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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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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