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John Midgley, Director

February 27, 2008

Mr. Bryce Brown, Jr.
Office of the Attorney General
7141 Cleanwater Dr.
PO Box 40113
Olympia, WA 98504-0113
bryceb@atg.wa.gov
By first class mail and e-mail

Re: Concerns about WSDOT and safety of individuals who are homeless on public property

Dear Mr. Brown:

The Seattle/King County Coalition on Homelessness (SKCCH) has retained Columbia Legal Services to help advise it on responding to the activities of the City of Seattle and the State of Washington regarding responding to individuals who are sleeping in public spaces.

SKCCH has serious concerns about the safety, efficacy, and legality of the continuing actions of the State of Washington Department of Transportation (WSDOT).¹ SKCCH is in the process of reviewing the recently released *Interim Northwest Region Guidelines for WSDOT Activities within State Right of Way*, and intends to provide more detailed comments in the near future. However, an initial review of the Interim Guidelines indicates that they will continue to result in WSDOT actions that present a significant risk of harm to individuals who are homeless as well as result in legal and constitutional violations.

According to numerous sources of information provided to SKCCH, the WSDOT is clearing encampments without:

1. Providing meaningful notice to individuals living in the areas the WSDOT is clearing;
2. Engaging in any outreach to ensure that the individuals cleared from the location are offered supportive services and alternate housing;
3. Providing an opportunity for individuals to recover belongings seized by the WSDOT; or
4. Ensuring that individuals are not harmed by dangerous equipment.

¹ SKCCH was formed in 1979 and is one of the oldest homeless coalitions in the country. SKCCH works collaboratively to ensure the safety and survival of people who are homeless and to end the crisis of homelessness in our region. SKCCH works to organize and implement advocacy campaigns for increased funding for homelessness and housing programs; takes a leadership role in the Committee to End Homelessness in King County; acts to shape public policy related to housing, poverty and homelessness; coordinates the Annual One Night Count of homeless individuals without shelter; organizes and implements "Project Cool," a yearly event that collects and distributes back-to-school supplies for homeless children; provides an important forum for information sharing in relation to service-provision, current legislative issues, and funding resources; and allocates government funds through competitive processes.

The failure to engage in these practices has resulted in unlawful and unconstitutional actions. More importantly, SKCCH believes that adopting a practice that employs the four approaches above might have prevented the deaths of the two individuals who were killed during WSDOT actions over the past half-year. Implementing an appropriate policy and practice is imperative to reduce the likelihood that other individuals are seriously hurt or killed in the future.² The Interim Guidelines will not sufficiently correct the legal and safety deficiencies in WSDOT practice.

While SKCCH understands that there are situations which require WSDOT to clear areas of all individuals and/or personal property, SKCCH respectfully requests that the WSDOT immediately cease conducting the sweeps until such time as a policy and practice is put into place that incorporates the four principles above. As it has numerous times over the past several months, SKCCH continues to offer to assist the WSDOT in putting together such a policy.³ I have been informed by SKCCH that representatives from WSDOT will be attending a SKCCH meeting on March 4, 2008. It is critical that WSDOT representatives to that meeting understand the legal background in this letter and have the decision-making authority to enact a policy that is legal, effective, and humane.

Protection of Personal Property

The Interim Guidelines state that bedding and “all material collected from [sic] the site” will be disposed of. As courts around the country have determined, destruction of homeless persons’ property can violate constitutional rights if proper procedures are not followed. The practice of summarily seizing and destroying homeless persons’ property violates the Fourth Amendment, as such practices amount to unreasonable searches and seizures, and the Fifth Amendment, which prohibits the taking of private property for public use without just compensation. Further, without effective and adequate pre- or post-deprivation process, seizure and immediate destruction of homeless people’s personal property violates the Fourteenth Amendment’s Due Process Clause. The attached letter from the National Law Center on Homelessness and Poverty clearly details the legal issues involved in communities’ efforts to remove individuals who are homeless and their personal items from public property (attached as Appendix A).

² The information that SKCCH has about the WSDOT sweeps indicates that WSDOT is not even applying the minimal notice provisions in the City of Seattle’s proposal. Especially after Mr. Isaac Palmer’s death, SKCCH was confused why the WSDOT would continue doing work without taking even the most rudimentary measures to notify individuals of impending actions. Even after a lawsuit from Mr. Palmer and a second death, that of Mr. Ralph Vantine in Snohomish County, the failure to even implement the City of Seattle’s policy is perplexing.

³ WSDOT recently released a press release related to the death of Ralph Vantine, in which it notes that its “work on guidelines to address homeless issues” includes “on-going informal conversations with homeless advocacy groups as we develop the guidelines.” While SKCCH has repeatedly requested to assist with this process, WSDOT has not yet engaged my client in any substantive way. WSDOT should immediately explain with whom it has been working on the guidelines, including which advocacy groups have been allowed to provide input, as SKCCH has certainly not been part of any meaningful conversations.

Without following proper procedures, destruction of personal property found in public areas also may violate Washington State law, especially if police are involved. RCW 63.32.010 requires that police not summarily dispose of abandoned property. Instead, abandoned property must be retained for 60 days, at which point, the police have several options, including destroying it if it has no “substantial commercial value.” Since the police may be involved in these activities, according to the Interim Guidelines, destruction of property under their supervision would violate state law. RCW 63.32.010 does not allow for destruction of abandoned property until after 60 days, if it has no “substantial commercial value.” Even where the police aren’t involved, state law sets forth a procedure for dealing with lost or found property in the possession of individuals or employees of governmental entities. *See* RCW 63.21.010 and .060.

Notice and Outreach

The Interim Guidelines reference alerting service providers and advocates about scheduled work that may impact people who are homeless. It would be more effective to alert the people who are homeless about scheduled work and to alert a team of contracted outreach professionals who could establish a relationship and assist people in securing alternative housing. In order to address this issue in a humane way with an eye towards addressing the needs of the individual and the community, significant advance notice is needed. SKCCH suggests that a total of 28 days notice be given to the outreach team and the individuals, with a minimum of two weeks time for outreach to occur, and with repeated notice at intervals thereafter. This would allow meaningful outreach and plans to be put in place for accessible alternative housing or shelter for individuals. Without sufficient notice, effective outreach, and offers of meaningful alternative places to sleep, individuals will likely return to public land to seek temporary shelter. More importantly, without sufficient outreach, it is possible that individuals, such as those who were killed by WSDOT actions in the past half-year, will not be aware of the serious risk of bodily harm or death. In addition, court decisions have indicated that comprehensive outreach and housing options must be provided to people forced to leave their area of refuge.

For the advance notice to be effective, sufficient information should be included on the written notice, and the notification must be posted prominently in both the general area to be entered as well as on individual tents or other structures. Notification should be presented in multiple languages. The notice should include the date and time that government officials are scheduled to enter the area, the nature of the non-emergency action, and a working phone number for more information. Additionally, it should include an explanation of the activity and how individuals may protect their belongings and recover any property that may be confiscated. New notification should be posted every seven days to insure that as new people enter the area they are also notified.

In addition, adequate training should be provided to all parties involved in entering an area where people experiencing homelessness are known to be seeking refuge. This training should cover the proper way of assisting individuals found in the area, safety protocols, and proper procedures for found property. If people who are homeless are found in an area during a non-emergency

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action, they should be given ample time to gather their property and leave the area. If they need assistance in removing property they should be provided with such assistance.

In conclusion, SKCCH calls for an immediate cessation of sweeps until safe, reasonable, effective and legal approaches can be developed. It is my hope that, in advance of the upcoming March 4 meeting between our clients, this letter will provide background as to the significant safety and legal concerns that WSDOT's actions have generated. I look forward to a timely response from your office, and please do not hesitate to contact me if you wish to discuss this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey Trupin", with a long horizontal flourish extending to the right.

Casey Trupin

Attorney for Seattle-King County Coalition on Homelessness

Columbia Legal Services

Enclosure

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

December 17, 2007

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Alison Eisinger
Executive Director
Seattle/King County Coalition on Homelessness
77 South Washington St.
Seattle, WA 98104

Dear Ms. Eisinger:

Per your inquiry, I am writing to provide some information about the legal implications of the recent sweeps and destruction of property at various homeless encampments in the Seattle metropolitan area. The National Law Center on Homelessness & Poverty is very troubled to learn that the City of Seattle and the Washington State Department of Transportation have engaged in a campaign of sweeps of areas inhabited by homeless persons. As courts around the country have determined, destruction of homeless persons' property can violate their constitutional rights if proper procedures are not followed.

The practice of seizing and destroying homeless persons' property violates the Fourth Amendment, as such practices amount to unreasonable searches and seizures. *Pottinger v. Miami*, 810 F. Supp. 1551, 1570 (S.D. Fla. 1992); *Justin v. City of Los Angeles*, 2000 WL 1808426, at *10 (C.D. Cal. Dec. 5, 2000); *Kincaid v. Fresno*, 2006 WL 3542732, at *37 (E.D. Cal. 2006). In addition, the seizure of homeless persons' personal property also violates the Fifth Amendment, which prohibits taking of private property for public use without just compensation. *Pottinger*, 810 F. Supp. at 1570 n.30. Further, without effective and adequate pre- or post-deprivation process, seizure and immediate destruction of homeless people's personal property violates the Fourteenth Amendment's Due Process Clause. *Kincaid*, 2006 WL 3542732, at *39.

Without following proper procedures, destruction of personal property found in public areas not only violates property owners' constitutional rights, but also violates Washington State law. According to state law, when police gain possession of personal property in the course of their official duties, they must provide written notice to the property owner of the possible disposition of the property and the amount of time the owner has to retrieve the property, which is 60 days from the time the property came into the possession of the police. *See*, Wash. Rev. Code §§ 63.32.010, 63.32.020 (2007).

In situations where cities have unlawfully seized and destroyed the property of homeless persons, courts have issued orders or injunctions to stop such practices and ensure homeless persons' constitutional rights are not violated. Although procedures vary from city to city, city or state governmental entities must provide adequate written notice that they will be cleaning out an area and must store property for a certain period of time to allow property owners the opportunity to retrieve their property.

As part of the settlement of the *Pottinger* litigation, the City of Miami instituted police trainings and a requirement that police must not destroy homeless persons' property, but tag and store it as they would any other found property. According to a permanent injunction issued in the *Justin* litigation, the City of Los Angeles is prohibited from confiscating personal property that does not appear abandoned and destroying it without notice. The City is required to give notice that it will be cleaning an area and must store property for 90 days so that the property owner may retrieve it after a clean-up.

The City of Cincinnati instituted a set of formal procedures concerning police interactions with homeless encampments also as part of a lawsuit settlement. According to the procedures, police must give homeless persons 72 hours notice before clearing out an area in the form of a notice letter to each individual at the encampment. In addition, the police officer issuing notice must fax the notice to the Greater Cincinnati Coalition for the Homeless, to provide outreach workers with an opportunity to help the homeless individuals find an alternative place to go prior to the cleanup. Any property at the site must be maintained in the Court Property Unit to be available for retrieval by its owner.

The City of Pittsburgh also established a similar protocol as part of a lawsuit settlement. The city agency responsible for the clean-up must give 7 days advance notice of a clean-up by placing a written notice at each encampment or at each identifiable group of possessions. The same notice shall be faxed to a group of homeless service providers. The notice shall contain the dates when the clean-up will occur, the agency responsible for the clean-up, the location where the items will be stored and that they will be stored for one year, the hours and days when items can be re-claimed, the date notice was given, and a telephone number to call to get more information about the cleanup. The city must store any property for one year to be available for retrieval by its owner.

The District of Columbia voluntarily established a formal procedure for disposition of property in public spaces through a Memorandum of Understanding (MOU) between various city agencies. According to the MOU, 14 days prior to cleaning a public area, the agency responsible for the area must post a conspicuous notice in the immediate vicinity of the area to be cleaned. The notice must contain information about the designated location to be cleaned, the date the cleaning will take place, the site where any remaining property in the location will be stored, the process for claiming any confiscated property, and the contact information of two service providers. All property deemed to be valuable is to be stored for a period of no less than 45 days.

Portland, Oregon, also has formal procedures for law enforcement officers to clean public spaces where homeless people are living. At least 24 hours prior to the cleanup, police officers must post a notice in English and in Spanish at the site. Prior to posting the notice, the police department must first notify a local social service agency serving homeless persons of the cleanup to allow outreach workers the opportunity to offer assistance to the individuals at the site. Any items left at the site that are recognizable as personal belongings and of apparent use must be stored for a minimum of 30 days and made available for retrieval. Soon after Portland established its procedures the Oregon state legislature passed legislation modeled on Portland's procedures. *See* Or. Rev. Stat. §§ 203.077, 203.079, 203.081, 203.082 (2006).

In the past few months, Washington, DC and Baltimore have approached the issue of cleaning up areas where homeless people are living in a very constructive way. Earlier this fall, when the District of Columbia wanted to clean a small encampment near a highway in the city, it

worked with a local service provider, dispatched city outreach workers, and obtained and offered apartments to those individuals at the encampment. Just this past weekend, the City of Baltimore offered shelter and 30-day hotel stays, in addition to Section 8 vouchers, to a group of homeless individuals in an encampment in the city.

The above examples demonstrate that many cities around the country have developed procedures that enable cities to clean public areas without violating the constitutional rights of homeless persons. I would be happy to work with you and any city officials interested in implementing similar procedures in Seattle. Please feel free to call me at 202-638-2535 with any questions.

Sincerely,

Tulin Ozdeger
Civil Rights Director