



**4974 N. Fresno St. #185
Fresno, CA 93726-0317
January 5, 2010**

James C. Sanchez, City Attorney
City of Fresno
2600 Fresno St.
Fresno, CA 93721

Dear Sir:

As part of the Greater Fresno Area Chapter of the American Civil Liberties Union of Northern California's continuing effort to advocate for the fair and reasonable treatment of homeless people living in the Fresno, members of the chapter Board of Directors have been monitoring the sweeps of homeless "encampments" by the City. Upon review of the current sweep scheduled for tomorrow, January 6, 2009 at Ventura and F St. and in the 500 Block of F St.; several issues, including possible due process issues have surfaced. These issues need immediate attention to prevent discrimination against, and violations of the 14th Amendment rights of, the homeless population at that location.

The first issue is the posting of paper notices stating that the homeless are "trespassing" on private property at the southeast corner of Ventura and F St. The notices are issued by employees of the City of Fresno Community Sanitation office. It is our concern that non-law enforcement representatives are enforcing trespassing law, and ordering the homeless to leave. This appears to be an abuse of authority; which is more commonly and appropriately granted to the property owner, or law enforcement personnel at the property owner's request.

A related issue concerns whether the issue is one of trespass, or if it is a civil matter between the owner and those alleged to be infringing on the owners property rights, normally requiring the owner of the property to pursue civil eviction of the people who have been living on the property.

The second issue is the posting of the paper notices stating that the homeless are trespassing by placing tents, shelters, and other property in the public right of way on the 500 block of F St. and including the unimproved public right of way portion of the lot at the southeast corner of Ventura and F St. This alleged violation is more commonly and appropriately addressed as an encroachment issue following proper administrative procedures, and with person to person service of a notice of violation to each individual suspected of causing the alleged encroachment.

Also, the administrative notice and enforcement is normally and appropriately a function of, and accomplished by, City Code Enforcement personnel.

The third issue is what appears to be a violation of City of Fresno Municipal Code section 4-301, by the Community Sanitation office management and their employees. The employees gather the unclaimed property left at the site of the sweep, bag the unclaimed property, and take it to storage facilities maintained by the City of Fresno Community Sanitation office. After 90 days the Community Sanitation office has the unclaimed property transferred to a City refuse disposal facility, and disposes of the property.

Municipal Code section 4-301 commands that, "All employees of the city shall turn over to the Police Department any lost or unclaimed property which is turned over to them or comes into their possession while on duty or as a result of their employment."

Community Sanitation employees on prior sweeps have been observed bagging property without a proper inventory of each individual item. Further, employees are allowed to subjectively make their own determinations of what constitutes unclaimed property versus what is to be disposed of. That property which is determined to be worthy of retention is placed into plastic bags and intermingled with other unclaimed property. Although groups of property items are photographed before being placed in a plastic bag; no reference is made as to where the property was located when found, and no detailed description of the unclaimed property is documented, making recovery of the item difficult or impossible. This procedure is contrary to the standard and proper inventory procedures of a law enforcement agency. Found, unclaimed property is normally individually tagged with identifying information. A detailed written description is noted on a permanent written log for cross reference. The location where the property was recovered from is also documented in detail.

These issues appears to deny the homeless the same due process afforded other groups of people in the city of Fresno.

The fourth issue is the proposed fencing of the lot by the City of Fresno. We are interested in knowing why this is being done; and who is paying for it?

We ask that the sweep scheduled for tomorrow, January 6, 2009, be cancelled. We ask that these issues be addressed immediately; to prevent the continuation of what we believe are unfair and discriminatory practices.

Respectfully,

William G. Simon, Chair
for the Greater Fresno Area Chapter ACLU-NC