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Re: Invitation to Collaborate on Policy and Procedure Development to Regulate Closure of Homeless Encampments

Dear Attorneys Kubiak and Janosczo:

The Community Justice Project (CJP) and the American Civil Liberties Union of Pennsylvania (ACLU-PA) write on behalf of clients who are unhoused individuals and former residents of the Stockton Avenue encampment and other similarly situated unhoused people who are or will be living in the City of Pittsburgh. The City's chaotic closure of the Stockton Avenue encampment last month raised serious constitutional concerns. People were unceremoniously evicted without clear and adequate notice or safeguards to preserve personal valuables. This was the first serious breach of the guidelines established by the settlement of a class action, *Sager v. City of Pittsburgh*, No. 03-cv-0635 (May 9, 2003, W.D. Pa.). While no longer legally binding, City administrations since 2006 pledged to, and largely did, honor the settlement agreement, until the Stockton Avenue fiasco. In light of rumors that the City intends to close additional encampments, we respectfully request a meeting with relevant City and County officials, and other necessary stakeholders, to discuss adoption of policies and procedures that will allow the government to fulfill its responsibilities, but does so in a way that protects our clients' dignity and constitutional rights.

The closing of the Stockton Avenue encampment was on many levels problematic. Notice to residents was limited and confusing. Residents were first told, less than 48 hours in advance and by word of mouth, that they would need to be out of the camp by noon on December 9th. Late in the day on December 9th, a written notice was posted informing residents that "camping" at the site was prohibited immediately, and giving them less than 5 days to remove all personal property. This short notice left most residents without sufficient time to make adequate, safe plans for their future residence.

Additionally, during the December 14th operation, City personnel indiscriminately scooped personal items in a front loader and piled them into a dump truck.¹ So little care and precaution were applied that City personnel lifted a sleeping woman with a front loader.² Assuming the City is actually storing the personal property removed from the camp, as promised in the posted notice, the haphazard manner of removal raises serious concerns about whether residents' possessions can be properly preserved and organized to permit reunification with their owners.

Finally, it is unclear that the evicted Stockton Avenue residents were given safe alternative housing. While we praise the County's opening of the 2nd Avenue Common, questions remain as to whether that facility, and others in the area, provide sufficient capacity to house all unhoused homeless individuals. This factor must be considered in formulating any policy that forcibly removes unhoused individuals from public spaces.

The problematic evictions contravened assurances the City Solicitor provided to both the ACLU and CJP on December 8th and 9th, respectively. On phone calls with both our organizations, the City Solicitor stated that the City would take a three-pronged approach to providing Stockton Avenue residents with alternative shelter by offering residents a space at 2nd Avenue Commons, assistance and resources if they wished to relocate to an alternate outdoor site, and a short-term hotel-stay if they needed more time to make their decision. The Solicitor also confirmed to CJP that the City would follow the 2003 settlement agreement in *Sager v. City of Pittsburgh*, with respect to the identification, collection, and secure storage of camp residents' personal property. We understand the City Solicitor was unexpectedly unavailable due to an emergency when the closure of the Stockton Avenue encampment occurred, but constitutional compliance should not and cannot depend on any one public official. City and County officials overseeing the December 14th operation failed largely to honor any of the pledges.

The closure of the Stockton Avenue encampment vividly illustrates why the City needs to formalize policies, procedures, and protocols to protect the constitutional rights of homeless individuals living in encampments. As outlined in CJP's December 9th letter to the City, residents of homeless encampments have rights that protect their bodily autonomy and their personal possessions. These rights require proper and adequate notice of camp closures, a credible offer of alternative shelter that does not increase the dangers to residents, and a proper means for collecting, storing, and returning personal property. Since the ACLU's 2003 class action, relevant law has developed favorably. Courts have not only buttressed the Fourth Amendment property seizure and Fourteenth Amendment procedural due process claims, they have recognized an important Eighth Amendment cruel and unusual punishment claim for evicting unhoused homeless without providing a suitable alternative.

CJP and the ACLU hope to work with City and County officials, and other necessary stakeholders, to safeguard our clients' rights and those of similarly situated individuals. This is a

¹ See KDKA-TV:

<https://www.cbsnews.com/pittsburgh/news/pittsburgh-north-side-homeless-encampment-stockton-avenue-dismantled/>.

² See WPXI-TV:

<https://www.wpxi.com/news/local/homeless-woman-scooped-up-by-city-heavy-equipment-operator-during-cleanup/YRD53YYDNZEPDGB6JG227CC7EE/>.

matter that can and should be resolved by dialogue. Pittsburgh is not the only city grappling with this issue; best practices are evolving. We believe the prudent path is to work together to develop policies and practices to ensure that if camp closures are necessary in the future that they will be conducted in a way that not only advances the City's interests, but also safeguards residents' constitutional rights and avoids unnecessary trauma and hardship.

We would welcome a meeting with City and County officials, and other important stakeholders, to discuss the development and content of policy, procedures, and protocols for determining the need to close encampments, and for ensuring residents' valuables and property are adequately safeguarded and appropriate alternative housing is made available. We hope and expect that such discussions will occur *before* another sweep. Our preference is not to reprise a *Sager* TRO and preliminary injunction proceeding, but we cannot allow another Stockton Avenue-type fiasco. We do not expect that to be necessary, as we have a solid track record, at least more recently, of resolving disputes with both the City and County without litigation.

We look forward to receiving your response and to a collaboration that promotes everyone's interests while protecting constitutional rights.

Respectfully,



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