



WILMER CUTLER PICKERING HALE AND DORR LLP ®

June 9, 2016

Mayor Edwin Lee  
San Francisco City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

*RE: City of San Francisco's Illegal Seizure and Destruction of Homeless Individuals' Property*

Dear Mayor Lee:

We write today on behalf of homeless residents and concerned citizens of the City and County of San Francisco (the "City") to express our deep concern about the City's seizure and destruction of homeless individuals' personal property in violation of the Fourth and Fourteenth Amendments, California law, and the City's own policies. Specifically, the City and its agents have repeatedly engaged in sweeps in which they have taken, discarded and/or destroyed homeless individuals' property without proper notice and/or any meaningful opportunity for the owners to reclaim their belongings. These practices have permanently deprived vulnerable individuals of their personal shelter, food, medication, cooking utensils, family photographs and keepsakes, identification cards, Electronic Benefit Transfer ("EBT") cards, and other items critical to their health and well-being. Following the City's efforts to clear homeless encampments from portions of San Francisco as part of its preparation for hosting the Super Bowl festivities, the intensity and frequency of these illegal sweeps have increased. Our concern about these practices is compounded by the well-publicized shortage of facilities within the City to address its expanding homeless population, as well as recent reports indicating that you intend to escalate the City's clearing of homeless encampments.<sup>1</sup>

We ask that the City immediately adopt corrective measures to put its practices in conformity with legal requirements. We hope to work collaboratively with the City, and would welcome the opportunity to meet to discuss these concerns before June 30, 2016.

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<sup>1</sup> Jay Barmann, *Following Shooting by Police, Mayor Lee Announces Plan to Clear All Homeless Camps Citywide*, SFIST (Apr. 10, 2016), [http://sfist.com/2016/04/10/following\\_shooting\\_by\\_police\\_mayor.php](http://sfist.com/2016/04/10/following_shooting_by_police_mayor.php).

## **I. Recent City Practices Have Significantly And Unnecessarily Harmed Homeless San Franciscans**

On the afternoon of February 23, 2016, City workers from the Department of Public Works (DPW), accompanied by California Highway Patrol officers, were captured on video throwing homeless persons' tents into a garbage truck on Division Street. Encampment residents did not know that they would lose their belongings that day: while the Department of Public Health issued an "Abatement Order To Vacate" for the area along Division Street from South Van Ness to 11th Street, the notice was not posted until *after* the City conducted the sweep.

When the City and its agents arrived onsite, workers gave individuals who happened to be present a mere ten minute warning before disposing of their belongings in a dump truck; they provided no notice to those not present. Among other essential items of personal property, workers threw a disabled veteran's walker into the back of a trash compactor and then crushed it, over the protests of bystanders.<sup>2</sup> While the DPW allegedly indicated that the homeless individuals could recover their belongings at a city-owned yard, news sources and eyewitnesses reported only immediate disposal.<sup>3</sup>

Similar sweeps were documented on March 1, 2016 at Division Street, April 10, 2016 at an encampment on Shotwell Street, and April 21, 2016 at an encampment on Cesar Chavez Street. During the night time sweep on Shotwell Street, "officers pulled apart [] tents, piece by piece as the rain fell."<sup>4</sup> Although the tents and belongings of hundreds of people were cleared out over these two months, DPW records show that from February 23, 2016 to April 23, 2016, the Department of Public Works logged only nineteen "bagged and tagged" items that were brought to storage by either the Department itself or the Police Department.<sup>5</sup>

These illegal seizures inflict significant and unnecessary damage on the City's homeless residents. As an example, when one disabled individual located at Division Street left with her partner to participate in a housing workshop on 22nd and Mission Streets through the Mayor's Office, she asked friends to watch her locked tent, posting a sign on the tent to indicate that the two would return soon. When she returned, the City had taken all of her belongings, including her tent, sleeping bags, clothes, her treasured King James Bible, and more than a dozen bottles of medication prescribed to treat her several ailments, including epilepsy, heart disease, edema, arthritis, chronic neuropathy, and diabetes. Deprived of her medication, "Pastor Elaine," as

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<sup>2</sup> Michael Barba, *Homeless Residents' Tent City in SoMa Ordered to Vacate*, S.F. EXAMINER (Feb. 23, 2016), <http://www.sfexaminer.com/homeless-tent-city-soma-ordered-vacate/>.

<sup>3</sup> Chris Roberts, *BREAKING: City Is Cleaning Out Division Street Homeless Camp*, S.F. WEEKLY (Feb. 23, 2016), <http://www.sfweekly.com/thesnitch/2016/02/23/breaking-city-cleaning-out-division-street-homeless-camp>.

<sup>4</sup> Joe Fitzgerald Rodriguez, *Shotwell Tents Destroyed as Friends Mourn Homeless Man Shot by SFPD*, S.F. EXAMINER (Apr. 10, 2016), <http://www.sfexaminer.com/shotwell-tents-destroyed-friends-mourn-homeless-man-shot-sfpd/>.

<sup>5</sup> "Bag and Tag" Log produced by the Department of Public Works from the period of February 23, 2016 to April 23, 2016.

encampment residents call her, experienced several minor strokes and had to be rushed to the hospital – she now suffers from recurring post-traumatic nightmares of people reaching into her tent.

Though the recent Division Street sweeps have received the lion's share of publicity, unlawful seizures have been occurring throughout the City. For instance, outreach workers have reported repeated property seizures within Golden Gate Park, even though, when asked if a storage facility exists where confiscated belongings are kept, San Francisco Recreation and Parks Department (Parks Department) officials' only response has been that their policy is "under review."<sup>6</sup> POOR Magazine recently interviewed 86 homeless San Franciscans whose belongings had been taken by the City in the past year, at encampments on Duboce Street, Cesar Chavez, 14th Street, and Trainor Street. Ninety-four percent of those interviewed had not been able to reclaim their tents, phones, medicine, clothes, and other confiscated belongings.<sup>7</sup>

These sweeps and property destruction practices can greatly diminish homeless individuals' sense of hope and stability. The experiences of Travis Lewis and Stacy Elliott are illustrative of the lasting damage these practices cause. Travis and Stacy are a young couple who both ended up homeless after moving from their respective hometowns. To help survive their homeless condition, they built a tiny movable wooden shelter structure that they located next to the freeway near 7th and Hooper streets. On March 1, 2016, DPW workers and San Francisco Police Department officers arrived without warning, dismantled the couple's temporary home, and threw all of their belongings into a dump truck, including their pet baby snake. Shocked at what she was seeing, one conscientious DPW worker refused to participate, as other workers discarded and destroyed the couple's belongings including electronics and medication (HIV, depression), as well as their tiny "house" itself. Losing the one place they could call home has significantly damaged the couple's physical and mental health.

## II. The City's Seizure and Destruction of Personal Property Is Unlawful

These sweeps are unconstitutional. The Fourth and Fourteenth Amendments to the U.S. Constitution, as well as Article I of the California Constitution, protect *all* persons, including persons who may not have a permanent address, from the seizure and destruction of their property by the government. To begin with, the practice of summarily seizing and destroying homeless individuals' property is an unreasonable seizure in violation of the Fourth Amendment, as well as Article I, section 13 of the California Constitution. *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012) (City violated Fourth Amendment rights of homeless persons when it seized and destroyed their legal papers, shelters, and personal effects); *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1115-16 (E.D. Cal. 2012) (injunctive relief available under

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<sup>6</sup> Meeting between Coalition on Homelessness and S.F. Recreation & Parks Dep't officials, including Gary McCoy, Policy & Community Affairs Manager (Apr. 23, 2016).

<sup>7</sup> *WeSearch Policy Group (WPG) Data Release 2016 UnHoused residents of San Francisco Data Collection 2015-2016*, POOR MAGAZINE (Jan. 27, 2016), <http://www.poormagazine.org/node/5470>.



California Constitution in action alleging city wrongfully seized and destroyed homeless individuals' shelter and property).

Further, seizing and destroying a homeless person's property without effective and adequate pre- or post-seizure process, including adequate notice and a meaningful opportunity to reclaim, violates the Due Process Clause of the Fourteenth Amendment as well as Article I, section 7 of the California Constitution. *Lavan*, 693 F.3d at 1032 ("City must comport with the requirements of the Fourteenth Amendment's due process clause if it wishes to take" a homeless person's personal property); *Sanchez*, 914 F. Supp. 2d at 1115-16. "As [the courts] have repeatedly made clear, the government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking. This simple rule holds regardless of whether the property in question is an Escalade or an EDAR, a Cadillac or a cart." *Lavan*, 693 F.3d at 1032 (internal citations omitted). The City and its agents are required "to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return." *Id.*

In addition, absent exigent circumstances, the City must provide notice before it seizes homeless people's property, because due process requires the government to provide notice before it seizes property, unless it cannot "feasibly" do so. *Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (if the state can feasibly provide a pre-deprivation hearing before taking property, it generally must do so to comport with the Fourteenth Amendment); *Fuentes v. Shevin*, 407 U.S. 67, 97 (1972) (notice and hearing required before government seizes personal property). The courts have emphasized that depriving homeless individuals of protected property interests without adequate process is "especially troubling" given their vulnerability within our society. *Lavan*, 693 F.3d at 1032.

The City cannot justify its destruction of homeless people's property on the grounds that it is temporarily unattended and therefore "abandoned." *Sanchez*, 914 F. Supp. 2d at 1093 (E.D. Cal. 2012) ("[T]he fact that property is unattended does not necessarily mean that it has been discarded, and ... reasonable doubt about whether property is trash or debris or valuable property should be resolved in favor of the conclusion that the property is valuable and should not be discarded.") (internal citations omitted). "In California, as under the common law, an item is the property of its owner unless the owner intentionally and voluntarily abandons it because she simply no longer desires to possess the thing being abandoned." *Kincaid v. City of Fresno*, 2006 WL 3542732, at \*37 (E.D. Cal. Dec. 8, 2006) (internal citations omitted). Homeless individuals have a protected property interest in their unabandoned but temporarily unattended personal property, and the government violates procedural due process when it provides insufficient notice, no means to safeguard retrieved property, and/or insufficient guidelines for retrieval of seized or destroyed property. *Sanchez*, 914 F. Supp. at 1093, 1103. San Francisco committed these violations when on the afternoon of February 23, 2016, city workers from the Department of Public Works (DPW), accompanied by California Highway Patrol officers, threw homeless persons' tents into a garbage truck on Division Street without proper notice. Indeed, the Department of Public Health's "Abatement Order To Vacate" notice for the relevant area was not posted until *after* the City conducted the sweep.

In addition to their violation of the Due Process Clause, the City's sweeps, directed towards the homeless and specifically targeting homeless individuals' property, also violate the Equal Protection Clauses of the Fourteenth Amendment and Article I, section 7 of the California Constitution. *Parr v. Municipal Court*, 3 Cal. 3d 861, 868 (Cal. 1971) (“[S]ingl[ing] out a social group and stigmatiz[ing] its members as ‘undesirable’ and ‘unsanitary,’ the city council violated the constitutional guaranty of the equal protection of the laws.”); *Anderson v. City of Portland*, 2009 WL 2386056, at \*8 (D. Or. July 31, 2009) (Equal Protection claim available when City of Portland's enforcement of anti-camping ordinances targeted homeless individuals); *Sanchez*, 914 F. Supp. 2d at 1115-16 (injunctive relief available under California's Equal Protection clause to extent City of Fresno wrongfully seized and destroyed homeless individuals' shelter and property).

Wholly apart from the constitutional implications of the City's actions, these actions also violate the City's own guidelines governing property storage and retrieval. The Parks Department policies require that seized property, whether found attended or unattended, be stored for 90 days in order to permit its return. S.F. Recreation and Parks Dept., *Procedures for Property Found in Parks and Recreation Facilities* (2006). DPW rules likewise establish a 90-day property retrieval policy for items DPW has collected that have been “left unattended on public or private property.” S.F. Dept. of Public Works BSES 30012 – Homeless – Property.<sup>8</sup> The Department must “bag and tag” these items, and then secure them at a storage yard. *Id.* The regulations for property “hailed in” by the police and delivered to the DPW go one step further, maintaining a 120-day storage requirement. S.F. Police Dept. Bull., *Operation Outreach Protocol for Processing Homeless Property – “Bag & Tag”* (Apr. 19, 2012).<sup>9</sup>

These requirements and policies are being routinely violated throughout the City's various departments. Substantial photographic and video evidence confirms the practice of City workers loading homeless individuals' belongings into dump trucks and trash compactors.<sup>10</sup> As described above, DPW's own logs show that very little property has actually been taken to storage. This disproportionately small volume of logged items underscores the extent to which the City is violating these various legal requirements.

Separate from the humanitarian and legal imperatives for doing so, were the City to adopt City-wide procedures ensuring the legally required prior notice and retrieval processes, these

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<sup>8</sup> Available at <http://sf311.org/dept-public-works-bses-30012-homeless-property> (last accessed June 8, 2016).

<sup>9</sup> Available at <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentBulletins/12-085.pdf> (Apr. 19, 2012).

<sup>10</sup> See, e.g., Chris Roberts, *BREAKING: City Is Cleaning Out Division Street Homeless Camp*, S.F. WEEKLY (Feb. 23, 2016), <http://www.sfweekly.com/thesnitch/2016/02/23/breaking-city-cleaning-out-division-street-homeless-camp> (sharing video posted by Kelley Cutler on Facebook); Michael Barba, *Homeless Residents' Tent City in SoMa Ordered to Vacate*, S.F. EXAMINER (Feb. 23, 2016), <http://www.sfoxaminer.com/homeless-tent-city-soma-ordered-vacate/> (“DPW threw away several tents that were left unattended and gave people who were there a 10-minute warning before trashing their property, Cutler said.”); Joe Fitzgerald Rodriguez, *Watch SFPD Tear Down Tent Where Homeless Man Was Shot, Killed Days Earlier* (Apr. 10, 2016), <https://www.youtube.com/watch?v=LGPjrlirwWM>.

procedures would allow individuals to avoid the loss of their property by moving their possessions before the arrival of City workers. Because, as we understand it, the City plans these operations several days in advance, posting notice is feasible, will not lead to delay, and is not burdensome. By giving individuals adequate time to remove their property, government resources would be conserved through reduction of the amount of property to be removed, inventoried, and stored.

### **III. Changes Necessary To Bring Current City Actions And Policies Within The Law**

We recognize that the City faces significant challenges as changing demographics and housing shortages have pushed more and more individuals onto the streets. But illegal sweeps are not the solution. Rather, the City should focus its efforts on working with organizations such as the Coalition on Homelessness to continue to improve policies for outreach, shelter, and housing of homeless San Franciscans – these dialogues and measures will reduce the number of homeless individuals currently living in encampments, the root cause of the problem.

For now, we request that the City put an immediate moratorium on its illegal sweeps<sup>11</sup> of homeless encampments, while it develops and implements a policy for addressing the property of homeless individuals that strictly complies with the laws and guidelines discussed above, thereby protecting the rights of homeless San Franciscans. Because of the number of City agencies involved in these activities and the lack of consistent and coordinated practices, the City's new policy should have general applicability across all agencies involved with these activities, and should include:

- Meaningful notice to be provided to those who would be subject to seizure of homeless individuals' property, including clear requirements for the notice content and posting procedures to assure actual and sufficient notice.
- Outreach to be provided ahead of any clearing action, including identification of the organizations that will be conducting such outreach.
- A set of clear procedures and instructions for processing personal property at property removal sites, both with respect to items belonging to individuals present during the activities, as well as items belonging to those who are temporarily absent.
- A clear and well-communicated process for affected individuals to retrieve all seized items of value, and to make claims for property that has been improperly destroyed and/or damaged, as well as clear procedures that provide compensation for past seizures and destruction.

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<sup>11</sup> By "illegal sweeps," we are referring to the City's conduct of seizing and destroying homeless individuals' property without proper notice and reclamation procedures. We are not referring to the City's efforts to remove garbage and other refuse.

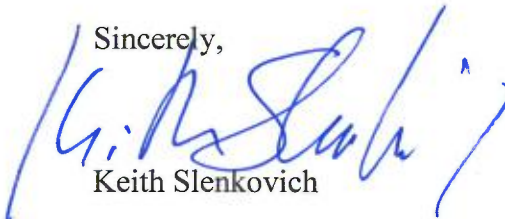


- A process for transporting affected individuals and their possessions to adequate housing and/or other acceptable accommodations, taking into account the issues posed by disability and/or limited mobility.

In its sweeps, including those on February 23, March 1, April 10, and April 21, the City destroyed homeless individuals' shelter and essential personal belongings without proper notice, without a means to safeguard seized property, and in contravention of federal and state law as well as San Francisco's own guidelines for retrieval of seized property. Wholly apart from the humanitarian toll these actions take, the Fourth and Fourteenth Amendments as well as Article I of the California Constitution prohibit such forfeitures without adequate process. We request that the City stop these unconstitutional sweeps, and engage with us in a meaningful dialogue about how the City can ensure the protection of the rights of its homeless individuals, one of City's most vulnerable populations. As indicated above, we would welcome the opportunity to meet to discuss these concerns before June 30, 2016.

Thank you for your time and attention to this matter.

Sincerely,



Keith Slenkovich

On Behalf of:

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