

SENT VIA ELECTRONIC MAIL

July 9, 2020

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Chief of Police Dan Templeman
City Council Members
2930 Wetmore Avenue
Everett, WA 98201

Code Enforcement Unit Supervisor Eileen Hinkley
3002 Wetmore Avenue
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Re: Request to Halt Encampment Removal at Rucker Avenue

Dear Mayor Cassie Franklin, Chief of Police Dan Templeman, City Council Members, and Code Enforcement Unit Supervisor Eileen Hinkley,

It has come to our attention that the City of Everett has issued an Emergency Order regarding the vacant lot on Rucker Avenue, where dozens of homeless individuals currently reside. It appears that, on the heels of another sweep just days prior, the City is poised to rush this encampment removal and the destruction of residents' homes without providing safe alternative places for people to go or meaningful notice. As the City is well aware: we are in the midst of a global pandemic unprecedented in modern history. Forcibly dispersing some of the City's most vulnerable residents – who have nowhere else to go – throughout Everett runs afoul of public health expert guidelines pertaining to COVID-19 and will cause great harm. We write to urge the City to rescind its Order and halt the removal of the encampment.

While COVID-19 has spread throughout Washington State, it has impacted some regions more than others – including Snohomish County, which has one of the highest numbers of confirmed cases in the state.¹ According to Dr. Chris Spitters, health officer for the Snohomish Health District, cases have escalated over the past few weeks, reaching “unprecedented figures that clearly do signal obviously increased case

¹ Washington Department of Health, *COVID-19 Data Dashboard, Confirmed Cases, Hospitalizations and Deaths by County* (July 8, 2020), available at <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/DataDashboard>.

rates and increased transmission.”² Dr. Spitters also expressed concern that many new infections in Snohomish County are among populations who do not know anyone with the disease or work in jobs that put them in higher risk of contracting the virus, signaling there are many cases the county is unaware of.³

As recognized by Governor Jay Inslee’s “Stay Home, Stay Healthy” order, a critical component to slowing the spread of the virus is for all Washingtonians to stay home as much as possible.⁴ Minimizing exposure to COVID-19 is especially critical for particularly vulnerable populations, including those experiencing homelessness, who are at higher risk of contracting and developing serious symptoms of COVID-19 than those who are housed.⁵ In fact, the Center for Disease Control and Prevention (CDC) has issued guidance specifically related to unsheltered homelessness, noting a “[l]ack of housing contributes to poor physical and mental health outcomes, and linkages to permanent housing for people experiencing homelessness should continue to be a priority.”⁶

Thus, the CDC has advised that absent the availability of individual housing units for everyone in an encampment, cities should “allow people who are living unsheltered or in encampments to remain where they are” as “clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.”⁷ Instead, the CDC recommends that, to combat the spread of COVID-19, jurisdictions provide hygiene facilities and materials and help people living in encampments maintain sufficient space to social distance.⁸

Given the public health emergency caused by COVID-19 and the numerous evictions of people experiencing homelessness off of public

² See Ryan Blethen, *Snohomish County might move back to Phase 1 if coronavirus cases climb more rapidly*, SEATTLE TIMES, June 30, 2020, <https://www.seattletimes.com/seattle-news/health/snohomish-county-might-move-back-to-phase-1-if-coronavirus-cases-start-rapidly-climbing/>.

³ *Id.*

⁴ Washington Governor Jay Inslee News & Media, *Inslee announces "Stay Home, Stay Healthy" order*, March 23, 2020, available at <https://www.governor.wa.gov/news-media/inslee-announces-stay-home-stay-healthy%C2%A0order>.

⁵ See e.g., Alyse D. Oneto, Samantha Batko, *Why Homeless Encampment Sweeps Are Dangerous during COVID-19*, Urban Wire, May 12, 2020, <https://www.urban.org/urban-wire/why-homeless-encampment-sweeps-are-dangerous-during-covid-19>.

⁶ Center for Disease Control and Prevention, *Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials* (March 22, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

⁷ *Id.*

⁸ *Id.*

property, community members in Everett made the decision to meet urgent needs by utilizing privately owned land to temporarily shelter homeless residents and provide resources and support. News reports indicate every effort is being made by local advocates to find safe alternative places for people to go within 30 days. The City should support efforts to stop the spread of COVID-19 and get residents housed, not disrupt the plans already underway, inflicting possibly irreparable harm in the process.

Moreover, if the City insists on engaging in sweeps, despite the pandemic, it still must do so in compliance with the federal and state constitutions, and the ACLU-WA is prepared to ensure that Everett respects the rights of its unhoused community members. For example, the state and federal constitution prohibit cruel punishment – including criminalizing being “homeless in public places” and “conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping on the streets.” *Martin v. Boise*, 920 F.3d 584, 617 (9th Cir. 2019). *See also City of Everett, Wash. v. Bluhm*, No. CRP 7006, slip op. at 6-7 (Everett, Wash. Mun. Court Jan. 12, 2016) (recognizing the homeless facilities are “grossly inadequate and leave no reasonable alternative for a large segment of the homeless population of Everett” and finding the City’s code outlawing camping to be unconstitutional as applied to the homeless population).

Those experiencing homelessness are similarly entitled to the same protections against the invasion of their homes and disturbance of private affairs as those in brick and mortar housing. *State v. Pippin*, 200 Wn. App. 826, 845, 403 P.3d 907 (2017) (“Against this backdrop, to call homelessness voluntary, and thus unworthy of basic privacy protections is to walk blind among the realities around us. Worse, such an argument would strip those on the street of the protections given the rest of us directly because of their poverty. Our constitution means something better.”). *See also Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029, 1031 (9th Cir. 2012) (noting the “violation of a City ordinance does not vitiate the Fourth Amendment's protection of one's property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment” and that the City “almost certainly could not argue that it's summary destruction of homeless peoples' property was reasonable under the Fourth Amendment”).

The City must also provide sufficient and adequate notice before seizing the homes and belongings of those experiencing homelessness. As the courts have 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. This simple

rule holds regardless of whether the property in question is an Escalade or an EDAR, a Cadillac or a cart.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (internal quotations and citations omitted).

The City’s threatened encampment removal at Rucker Avenue does not appear to comply with these constitutional provisions. The City has provided minimal warning and nowhere for residents to go, increasing the stress and severely exacerbating the health risks associated with the sweeps. The City has also failed to take steps to ensure residents’ homes and belongings will be safeguarded, rather than summarily destroyed.

In light of these circumstances, we strongly urge the City to rescind its Order regarding the encampment on Rucker Avenue today and focus its efforts on safely housing Everett’s homeless residents and preventing the spread of COVID-19.

Sincerely,



Breanne Schuster

Staff Attorney
ACLU of Washington