DC. In September 2022, Division I of the Court of Appeals heard oral argument from CCL attorneys and other counsel of record on issues that addressed the intersection of the P and the First Amendment.

### Opioids Litigation

CCL attorneys assisted in facilitating the first large-scale opioid litigation settlement arising out of the City’s cases against opioid manufacturers and distributors. CCL attorneys continue to partner with outside counsel in other litigation arising out of the ongoing opioid epidemic.

### Homelessness Litigation

The Section manages the City’s litigation on homelessness issues, including legal challenges to City homeless encampment policies. In 2022, CCL attorneys also filed an amicus brief in the Ninth Circuit in a case involving municipal discretion in responding to the individualized needs of homeless person’s within the municipality’s jurisdiction.



## Seattle Police Department Consent Decree Representation

In 2012, the City and United States Department of Justice (DOJ) entered into a Consent Decree requiring reforms to ensure public trust and officer safety. The Consent Decree is overseen by the United States District Court and determines when federal oversight may be lifted based on progress and compliance. The Court appointed a Monitor to oversee implementation of the Consent Decree and advise the Court on progress. CCL attorneys continue to advise City clients and work with DOJ and Monitoring Team partners on Consent Decree issues.

## Contracts and Utilities Section

The Contracts and Utilities Section provides legal services to every City department addressing a wide scope of City services and activities. Clients and issues include the City's municipal utilities (Seattle City Light [SCL] and Seattle Public Utilities [SPU]); bond financing; the City's Equitable Development Initiative; Waterfront Park construction, operations, and development; millions of dollars in low-income housing grants; contracts with the King County Regional Homelessness Authority; human services contracts; childcare and education funding agreements; telecommunications issue; purchasing of goods and services; public works contracting and claims; Parks and Recreation (SPR) property issues and concessions; and a variety of leases, easements, real property acquisitions, and transfers.

Below are some examples of work done by the Contracts and Utilities section:

### Affordable Housing

Section attorneys supported the Office of Housing (OH) with OH funding awards in another record-breaking year of loan closings. The OH's affordable rental housing loan closings in 2022 totaled over \$228 million. This included over 22 loan closings for approximately 1,600 units of housing, with more than 380 units dedicated for homeless persons. Section attorneys advised on structuring, documenting and developing these investments which will help those facing housing insecurity for decades to come. Section attorneys also supported OH with its Multifamily Tax Exemption (MFTE) program, which provides a property tax exemption on residential improvements in exchange for limiting housing costs for income-qualified households on a percentage of the housing units. The program resulted in over 800 additional MFTE-restricted units in 2022.

### SPU Ship Canal Water Quality Improvement Project

Section attorneys continue to provide SPU with legal services associated with this estimated \$570 million capital project, of which the "Mudhoney" tunnel drilling is just one component. In 2022, attorneys provided legal assistance to SPU on construction easements, contractor disputes, and additional anticipated project contracts.

### SR 520 Agreements Between Seattle Parks and Recreation and WSDOT

Section attorney played a significant role in SPR's negotiations with WSDOT to complete property exchanges to allow the Washington State Department of Transportation (WSDOT) to build a new Portage Bay Bridge and a landscaped Roanoke Lid connecting Roanoke Park to North Capitol Hill. In exchange, WSDOT will transfer a 27-acre peninsula to the City that will be suitable for development as a north entry to the Arboretum. WSDOT agreed to pay the City \$22,247,665 as a mitigation payment that the City will use to improve the Arboretum. Section attorneys assisted City clients in drafting and

negotiating a procedures agreement outlining each agency's roles and responsibilities during construction; an operation and maintenance agreement setting forth responsibilities post-construction; and four interagency agreements between WSDOT and SCL, SPU, Seattle IT, and SDOT.

## Seattle Center Campus Signage

Section attorneys assisted Seattle Center with an agreement with the Climate Pledge Arena tenant for the City's acquisition of a turnkey Seattle Center campus digital signage program. The signage enhances visitor wayfinding, includes more signage for resident organizations, and provides needed revenue to the Seattle Center.

## Debt Financing

Section attorneys provided in-house legal support to the City's Department of Finance and Administrative Services (FAS) team for annual bond issuances and other debt financing projects. In 2022, this financing was critical for the support of significant civic projects, including the repair of the West Seattle Bridge and the redevelopment of the City's central waterfront area, including the Oceanfront Pavilion Project at the Seattle Aquarium, and City utility infrastructure.

## Telecommunications

Section attorneys have expertise in this complex and rapidly changing area of law. Section attorneys regularly advise interdepartmental clients as they navigate and balance the City's need to protect local authority while facilitating the deployment of next generation telecommunications infrastructure such as 5G in Seattle on SCL poles, in City right of way, on City buildings, and on other property. This advice helps City clients to make process improvements and work collaboratively with the industry while protecting the City's interests. For example, in 2022, the Section advised SDCI on new policies and procedures for deployment of antennas on City buildings; advised Seattle Center regarding wireless deployment campus wide, including new leases and an RFP for a Neutral Wireless Infrastructure Provider; advised Seattle's Office of Waterfront and Civic Projects to review and approve applications for deployment of poles along the Waterfront; and assisted SCL in implementing new wireless site agreements to lease space on SCL poles and the Master Pole Attachment Agreement and accompanying Department Policy and Procedure for wireline pole attachments.

## WSDOT Transportation Projects

The Section advises interdepartmental clients on WSDOT's major projects in Seattle. In addition to the Portage Bay Bridge project, Section attorneys negotiated and drafted real property documents including an easement with FAS for transfer of a portion of Fire Station 22 (and associated City legislation); settled disputes with WSDOT before closeout of several projects of WSDOT's SR 99 Alaskan Way Viaduct Transportation Program; and drafted and negotiated letters of approval for accepting City infrastructure constructed as part of the Viaduct Demolition Project and the Decommissioning of the Battery Street Tunnel Project.

## Employment Section

The Employment Section, along with the City's Department of Human Resources, is responsible for personnel policy development and labor relations matters, including litigation, civil service and arbitration proceedings. With over 11,000 City employees, including many union members, the personnel and labor issues facing the City are complex and diverse.

Below are some examples of work done by the Employment section:

### Termination of Seattle Fire Department Battalion Chief Upheld

A Seattle Fire Department (SFD) Battalion Chief was terminated from City employment after publicly encouraging their children to shoot participants in a Black Lives Matter protest passing by their residence. The Battalion Chief challenged the decision, and an Employment attorney successfully persuaded an arbitrator to uphold the termination. The arbitrator found that the Battalion Chief violated the City's code of conduct, and their actions caused harm to SFD's reputation and interfered with its ability to provide services to the community during the summer of 2020.

### Termination of Evidence Technician Upheld

An evidence technician at SPD was terminated from City employment after wiping a weapon clean of all fingerprints to conceal the improper transfer of their own fingerprints onto the same, destroying key evidence supporting a criminal investigation. An Employment attorney successfully persuaded an arbitrator to uphold the termination, finding the Police Chief had just cause to impose this level of discipline.

### COVID and the Workplace

Employment Section attorneys continued to collectively advise on all aspects regarding COVID-19 and the workplace, including the City's Vaccine Mandate, Alternative Work Arrangements policies and guidelines, and Return to Office policies and procedures. The pandemic continued to bring new and unprecedented challenges to City policymakers, and attorneys in the Employment Section continued to navigate a shifting legal landscape in federal, state, and local laws.

### Collective Bargaining and Labor Relations

The Employment Section attorneys continued to work with the Department of Human Resources Labor Relations group to maintain effective relationships with the City's Labor Partners, and foster collaboration between Labor Relations and all City departments. This included providing legal advice as to the implementation and outcomes of proposed bargaining strategy, and defending City departments and Labor Relations in arbitrations resulting from grievances, contract interpretation issues and appeals of disciplinary decisions.

### Workers' Compensation Benefits

The Employment Section contains a small practice group dedicated to providing legal advice and defending litigation involving the City's administration of workers' compensation benefits. In 2022, this practice group successfully obtained two published appellate decisions in the City's favor, which clarified and established new law in Washington regarding the requirements for filing workers' compensation claims and the criteria for establishing strokes as industrial injuries.

## Civil Service

Employment Section attorneys continued to provide legal advice and defend litigation arising out of the City's Civil Service infrastructure. This work includes not only appearing before the City's two Civil Service Commissions to defend appeals, but also to advise the Executive Director and Commissioners as to decisions and orders, procedural and jurisdictional issues, and rulemaking. The Employment Section also supports and fosters collaboration between the Commissions and the City departments who employ workers with civil service status.

## Transition and Establishment of New Administrations

2022 brought the inauguration of a new Mayor, City Attorney and at-large City Council member. Employment Section attorneys provided not only thought partnership and legal advice to newly elected officials regarding their roles and responsibilities, but also regarding the appointment of new cabinet members, senior leadership positions and staff to implement new missions and organizational structures.

## Race and Social Justice Initiative

The Employment Section continues to provide legal advice and support to City departments regarding implementing the City's Race and Social Justice Initiative. This includes supporting City departments in upholding the values and intent of the Initiative, whether in applying an equity lens to internal business practices and delivery of services to the public or in promoting a workplace free of discrimination.

## Human Resources and Workforce Management

Employment Section attorneys continue to provide legal advice to City departments regarding the management of their employees, including but not limited to workplace policies and procedures, performance management, discipline, Americans with Disabilities Act accommodations, leave and benefit administration, and investigations.

## Environmental Protection Section

The Environmental Protection Section provides legal counsel on a full range of environmental issues, including Superfund cleanups, water resources, recovery actions, the Endangered Species Act, and long-term policy development.

Below are some examples of work done by the Environmental Protection section:

### *City of Seattle v. Monsanto*

In 2016, the Environmental Protection attorney, in partnership with outside counsel, sued Monsanto on behalf of the City for money to clean up polychlorinated biphenyl (PCB) contamination in the Lower Duwamish Waterway (LDW) and to reduce the number of PCBs continuing to enter the City's stormwater system. The City claims Monsanto created a "public nuisance" by producing and marketing PCBs for products, such as exterior building paint and caulk, and that Monsanto knew would cause PCBs contaminating the environment. PCBs are "forever" chemicals that do not break down over time and that accumulate in animal fat, so people and wildlife that eat PCB-contaminated fish or shellfish have increasing levels of PCBs in their bodies. Fish and shellfish that spend their lives in the Lower Duwamish are not safe to eat due to PCBs. Salmon are safe, because they pass through the Lower Duwamish

quickly. PCBs cause a wide variety of illnesses, including cancer, birth defects and problems with the reproductive and neurological systems. In 2022, the City and Monsanto filed cross motions for summary judgment and motions regarding each other's expert witnesses. The case is now set for trial in June 2023.

## Gas Works Park

The Environmental Protection Section advises City departments regarding contaminated sites. For Gas Works Park, Section attorneys advise SPR and SPU as they navigate regulatory requirements. In 2022, the City and Puget Sound Energy (PSE) conducted a remedial investigation and feasibility study (RI/FS) for Gas Works Park to address contamination in the sediments of the lake adjacent to the park. The contamination is from a former manufactured gas plant, a tar refinery, and other historical industrial activities on Lake Union. The RI/FS describes the areas requiring remediation, identifies and evaluates a range of cleanup action alternatives, and identifies a preferred alternative to address the contamination. An amended order issued by the Washington Department of Ecology (Ecology) and agreed to by PSE and the City requires development of a preliminary cleanup action plan based on the RI/FS. The RI/FS and the amended order went out for public comment October 24<sup>th</sup> through November 22, 2022. In 2023, Ecology plans to issue a cleanup action plan for public review.

## Lower Duwamish Superfund Site

For over 30 years, Section attorneys have advised City departments on regulatory requirements applicable to contamination found in the LDW. In 2022, a major milestone was reached in an alternative dispute resolution process, called the Duwamish Allocation, that involved over forty Potentially Responsible Parties for contamination in the LDW. After eight years, the Allocator issued their Final Report and the Allocation Parties began settlement negotiations to resolve which Parties would sign an Environmental Protection Agency (EPA) Consent Decree to perform the remaining cleanup actions required by EPA and Ecology, and which would "cash out" by paying into a dedicated fund for the cleanup. Section attorneys handled the lengthy Allocation process and are now leading negotiations for the City, which are ongoing. The remaining cleanup activities are estimated to cost around \$700 million, therefore the settlements are significant both monetarily and for the future of the LDW.

## South Park Landfill

Section attorneys often advise departments as they navigate the complex regulatory schemes that apply to contaminated property. For example, the South Park Landfill is a closed solid waste landfill near the South Park neighborhood. In 2009, the City and a private party that owned part of the former landfill site entered an Agreed Order with Ecology to investigate the site and develop a cleanup action plan. In 2019, the City signed a Consent Decree which described the remedial actions to be taken at the site. SPU staff, assisted by Section attorneys, are negotiating an amendment to the Agreed Order to accommodate a change in the City's development plans for the part of the site the City owns. A new consent decree is also being negotiated. The new consent decree will require the City, along with other parties, to implement the cleanup action plan.

## Side Sewer and Stormwater Enforcement

The Section provides ongoing advice to City staff on violations of the City's Side Sewer and Stormwater Codes. Side sewers connect private property to the City's sewer system. The side sewers are owned by the private property owner and the owner is responsible for proper maintenance. Examples of recently

issued notices of violation include an unpermitted discharge of sewage to a water body; failure of a restaurant to install and maintain a grease interceptor to minimize or eliminate the fats, oils, and grease entering the sewer system; a damaged private side sewer causing a sinkhole in the City right-of-way; and unpermitted discharge of a commercial cleaning solution to the public drainage system. The City's Stormwater Code prohibits releases of contaminants into stormwater and requires property owners to use Best Management Practices to prevent such releases. Examples of violations are paint contaminating stormwater, dumping of waste into a storm drain, and lack of covers on outdoor waste containers.

## Regulatory Advice regarding Clean Water

The Environmental Protection Section monitors constantly developing clean water regulations so it can advise City utilities and other departments how to comply. In 2022, attorneys tracked federal rulemaking, a related federal Supreme Court case about which waters are protected by the federal Clean Water Act, and federal and state action in setting water quality criteria to protect human health (limiting toxics) and salmon spawning (providing for adequate dissolved oxygen and limiting fine sediment). The Section monitored Ecology's setting of priorities for its revisions to water quality standards over the next few years, and reviewed Ecology's amendments to listings of waters that do not meet standards and therefore need water quality cleanup plans. The Section also followed Ecology's issuance of general permits to water dischargers to prevent pollutants from entering state waters, and Ecology's innovations in cleanup plans for state waters. Finally, the Section followed emerging concerns, such as the forever chemicals perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), tracking multi-disciplinary regulations designed to curb chemical releases into the environment, to inform cleanup of polluted waters, and to promote alternatives to these chemicals.

## Government Affairs Section

The Government Affairs Section (GA) advises on a variety of local government laws such as municipal finance and budgeting, initiatives and charter issues, legislation drafting, public disclosure and inter/intra-governmental relations. GA attorneys also litigate and advise on tax issues.

Below are some examples of work done by the Government Affairs section:

### *Seattle Chamber of Commerce v. City of Seattle*

Attorneys in GA successfully defended the City's Payroll Expense Tax (PET) against a lawsuit brought by the Seattle Metropolitan Chamber of Commerce (Chamber). The Chamber challenged the PET, arguing it imposes an illegal income tax on wages. The Court of Appeals upheld the tax, finding it a valid exercise of the City's broad authority to tax business transactions. The PET is a tax on employers with payroll in the City of more than \$7 million and is an annual source of over \$200+ million.

### Payroll Expense Tax Rulemaking

GA attorneys worked closely with FAS to draft Seattle Business Tax Rule 5-980, a comprehensive interpretation of the PET Code (SMC Chapter 5.38). The rule-making process invited participation from hundreds of stakeholders over a 15-month period, culminating in a rule that guides taxpayers in the applicability of the tax, along with reporting and filing methodology. GA and FAS continue to update the rule with real-world examples and guidance.



## Public Records Act and Records Retention Trainings

GA attorneys provide regular PRA and Records Retention trainings to City elected officials and City departments. This year, these trainings included the newly elected Mayor and City Attorney. At the request of both the Mayor and City Attorney, GA attorneys provided trainings to the entire Mayor's Office Staff, new Departmental Directors in Executive branch departments and to CAO executive staff. Regular trainings this year also included presentations to the CAO's Criminal Division, Office of Planning and Community Development, Department of Neighborhoods (DON), Seattle Office of Civil Rights Enforcement Staff, Legislative Branch – Legislative Aides, and City Budget Office, among other groups. GA attorneys were also involved in advising on the Citywide PRA/Records Retention training assigned to all City employees as of late December.

## Park District Six-Year Spending Plan

For the first time since the Seattle Metropolitan Park District's creation and after delays caused by the COVID-19 pandemic, the Park District and the City engaged in developing and agreeing to a six-year spending plan under their interlocal agreement. GA attorneys advised both bodies on their respective authorities in developing the plan, and preparation and approval of the plan itself. The Park District successfully passed its 2023-2028 Financial Plan, which governs how \$778 million of Park District funds will be spent by the City on SPR projects over the next six years.

## Redistricting Commission

For the first time in its history, the City redrew the boundaries of its Council districts. GA attorneys advised the interdepartmental redistricting workgroup and DON on setting up the City's first Redistricting Commission under the City Charter. Our attorneys advised the Redistricting Commission on the City Charter, federal and state redistricting law, the Voting Rights Act, the Washington Voting Rights Act, and other statutes such as the PRA and Open Public Meetings Act. As a result, the City Redistricting Commission delivered a revised district map on time that avoided any legal challenge.

## Legislative Process

The CAO plays a central role in preparing all legislation sent to the City Council for consideration. Besides legal review of specific subjects by the attorneys, technical review of every ordinance and resolution is carried out by the GA legislative editors, including as the City's Code Reviser.. In this role they ensure that proposed legislation meets City drafting standards and is generally accurate and accessible to the public.

In 2022, GA legislative editors began a comprehensive overhaul of the City's Legislation and Code Drafting Manual, which provides rules, advice, and examples to employees across the City on drafting legislation. The latest update seeks to balance quick guidelines with clear illustrations of situations. The GA legislative editors also partnered with the Office of the City Clerk to provide two trainings on how to search and amend the SMC. The presentation distinguished between different forms of municipal laws (the City Charter, ordinances, resolutions, and department rules) and explained why Seattle codifies certain legislation. Through their work to establish consistent drafting standards and educate employees on the implications of various legislative actions, GA legislative editors help to minimize time lost to drafting errors and to improve the clarity and effectiveness of all City legislation.

## Land Use Section

The Land Use Section provides legal counsel on zoning, planning, growth management, code enforcement, the State Environmental Policy Act, low-income housing development, preservation of historic properties, and acquisition of public property for open space, parks, and other public facilities.

Below are some examples of work done by the Land Use section:

### Pandemic-Related Tenant Protections

When the pandemic hit, the economic fallout threatened to dramatically increase evictions, complicating efforts to protect residents from the virus and its related financial hardships. On short notice, Land Use Section attorneys helped the Council and Mayor enact several temporary tenant protections—including eviction bans—to meet this challenge and then defended those measures against challenges from landlords. In 2022, this resulted in solid rulings in the City’s favor in federal court (*El Papel v. City of Seattle*, now on appeal to the Ninth Circuit Court of Appeals) and state court (*Rental Housing Ass’n of Wash. v. City of Seattle*).

### The Burke-Gilman “Missing Link”

For years the City has worked to complete the Burke-Gilman Trail’s “Missing Link” through the Ballard waterfront industrial area, but a persistent string of challenges from the project’s opponents tangled the project in different courtrooms and erected several hurdles. Land Use Section attorneys are there every step of the way to advocate for the project, untangle the litigation knots, and note pathways around legal obstacles. In 2022, this yielded a redesigned project now before the State Shoreline Hearings Board, which might have opportunity to resolve the dispute for good.

### Amendments to City Tree Protections

City officials are considering how best to amend City tree protections. To do that consistent with state law, the City had to analyze the environmental impacts of potential amendments. In 2022, Land Use Section attorneys advised on that analysis and then successfully defended it when it was challenged by the Master Builder Association of King and Snohomish Counties.

### Historic Preservation

Land Use Section attorneys work closely with DON historic preservation staff to craft regulations to maintain these resources while allowing property owners to prosper—in 2022, that work focused on several properties going through the landmarking process. The attorneys also advised on applying those regulations to development proposals and helped the volunteer commissions and boards that decide on historic properties.

### West Seattle Low Bridge Vehicle Use Management

With the closure of the West Seattle High Bridge for repairs, the City needed to regulate the volume of vehicles using the low bridge. The City determined the volume of vehicles the low bridge could accommodate that included first responders, vehicles accessing Harbor Island, and other classes of vehicles. Based on changes in state and City law, vehicles without permission to use the low bridge were initially warned and later ticketed. Land Use Section attorneys guided SDOT throughout the successful implementation of this program.

## Defending Permit Decisions

As Seattle continues to grow and densify, Land Use Section attorneys frequently are called on to defend City decisions on development applications. In one example from 2022, *Fischer Studio Buildings Condominium Owner's Association v. City of Seattle*, neighbors appealed a decision approving a new downtown residential tower. Working with developer's attorneys, a Land Use Section attorney successfully defended the decision in the Hearing Examiner appeal, and in the appeal of the Examiner's decision to King County Superior Court.

In another example, *Sherrard v. City of Seattle*, a neighborhood resident challenged a design review decision for a seven-story, mixed-use apartment building with commercial space in the Green Lake neighborhood, raising fourteen challenges including various notice and process issues and issues under the State Environmental Policy Act. A Land Use Section attorney successfully defended the decision in a Hearing Examiner appeal and in a subsequent appeal in King County Superior Court.

## Seattle's Long-Term Vision for Managing Growth

Washington adopted the Growth Management Act three decades ago to require cities and towns to plan for growth, so it preserves resources, limits sprawl, and focuses growth in denser, urban environments. This plan must be spelled out in Seattle's comprehensive plan—a blueprint for managing our growth for decades to come that must be updated periodically. In 2022, Land Use Section attorneys worked closely with City planning staff to help them craft proposed amendments to the City's plan that comport with the GMA and other laws, and to conduct the environmental review that must accompany those amendments.

## Torts Section

The Torts Section primarily engages in litigation. This section defends the City in personal injury and property damage cases, which span the spectrum from minor matters to multimillion-dollar lawsuits.

Below are some examples of work done by the Torts section:

### *Gifford v. City of Seattle*

A Seattle Police Officer alleged he sustained on-the-job injuries from PCB exposure and sought to recover both workers compensation benefits and sued the City for negligence and sought additional compensation. Following a multi-week jury trial, in which his counsel asked the jury to award him millions of dollars, the jurors concluded the City was not at fault for the officer's injuries.

## Capitol Hill Occupied Protest Litigation

Business owners, property owners, and residents brought the Hunters Capital case as a purported class action against the City following the creation of the CHOP in 2020. They argued that every business, property owner and resident within a few blocks of the CHOP was properly part of a class action and entitled to damages. The City succeeded in defeating the motion for class certification. A contrary ruling could have resulted in significant financial exposure for the City.

### *Marigold v. City of Seattle*

Most cases handled by the Torts Section are resolved by agreement or dismissed on motions. Here, Torts helped the City negotiate resolution of a lawsuit alleging that the City negligently failed to issue a license to a retail marijuana business.

### *Luna v. City of Seattle*

Here, the plaintiff alleged that the City had engaged in discriminatory code enforcement regarding construction at a site at which the plaintiff worked. The plaintiff sought over \$3 million in damages. The Torts section succeeded in getting the case dismissed on a motion with no payment by the City.

### *Lago v. City of Seattle*

The plaintiff alleged that the City negligently provided the wrong electrical service at a construction site and sought hundreds of thousands of dollars in damages. The Torts Section defended the City and negotiated a settlement on favorable terms.

### *Rogerson v. City of Seattle*

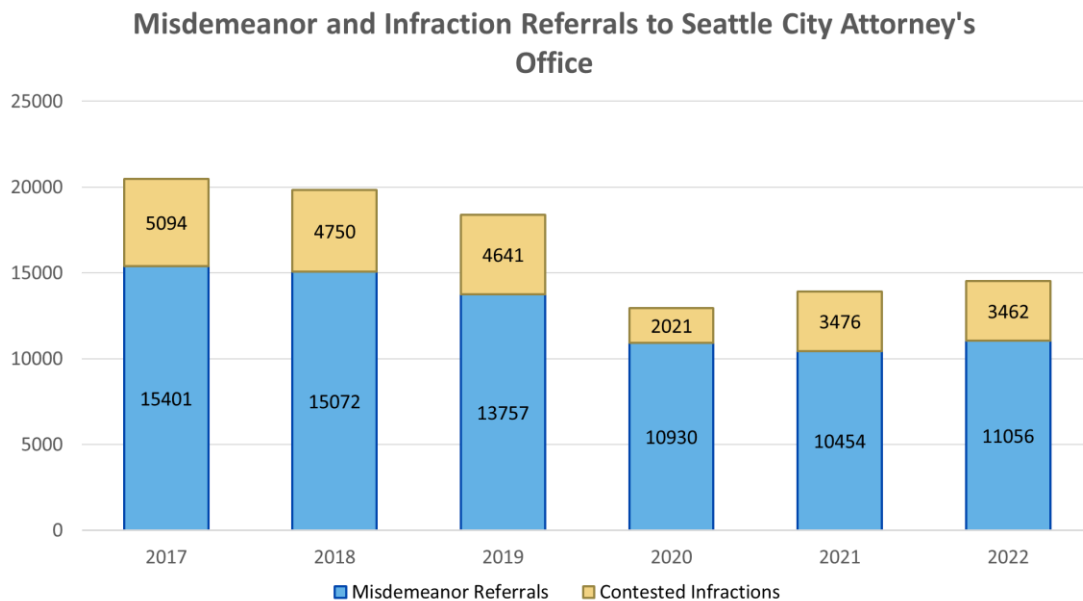
Here, the plaintiff alleged the City failed to test sexual assault kits within a reasonable period of time. The Torts Section drafted and successfully moved for summary judgment. The trial court's ruling dismissing the City is on appeal.

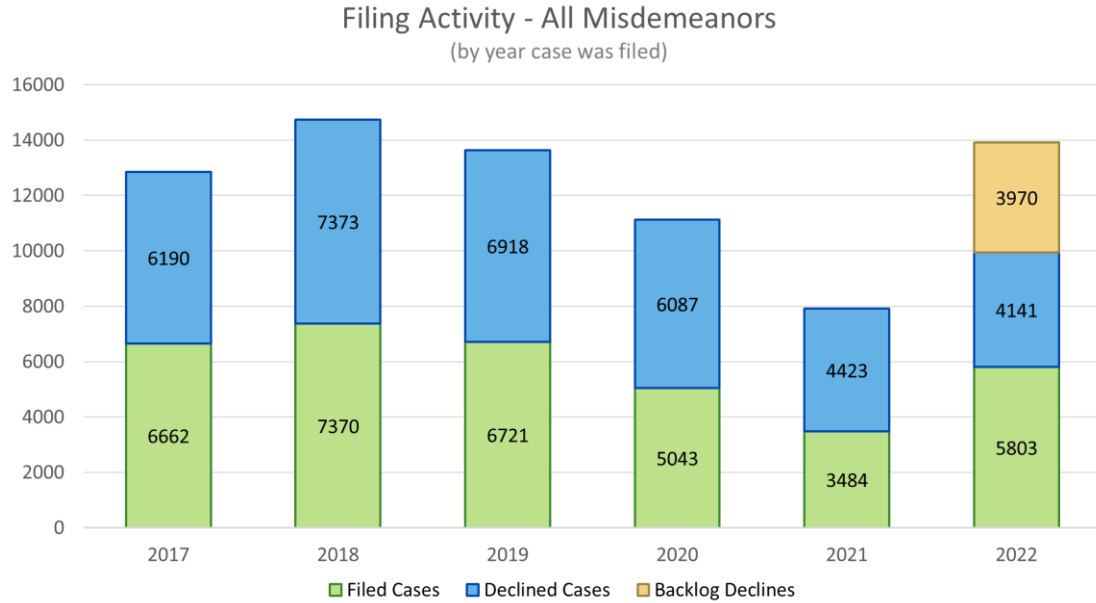
# Criminal Division Overview

The Criminal Division is responsible for prosecuting all misdemeanor crimes that are referred by the Seattle Police Department, representing the City in contested infractions before the Seattle Municipal Court, and managing many forms of alternatives to traditional prosecution. The Criminal Division is split into sections based on expertise and subject area:

- **Review and Filing Unit** – makes filing decisions on incoming police referrals;
- **Domestic Violence Unit** – prosecutes all domestic violence and other specialty cases like child abuse or animal cruelty;
- **Trial Team Unit** – the main trial unit for everything but domestic violence and specialty court cases;
- **Specialty Courts Unit** – responsible for all cases in alternative courts, LEAD, and infractions;
- **Pre-File Diversion Unit** – qualifying individuals who complete a diversion program have their cases declined.
- **Appellate Unit** – responsible for handling appeals and writs filed in King County Superior Court;
- **Case Prep & Prosecutorial Support Units** – skilled support staff to assist prosecutors.
- **Victim Advocates** – 8 domestic violence and 2 (1 added in 2022) general crimes victim advocates

The City Attorney's Office typically sees about 11,000 misdemeanor referrals from the Seattle Police Department and about 3,000 contested infractions from the Seattle Municipal Court. Referrals started to decline pre-pandemic when the police department started to face staffing issues and dropped drastically in 2020.



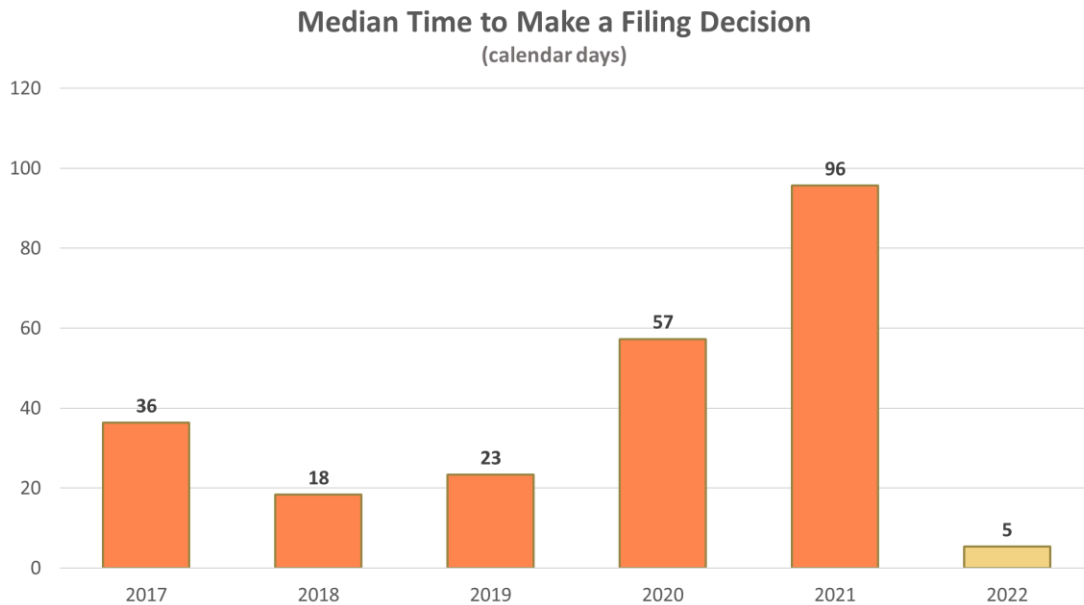


2022 saw an almost doubling of filing activity over 2021. Nearly half of the declined cases were very old referrals that were part of a backlog that grew to almost 5,000 by the start of 2022. More information on the backlog can be found below.



# Criminal Division Highlights

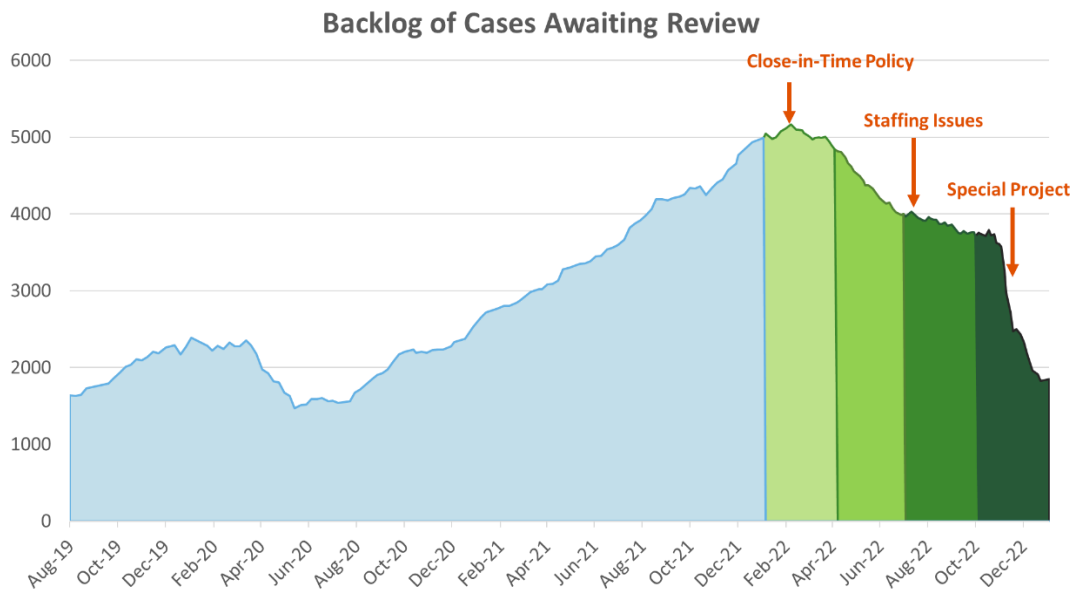
## Close-in-Time Filing



Before 2022, the City Attorney's Office reviewed the oldest referrals first. Older referred misdemeanors are more time consuming and difficult to file due to difficulty in contacting witnesses and other evidentiary issues. This policy eventually contributed to a very large backlog of referrals awaiting review which further added to the difficulties in filing.

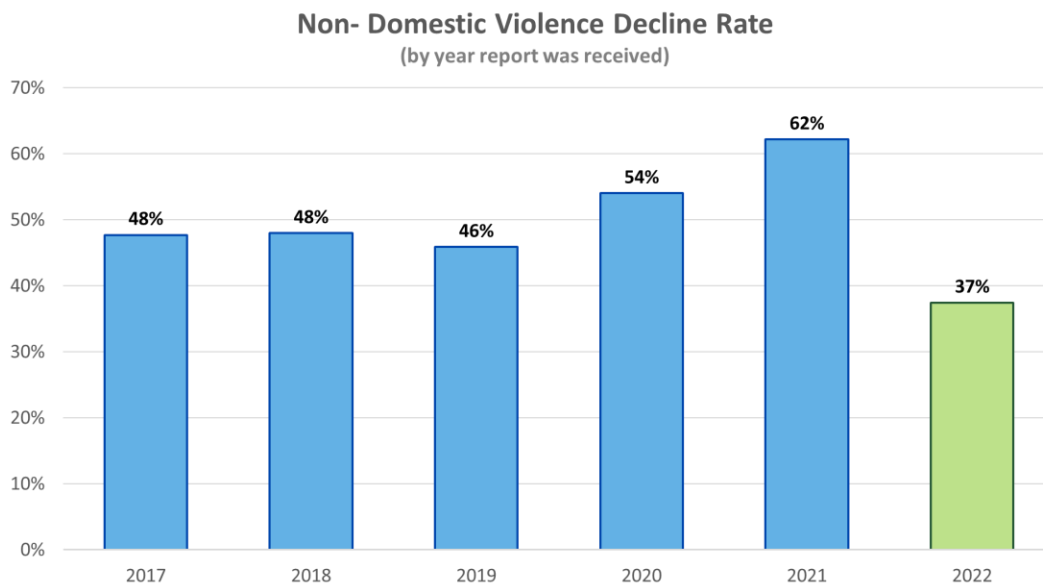
In early February 2022, City Attorney Ann Davison initiated the Close-in-Time policy to provide more real-time accountability as well as increase efficiency in the department. The policy had the goal of making a filing decision within 5 business (7 calendar) days of receiving it with extra time for domestic violence and LEAD clients allowed. The policy successfully reduced the median time to make a filing decision to 5 calendar days and created benefits throughout the department.

## Backlog of Cases Awaiting Review

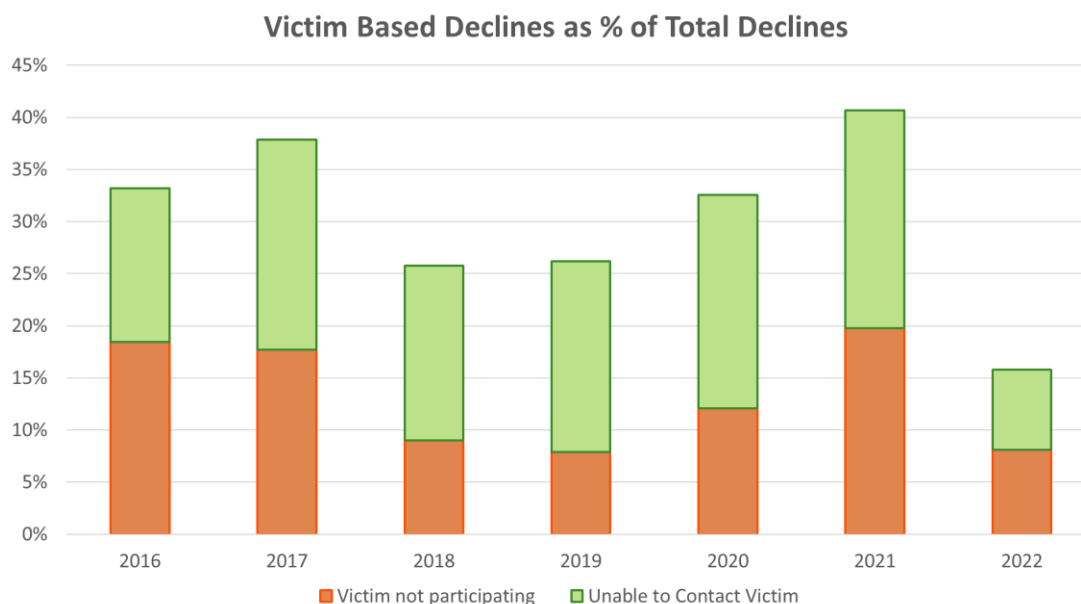


At the start of 2022, the City Attorney’s Office had accumulated a backlog of nearly 5,000 cases awaiting review. The Close-in-Time Policy was a key in reducing the backlog throughout the year, but the Review and Filing unit was understaffed in the second half of the year and a special project was initiated to address the backlog in Q4. That special project involved using data and a small group of attorneys to identify and review referrals that could not be filed based due to the age of the case or other factors.

## Victim Engagement

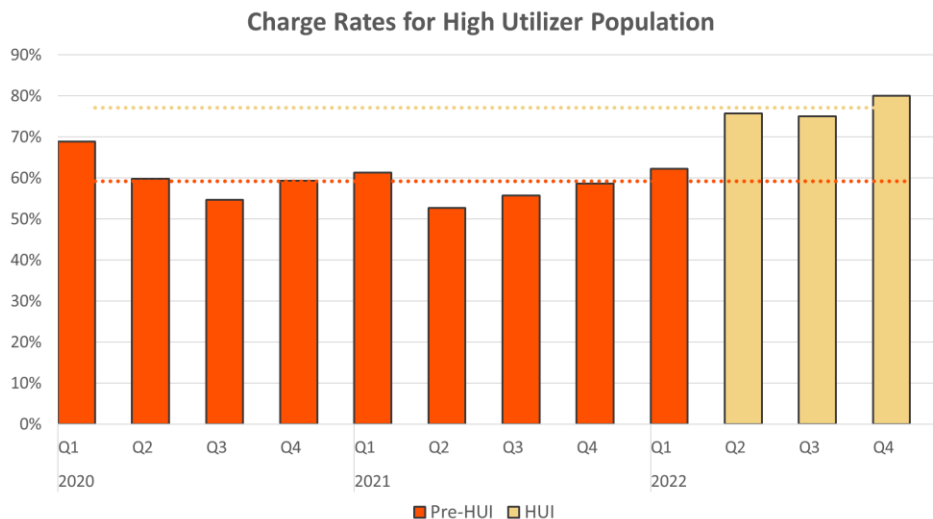


Incoming referrals can be declined for many reasons like a lack of proof or victim/witness contact issues. 2022 saw an increased focus on victims. This combined with the Close-in-Time Policy lead to many fewer cases being declined due to victims and witnesses not participating in the process.



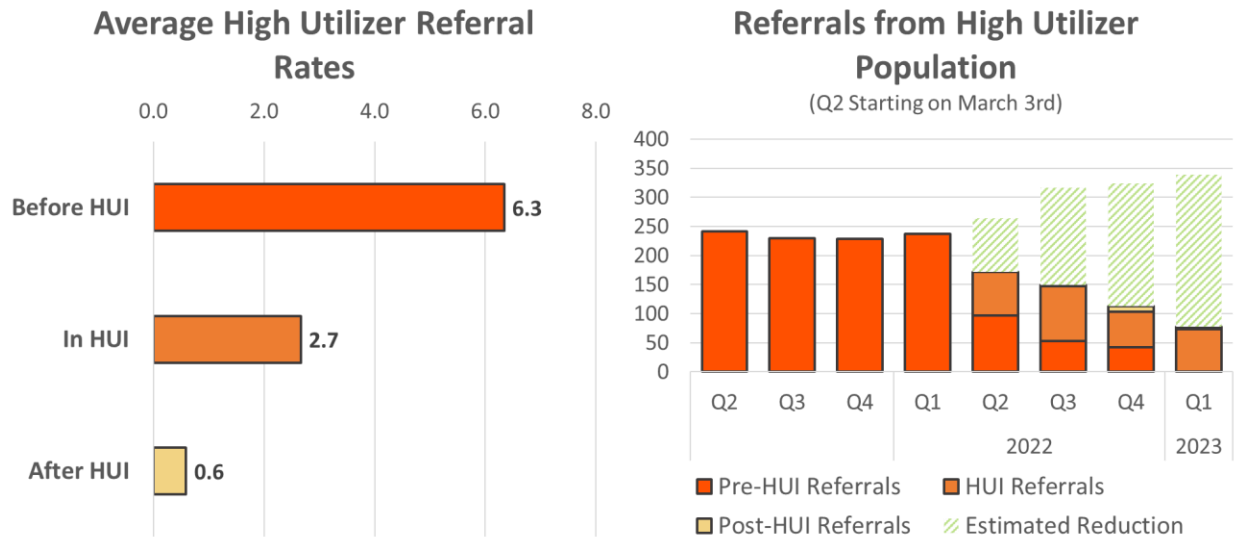
## High Utilizer Initiative

The High Utilizer Initiative was created at the end of Q1 2022 to give special attention and accountability to the most prolific individuals committing misdemeanor crimes in Seattle. The initiative brings together the King County Prosecuting Attorney's Office, Seattle Police, King County Jail, and service providers to give individual attention to everyone in the initiative. The initial cohort consisted of 118 individuals who had been responsible for over 2400 misdemeanor referrals to the City Attorney's Office over the previous 5 years. Each subsequent quarter updated the individuals in the initiative. Immediately, charge rates went up by almost 20%

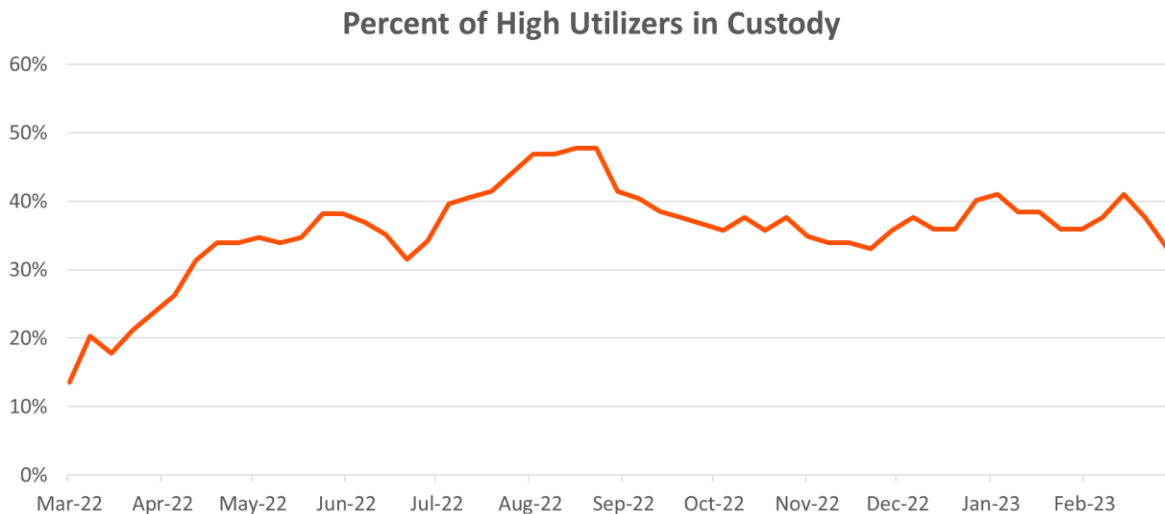


## Findings

The High Utilizer Initiative showed an estimated reduction of 750 criminal misdemeanor referrals to the City Attorney's Office after the first year of operation. This was calculated by looking at the referral rates prior to entry into the initiative and comparing them to their referral rates both while in the initiative and after exiting it.



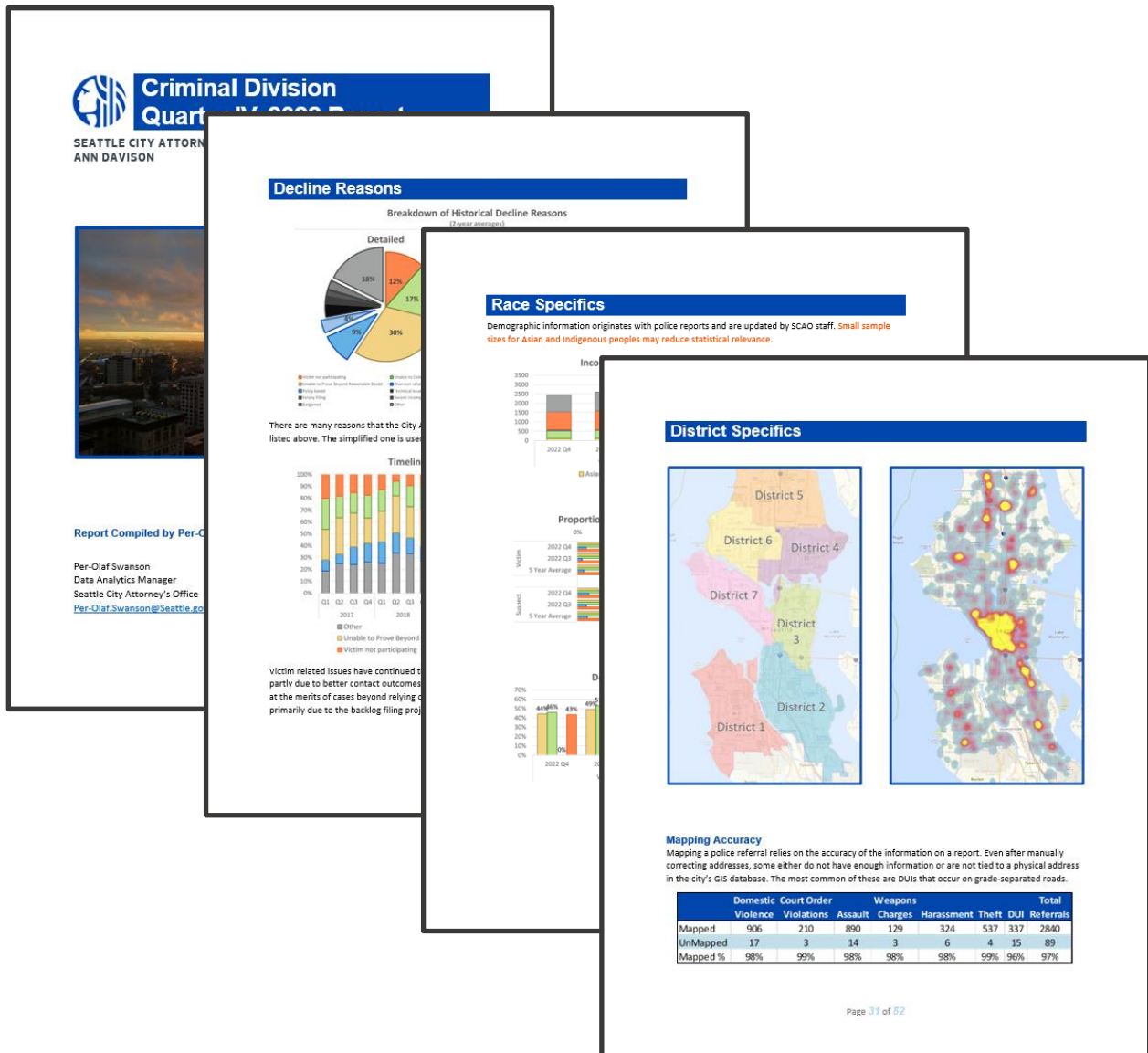
A prime reason for this success was the ability to place many of the high utilizers into custody. Prior to the initiative, the King County Jail would only accept bookings for person crimes and DUI misdemeanors.



Treatment was also offered to many of the high utilizers, but most of them absconded and work is underway to improve that process.

# Criminal Division Details

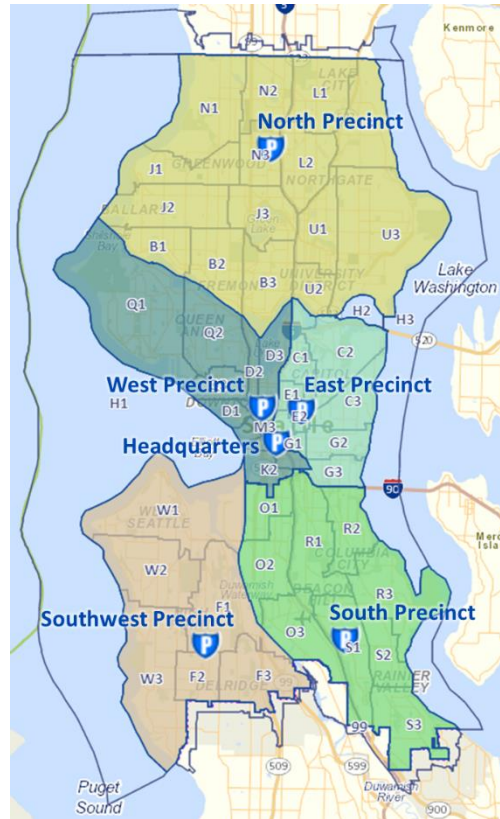
As part of City Attorney Ann Davison's commitment to transparency and accountability, comprehensive quarterly reports were created starting in Q1 of 2022. They each contain approximately 50 pages of detailed statistics on the operation of the criminal division. They can be found on the City Attorney's Office website under [Reports](#).



# Precinct Liaisons

The Precinct Liaison Program is a long-term, proactive partnership among the City Attorney's Office, law enforcement, public and private organizations, and the community geared at solving chronic neighborhood problems, improving public safety, and enhancing the quality of life of the community they serve.

The program is designed with specific goals in mind: 1) to reduce crime and enhance the quality of life in Seattle neighborhoods; 2) develop a more efficient and effective response to public safety problems; and 3) improve communication among residents, prosecutors, police, and other city departments involved in problem solving efforts. The Precinct Liaisons achieve these goals by 1) providing real-time proactive legal advice for officers in each precinct; 2) protecting SPD resources by working closely with other City agencies to address neighborhood problems before they become SPD criminal problems; 3) litigating appropriate code and criminal violations resulting from these efforts; and 4) facilitating community and intergovernmental communication and cooperation.



## Nightlife

The Precinct Liaisons are an integral part of the City-wide Joint Enforcement Team. This team includes representatives from the Seattle Police Department, Department of Transportation, Department of Construction and Inspections, Finance and Administrative Services, and Fire Department. The team works together to address problematic nightlife establishments that are creating public safety issues. In 2022, the Precinct Liaisons and JET successfully addressed two problematic nightlife establishments.

## Mint Lounge

After many years of persistent efforts by the City of Seattle, Mint Lounge has officially closed its doors and is no longer in operation. SPD, assisted by their liaison attorney, first objected to renewal of the lounge's liquor license in 2017 based on public safety concerns. However, after lengthy proceedings on the matter, the Washington State Liquor & Cannabis Board ("WSLCB") ultimately agreed to renew the license. SPD and CAO then filed a request for emergency suspension and subsequent revocation of the lounge's liquor license in 2022, after a series of violent incidents, culminating with gun fire outside the establishment and 44 shell casings recovered. This request was also denied by the WSLCB. After numerous safety reports from both the community and staff from the lounge, the SPD and CAO again raised public safety concerns to WSLCB in 2023. Mint Lounge finally ceased all business operations on January 28, 2023, and the property owner's lease expired January 31, 2023. This was a great success for SPD and CAO, after many years of objections and suspension requests filed to WSLCB.



## Stage Seattle

Stage Seattle (“Stage”) has a long history of issues affecting public safety ranging from fight disturbances and assaults to shootings dating back to 2019. With the help of the West Precinct Liaison, SPD submitted a letter to the WSLCB objecting to Stage’s renewal of its nightclub liquor license in July 2022. In October 2022, WSLCB decided to move forward with non-renewal of Stage’s nightclub license based on SPD’s objection letter and notified Stage of its intent to pursue non-renewal. In response to WSLCB’s non-renewal notice, Stage applied for an all-ages dance venue license, which the City denied in November 2022. Instead of appealing the City’s decision to deny its all-ages dance venue license application, Stage appealed WSLCB’s decision not to renew Stage’s nightclub liquor license. Stage’s appeal hearing is currently set for August 2023. The CAO and SPD are working together with the Washington AG’s office to meet discovery deadlines in responding to Stage’s appeal. In the interim, Stage possesses a temporary operating permit and is allowed to operate as a nightclub while its appeal is pending. Currently, Stage operates on a “special events only” basis, without regular days or hours, and there have been no recent public safety incidents since SPD’s objection letter was submitted.

## Vacant and Nuisance Buildings

The Precinct Liaisons work closely with Department of Construction and Inspection and SPD to identify, monitor and problem solve around vacant buildings and nuisance properties. The liaisons also work with SPD to use the Chronic Nuisance Statute to with businesses that are creating public safety issues.

## Vacant Buildings

The Precinct Liaisons are often involved with addressing public safety issues related to vacant buildings. For example, in late 2022 patrol officers with SPD’s Southwest Precinct notified the liaison of a vacant apartment building in the South Delridge that had recently become the subject of numerous 911 calls and community complaints due to the activity of 20-25 unauthorized occupants who were living inside the building in terrible conditions. Over the course of several weeks, the liaison coordinated with SPD, the Seattle Department of Construction and Inspection (SDCI), the property owner, several outreach providers, and the surrounding community to address the underlying problem. As a result, each of the unauthorized occupants were moved into stable housing, and the building was secured against further unauthorized entry.

## Aurora Motels – Nuisance Properties

In 2022, as part of an enforcement strategy along the Aurora Corridor, the North precinct liaison worked with SPD to identify certain Aurora Motels that were creating significant public safety issues. CAO and SPD sent letters to the owners of the Emerald Motel, Seattle Inn and Nites Inn, placing them on notice that the criminal activity in and around their properties was potentially creating a chronic nuisance, subject to legal recourse. Since then, the CAO and SPD have met with the ownership of each motel and requested their voluntary compliance to abate the nuisance associated with their properties. CAO and SPD have seen significant improvements around some of those properties as a result.

## Encampment Advisory Work

The South/Southwest precinct liaison is responsible for assisting the City of Seattle’s Unified Care Team (UCT), which is the interdepartmental team tasked with addressing homelessness-related issues across the City. In this fast-paced role, the liaison provides rapid legal advice to UCT and facilitates coordination between City agencies, City contractors, and other governmental agencies such as the King County

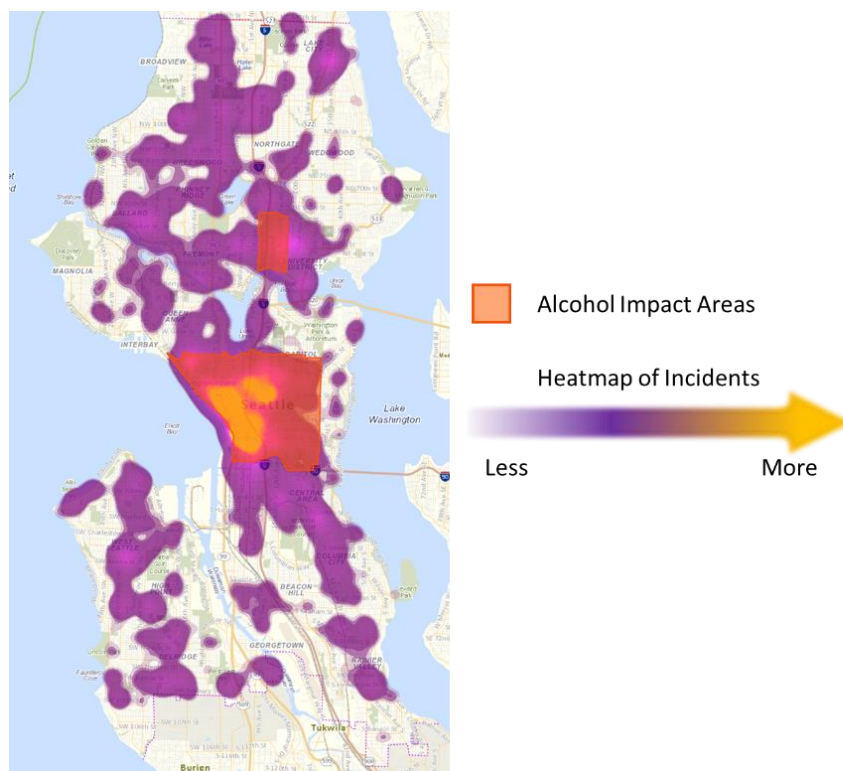
Regional Homelessness Authority (KCRHA) and the Washington State Department of Transportation (WSDOT). For example, the liaison worked together with UCT, KCRHA, WSDOT, the Seattle Police Department, and the Washington State Patrol to address a problematic encampment located across State and City property in the industrial area around 2<sup>nd</sup> & Michigan SW. This work resulted in the removal of a serious threat to public safety, and relocated over 30 individuals from the encampment into stable housing.

### Coordination with Washington State Liquor and Cannabis Board (WSLCB)

The Precinct Liaisons are responsible for reviewing all requests for liquor and cannabis licenses in the City of Seattle. As part of the review process, the precinct liaisons solicit input on licenses from SPD, other city departments and the community. The liaisons then work with WSLCB to submit appropriate objections for licenses and/or request non-renewal of a license or suspension.

### Alcohol Impact Areas (AIAs)

AIAs were created in 2009, at the behest of the community, in order to curb chronic public inebriation. The City of Seattle, through CAO and SPD, requested the WSLCB designate two areas within the City as an AIA – the North Area (University District) and the Central Core (Downtown and Pioneer Square). This designation allows the City to restrict the sale of certain types of alcohol, restrict the hours of sale for alcohol, and allows for a longer time frame to object to a license. The City is required to submit a 5 year report to WSLCB detailing the success of the AIAs and the need to continue them. In December 2022, the precinct liaisons submitted a very detailed 5-year report to the WSLCB on the AIAs. The report included data from SPD and SFD, testimonials from law enforcement, and dozens of letters of support from community organizations for the AIAs. As a result, WSLCB allowed the AIAs to continue in the City.



## Seattle Police Department Trainings

The Precinct liaisons provide real-time legal advice for the Seattle Police Department. They also provide more in-depth and nuanced trainings for officers as the need arises. In 2022, the liaisons provided numerous trainings for SPD.

### Encampment Issues

The liaisons provided the Alternative Response Team with an in-depth training focused on the MDAR and FAS rules surrounding encampment removals. The training also focused on the legal issues surrounding search and seizure, use of warrants, and appropriate criminal charges for potential issues that could arise.

### Field Training Officers

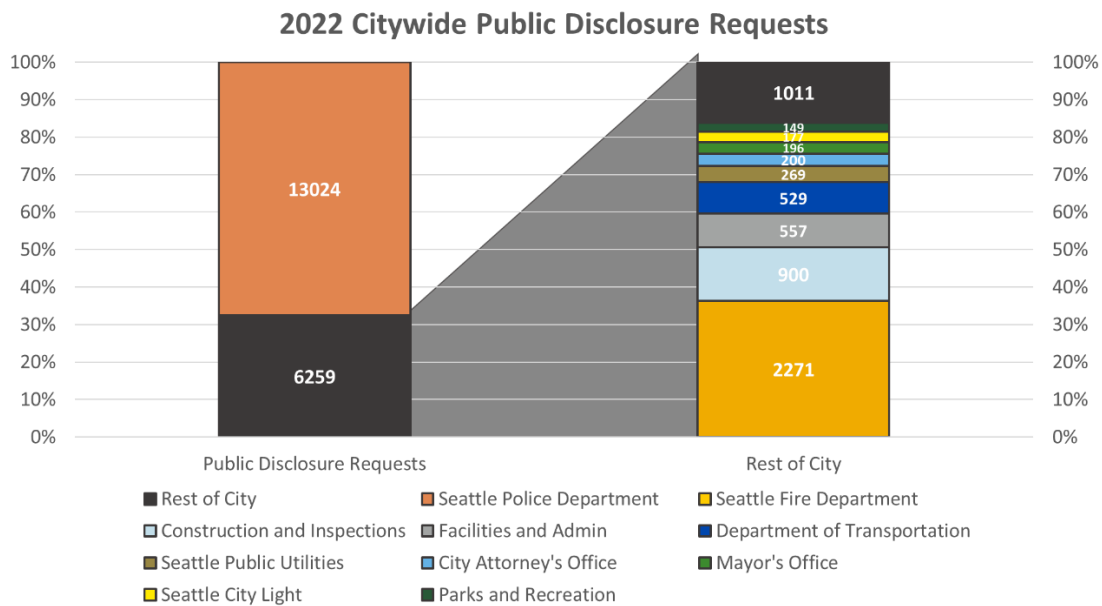
Field Training Officers are an important and necessary part of onboarding new recruits to SPD. Every new recruit is paired with a senior officer during their first few months, to assist with on-the-job training. One of the most crucial aspects of the field training is teaching new officers how to write a quality incident report. In 2022, the precinct liaisons were invited to present on the topic of report writing at the field training officer school. The liaisons presented on best practices for report writing, with a focus on misdemeanor report writing. The training was so well received, that the liaisons have been invited back to conduct subsequent trainings on report writing.

### Roll Call Trainings

The precinct liaisons provided numerous roll call trainings to SPD throughout 2022. With an influx of newer officers, the roll call trainings had two major areas of focus. One major area of focus is search warrant law and search warrant writing. Several rolls call were conducted to help officers understand not only the legal landscape for search warrants, but also the logistical components associated with applying for and serving a search warrant. The second major area of focus is report writing, specifically focusing on misdemeanor report writing.

# Public Disclosure Requests

## Citywide



The City Attorney's Office advises on legal matters regarding public disclosure requests. The City of Seattle had nearly 20,000 public disclosure requests in 2022, an increase of 26% from 2021. Two-thirds of those requests were directed at the Seattle Police Department. The City Attorney's Office has 1.2 full-time-equivalent public disclosure officers and they responded to the 8<sup>th</sup> most requests in the City, just ahead of the Mayor's Office. Most of these requests concern the Criminal Division.

## Seattle City Attorney's Office

