



Memorandum

TO: Honorable Mayor &
City Council

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: The Public Record
October 26 – November 8

DATE: November 14, 2018

ITEMS FILED FOR THE PUBLIC RECORD

Letters from Boards, Commissions, and Committees

Letters from the Public

1. Letter from Law Foundation of Silicon Valley, dated November 7, 2018, regarding Request to Direct Housing Department to Amend Its Memorandum of Agreement with Santa Clara Valley Water District and Homeless Encampment Sweep Procedures to Protect Residents of Encampments.
2. Letter from AT&T, dated November 1, 2018, regarding AT&T Mobility Site – 10100858 – CCL03224 – SNFCCA1060 – 275 Hospital Parkway.

Toni J. Taber, CMC
City Clerk

TJT/tt



LAW FOUNDATION of Silicon Valley

November 7, 2018

Honorable Mayor, Vice Mayor, and City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

Re: Request to Direct Housing Department to Amend Its Memorandum of Agreement with Santa Clara Valley Water District and Homeless Encampment Sweep Procedures to Protect Residents of Encampments

Dear Honorable Mayor, Vice Mayor and City Council:

All people must have access to the means to provide for their own basic needs, including shelter. The unhoused members of our community are particularly harmed when their personal property is taken during encampment sweeps because they lose whatever practical tools they had for survival or to transition out of homelessness and are deprived of due process.

For these reasons, we, individuals and organizations who are part of and/or support the unhoused community in San Jose, request that City Council direct the Housing Department to amend and improve its Memorandum of Agreement with the Santa Clara Valley Water District for Encampment Cleanup to comply with legal requirements. This Memorandum of Agreement is just one of many executed between the City and other entities related to encampment sweeps, and the concerns enumerated related to this Memorandum apply to the others as well. Approval of the Memorandum of Agreement should be placed on the Council's agenda for public comment given its importance.

While we and other advocates have requested that the Housing Department make changes to the Memorandum of Agreement, not all of the changes have been included. We recognize consideration of the new Memorandum of Agreement as a unique opportunity for both entities to improve their practices, and we ask that Council direct the Housing Department to implement the below described changes to the processes. We additionally encourage the City to adopt corrective measures to bring its practices into conformity with fundamental constitutional standards.

Factual Background

It has been the regular practice of the City of San José and the Water District to conduct sweeps of homeless encampments, and these sweeps have moved forward at an alarming rate—

over a dozen within the city limits every week. The people who live in these encampments represented one-third of San José's homeless population in 2017,¹ many of whom simply cannot afford to live in San José's red-hot housing market. Advocates and unhoused residents recognize regular deficiencies in the process for these sweeps.

Before any sweep is to be conducted, a homeless outreach team is supposed to make contact with residents of an encampment to offer support services. Ideally, the outreach team makes contact with residents more than once in order to build rapport and trust before the sweep is conducted. These outreaches are not actually being completed before most sweeps. Where the outreaches are completed, they have not been very thorough—it is frequently the case that this outreach consists of passing out contact cards for encampment residents to call service providers when they want to engage in services. This is problematic for a number of reasons, including (1) most recipients do not have regular telephone access, and (2) residents are not being offered meaningful, long-term housing solutions, only a short-term bed in already over-filled, and oftentimes, unavailable shelters.

The notices posted prior to any encampment sweep are 72-hour notices, which are practically insufficient time for most individuals, but generally viewed to satisfy legal-minimum notice requirements. However, the notices state a range of up to five days during which encampments may be swept. This range of dates creates ambiguity to the point that the notice is ineffective—people are unsure of when encampments may be swept and are thus less able to protect their property.

The notices are also ambiguously posted. A nearby tree or structure may be posted without actually posting the notice on all the tents or living spaces, which results in residents being unsure of what area will be swept in the course of the sweeps. Without having a specific area of what will be swept, residents are unable to ensure that their most important belongings are kept in a safe space.

While there is a process for the City to hold non-trash, personal property items in storage following encampment sweeps, in our experience, the City's policies about property preservation are routinely ignored in the course of sweeps. Residents of encampments regularly lose important personal property in the course of sweeps, including items identified on the City's list of belongings not to be destroyed, such as medications, identification, and bicycles. Even where things should be preserved as property, they are regularly rendered trash in the course of the sweeps. For instance, even where tents constitute a resident's valuable personal property (their very shelter), they are regularly cut open in the course of sweeps, rendered destroyed, and subsequently trashed. This is akin to having one's home bulldozed, and one's personal items discarded.

After the sweeps, unhoused residents are often left with nothing but the belongings in their arms. They have to re-start their efforts to collect vital documents, life-preserving medications, and tools for survival because of the difficulties in regaining their belongings from

¹ Applied Survey Research, "City of San José Homeless Census and Survey: Comprehensive Report." 2017. Available at: <https://www.sanjoseca.gov/DocumentCenter/View/70076>.

the City's storage space. Because of these significant deficiencies in the process, changes to the encampment sweep process are necessary.

1. The City Must Ensure Personal Property is Not Improperly Seized or Destroyed.

First, the City must ensure that personal property is not improperly seized and destroyed in the course of the encampment sweeps, and must include such direction in its Memorandum of Understanding with the Water District. Both the Fourth Amendment to the U.S. Constitution and Article I, Section 13 of the California Constitution prohibit the government from unreasonable seizure by summarily taking and destroying homeless individuals' property.² The victims of these encampment sweeps consistently report that their personal belongings, including basic necessities such as medications and IDs, are thrown out in the course of sweeps. While we recognize that the City has created a list of items that are not trash, this list is not consistently consulted or followed in the course of the sweeps. This list of items should be included in the Memorandum of Understanding with the Water District as well as any agreements with contractors. The City and the Water District must also end the practice of cutting open tents to determine their contents. This is unsafe for the people that may be inside, and it violates the Fourth Amendment by unnecessarily destroying belongings—the practice transforms someone's personal property into trash when use of a zipper could achieve the same goal.

2. The City Must Provide Meaningful and Adequate Notice and Procedures before dismantling encampments and seizing property is seized and destroyed

Second, both the Due Process Clause of the Fourteenth Amendment and Article I, Section 7 of the California Constitution are violated by the seizure and destruction of a homeless person's property without an effective and adequate pre- and post- seizure process, including clear notice and a meaningful opportunity to reclaim property. As the Ninth Circuit has repeatedly made clear, “[t]he 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.” [citation] This simple rule holds regardless of whether the property in question is an Escalade or an EDAR, a Cadillac or a cart.”³ The people living unhoused in San José have a protected property interest in their personal property, and both the City and the Water District violate procedural due process when they provide vague notice, no means to safeguard retrieved property, and/or insufficient opportunity to retrieve seized property.⁴

While the City's practices in providing notice have improved, the notices they currently provide are still vague and ineffective where they provide a range of five days during which an encampment may be swept. This range of dates should be eliminated entirely in favor of providing residents one particular date and time during which they can more certainly expect a sweep to be conducted. Every structure should be posted with notice in any encampment

² 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 California constitution in action alleging City wrongfully seized and destroyed homeless individuals' shelter and property).

³ Lavan, 693 F.3d at 1032 (citing Clement v. City of Glendale, 518 F.3d 1090, 1093 (9th Cir. 2008)).

⁴ See Sanchez, 914 F. Supp. 2d at 1093, 1103.

scheduled to be cleared. Moreover, the City's Property Supervisor should arrive at least a half-hour before any sweep begins to allow encampment residents an opportunity to remove their property before police are permitted to clear them from the area. The City should consistently provide bags that people can use to move and store belongings that should not be thrown away in the course of the sweeps. These actions would help to mitigate the loss of personal property, the work required of City employees and contractors, and the need for people to go through the post-seizure ordeal of collecting their belongings from the City's storage facility. Council should direct the Housing Department to include all of these procedures in the Memorandum of Understanding with the Water District.

3. The City Must Not Conduct Encampment Sweeps Without Providing a Safe, Alternative Location for Families to go

Further, the City must end the practice of forcing people to leave publicly-owned land without first offering people another place to live. When the City has conducted encampment sweeps, there is minimal outreach offered, if any. Importantly, when services are provided through outreach, shelter is rarely offered. Even if shelter was offered, it is ineffective given the lack of shelter beds available even on a short-term basis. By sweeping encampments with the threat of police force and failing to provide some alternative location for unhoused people to go, the City is effectively criminalizing involuntary homelessness in violation of the Eighth Amendment's protections from cruel and unusual punishment.⁵ We ask that the City therefore act to ensure that sweeps of homeless encampments are not conducted unless and until residents are at least offered an authentic, alternative shelter.

In sum, the sweeps of homeless encampments by the City and the Water District are being conducted in ways that fail to respect the constitutional and human rights of homeless individuals. We recognize consideration of the new Memorandum of Agreement as a unique opportunity for both entities to improve their practices, and we encourage you to implement the following changes in the document:

- Sweeps of homeless encampments should not be conducted unless and until residents are at least offered an authentic, alternative shelter;
- The list of items that may not be designated as trash should be included within the Memorandum of Agreement with the Water District as well as any agreements with contractors, and require that the list's protections are consistently enforced;
- All parties should end the practice of cutting open tents to determine their contents;
- Notices should specify one date on which an area is to be swept instead of a range of dates that leaves residents uninformed;
- Every structure should be posted with notice in any encampment scheduled to be cleared;

⁵ See Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018); see also Jones v. City of Los Angeles, 444 F.3d 1118, 1132 (9th Cir. 2009) (vacated pursuant to settlement).

- The City's Property Supervisor should arrive at least a half-hour before any sweep begins to allow encampment residents an opportunity to remove their property before police are permitted to clear them from the area.
- Bags that people can use to move and store belongings that should not be thrown away should consistently be provided prior to and immediately before sweeps.

While we disagree that any of these encampment sweeps should be permitted at all, we believe these changes to this Memorandum of Agreement and others related to encampment sweeps can help to make the process more humane. We urge you to adopt these changes in the interest of respecting our neighbors' most fundamental legal rights and allowing them to better care for themselves. Thank you for your time and attention to this matter.

Sincerely,

/s/

Matthew Warren and Nadia Aziz, Law Foundation of Silicon Valley

Elaine Talerico, Vice President, Thompson Creek Neighborhood Association

Gail Osmer, Homeless Advocate

Robert Aguirre, H.O.M.E.L.E.S.S.

Sandy Perry, President, Affordable Housing Network of Santa Clara County

Peter Miron-Conk, Andrew Lanier, Casa de Clara Catholic Worker

cc:

Jacky Morales-Ferraud, Director of Housing



AT&T
2600 Camino Ramon
4W850L
San Ramon, CA 94583

11/1/2018

VIA EMAIL

Ms. Anna Hom
CONSUMER PROTECTION & SAFETY DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: AT&T Mobility Site - 10100858 – CCL03224 – SNFCCA1060 – 275 HOSPITAL PARKWAY, SAN JOSE, California 95119

This is to provide the Commission with notice to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ("CPUC") that:

(a) AT&T Mobility has obtained all site land use approval(s) for the modification of the project listed above described in Attachment A.

A copy of this notification letter is also being provided to the appropriate local governmental agency for its information. Should there be any questions regarding this project, or if you disagree with any information contained herein, please contact me at ellenmagnie@caldwellcompliance.com or 925-918-5182.

Sincerely,

Attachment

cc: City Planning Director
City Clerk
City Manager

City of San Jose
200 E. Santa Clara Street, San Jose, California 95113



ATTACHMENT A

- 1-9 Project Location:** Modification
- Site Identification Number: CCL03224
- Project Number: 3701A0BP1D
- Site Name: SNFCCA1060
- Site Address: 275 HOSPITAL PARKWAY, SAN JOSE, California
95119
- County: SANTA CLARA
- Assessor's Parcel Number: 708-05-020
- Latitude: 37-14-24.4
- Longitude: 121-48-04.1
- 10-14 Project Description:**
- Number of Antennae to be installed: 6 antennas total approved at
121' in height
- Tower Design: BUILDING
- Tower Appearance: BUILDING
- Tower Height:
- A) Structure Height 122
- B) Top of antenna Height 121'
- Building Size(s): N/A
- 15 Business addresses of all Governmental Agencies (from permit)**
- City of San Jose
200 E. Santa Clara Street, San Jose, California 95113
(916) 813-9161
- 16 Land Use Approval:** R/R of (6) panel antennas, R/R of (3) RRUs, the installation of (6) additional RRUs, and associated equipment for an existing building mounted wireless facility
- 17 If Land Use approval was *not* required:** N/A