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December 9, 2022

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Via Email

RE: Unlawful Towing & Impoundment of Vehicular Shelters in Perris Hill Park on December 8, 2022

Dear Chief Goodman, Ms. Carvalho, and Mr. Field:

We hope this letter finds you healthy and well. We are writing to bring your immediate attention to the City of San Bernardino’s (“the City”) towing and impoundment of vehicles that were safely and lawfully parked on December 8, 2022 in the area of Perris Hill Park. San Bernardino police and tow operators descended on the park and towed multiple vehicles owned by unhoused individuals for technical violations with no prior notice, no opportunity to cure, without obtaining warrants, and without any applicable exceptions to Fourth Amendment and Due Process requirements.

The tow appears to be part of a larger pattern of “poverty towing” by the City of San Bernardino, in which the City deprives low-income residents of their vehicles for minor Vehicle Code violations without legal authorization. We ask that you take immediate action to ensure release of the vehicles seized on December 8 with a waiver of corresponding towing and impound fines and fees, as well as to ensure that no other San Bernardino residents are similarly deprived of their vehicles in the future.

EXECUTIVE DIRECTOR Hector O. Villagra

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*deceased

The individuals impacted by the towing and impoundment at Perris Hill Park on December 8, 2022 are unhoused residents of San Bernardino who were living in their vehicles. One resident, Melinda McClain, had just purchased her used vehicle several days prior to being towed. Ms. McClain was using the vehicle as a place to sleep, as well as transportation to her place of employment. She was planning to register the vehicle within the 14-day window after purchase. Instead, police woke her up and demanded she get out of the vehicle. They told her the vehicle was being towed for invalid registration. Ms. McClain showed police the car's bill of sale and explained her situation. Nevertheless, officers authorized the tow. At one point, Officer Velasco (badge #: 51319) told Ms. McClain to "shut up" and took her belongings from the vehicle, including her work uniforms, and threw them onto the ground. Ms. McClain's vehicle is a 2005 G6 Pontiac with the license 5LZM529 and VIN: 1G2ZH52H454134577.

Another resident, Amanda Schillero, was allowing her disabled father to sleep in her vehicle because they had both become unhoused. Ms. Schillero's vehicle was safely and lawfully parked in the park's public lot. She had been saving up the funds to afford fees for the registration, which had lapsed earlier this year. Police issued Ms. Schillero a ticket for the registration violation, but instead of allowing her an opportunity to cure the violation the officers proceeded to tow the vehicle momentarily after issuing the ticket. Ms. Schillero's father is now sleeping outside with nowhere to go in the middle of winter. Officers provided Ms. Schillero with a case number: 22-134-650; the citation number is: 433123478; her vehicle is a red 1995 Honda Civic with the license 8TJY156.

Another resident, Lisa Martinez, had been living in her used vehicle which she had obtained in June of this year. Her vehicle was safely and lawfully parked in the park's lot. Police also authorized the towing of her vehicle for a registration violation. The vehicle and all of Ms. Martinez's belongings were taken. Ms. Martinez's vehicle is a white 2003 Ford Focus.

The Ninth Circuit has repeatedly held that municipal entities' authority to tow vehicles is limited by the Fourth Amendment. In *Grimm v. City of Portland*, the court recognized that "[t]he uninterrupted use of one's vehicle is a significant and substantial private interest." 971 F.3d 1060, 1063 (9th Cir. 2020). The court highlighted that towing practices have disproportionate impacts on low-income communities and can permanently deprive people of their cars, which may serve as their homes or be necessary for their work – which can result in a "debt trap for the poor." *Id.*¹

The Ninth Circuit accordingly requires individualized notice before vehicle towing unless there is a "strong justification" for towing in the first instance. *Clement v. City of Glendale*, 518 F.3d 1090, 1094 (9th Cir. 2008).² In *Clement*, the court held that the towing of the Plaintiff's unregistered vehicle without a notice or warrant (or exception to the warrant requirement) violated Due Process requirements:

¹ See also *Brewster v. Beck*, 859 F.3d 1194, 1196–97 (9th Cir. 2017) (holding that 30-day impound of vehicle by the City of Los Angeles constitutes a seizure that requires compliance with Fourth Amendment); *Sandoval v. County of Sonoma*, 912 F.3d 509, 516 (9th Cir. 2018) (holding that community caretaking exception to warrant requirement does not categorically permit government officials to retain impounded private property).

² See also *Grimm v. City of Portland*, 971 F.3d at 1063–64 (holding that towing a car without providing notice cannot be justified as a means of deterring illegal parking).

[H]aving one's car towed, even one that's not operational, imposes significant costs and burdens on the car's owner... the owner will normally have to travel to the towing garage to retrieve it, which may involve significant cost for someone who doesn't have an operational vehicle to drive. And, of course, the garage won't release the car unless the owner pays towing, impound and storage fees. Imposition of these burdens and costs cannot be justified as a means of deterring illegal parking. The punishment for illegal parking is a fine, which is normally imposed by affixing a ticket to the windshield. A ticket can also serve as notice of the illegality and a warning that the car will be towed if not moved or properly registered. The costs and burdens on the car owner associated with a tow can only be justified by conditions that make a tow necessary and appropriate, such as that the car is parked in the path of traffic, blocking a driveway, obstructing a fire lane or appears abandoned. *Clement*, 518 F.3d at 1094.

As in *Clement*, there was no justification for towing multiple vehicles in which people were living, without prior notice and/or a warrant. *Id.* at 1095 (“[T]he government must attempt to notify the owner of a vehicle parked in violation of a valid statute” and seek alternative remedies “before the government may tow and impound it.”). Clearly, officers knew that people were living in these vehicles, and yet they chose not to provide any verbal warnings, citations, or any other notices that these vehicles would be subject to seizure prior to showing up to conduct the sweep. Moreover, there was no reason why the City could not have obtained a warrant and/or provided residents with one or more warning(s) and an opportunity to cure the minor underlying Vehicle Code violations.

While the “community caretaking” exception to the Fourth Amendment is sometimes used to justify vehicle towing without a warrant, this exception only applies to vehicles that jeopardize “public safety and the efficient movement of vehicular traffic.” *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976).³ Here, the vehicles posed no hazards to public safety, clearly were not abandoned, and were all parked safely in a public parking lot without blocking any traffic or impeding bikeways or walkways. It is well-established that mere noncompliance with a state statute or municipal code cannot justify impoundment. *See Miranda v. City of Cornelius*, 429 F.3d 858, 864-866 (9th Cir. 2005) (finding that a city ordinance cannot legitimize unlawful impound of a vehicle); *See also United States v. Cervantes*, 703 F.3d 1135, 1142 (9th Cir. 2012) (finding that a towing that is compliant with a state statute or police policy is insufficient justification for the impoundment under the community caretaking exception).

We hope to engage in a good faith dialogue with the City to resolve these rights violations and ensure this does not happen again. We ask that the City take the following actions:

- Release the vehicles that were towed and impounded on December 8, 2022 from Perris Hill Park with a waiver of storage and impound fines/fees

³ *See also United States v. Jensen*, 425 F.3d 698, 706 (9th Cir. 2005) (stating that the community caretaking “doctrine allowed law enforcement officers to seize and remove any vehicle which may impede traffic, threaten public safety, or be subject to vandalism.”)

- Update the City's policies related to towing and impoundment of vehicles to ensure legal compliance (see See CVC §22650)
- Ensure the City provides meaningful post-storage hearings, as required under Vehicle Code § 22852

We appreciate the City's consideration and ask for a response as soon as possible, and no later than Friday, December 16, 2022. We are hopeful we can resolve this matter amicably in the interest of judicial economy and avoid any escalation or litigation costs. We can be reached by phone at 213.977.5278 or by email at KRogers@ACLUSoCal.org. Thank you in advance for your prompt attention, and we look forward to hearing from you.

Sincerely,



Kath Rogers
Staff Attorney

/s/

Michael Kaufman
Senior Attorney

[INSERT ORGANIZATIONAL SIGNERS]