CITY OF BURBANK

MEMORANDUM

DATE: November 17, 2016

TO: Ron Davis, City Manager

FROM: Judie Wilke, Parks and Recreation Director

SUBJECT: **CITY MANAGER TRACKING LIST NO. 1929 – Update on Homeless Issues in Burbank**

This memorandum is an update on the issue of homelessness and the City of Burbank's efforts toward finding solutions. Although it is coming from one department, it is important to note that the writing of this memo was a collaborative effort of the Police, Community Development, Library Services and Parks & Recreation Departments as well as the City Attorney's Office.

BACKGROUND

At the October 18, 2016 City Council meeting, Mayor Talamantes requested an update from staff on the issue of a homeless individual's personal belongings on Amherst Drive at McCambridge Park. This report is being presented to speak to the broader issue of homelessness, staff's joint efforts to address the issue, and homeless complexities that impact the City's public spaces such as community facilities, parks, and parking structures. Further, staff will propose strategies to develop a balanced approach to addressing homelessness in Burbank.

As previously reported to City Council in September 2016, the Greater Los Angeles Metropolitan area has become home to the nation's largest homeless population. The total estimated homeless people in Los Angeles County for 2016 is 46,874,[1] an overall increase of 2,435 or 5.5 percent over the 2015 total of 44,439. Burbank's total homeless population is estimated at 167 on any given night, which has remained unchanged as of 2016 (168).

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[1] On May 4, 2016, the Los Angeles Homeless Services Authority released the 2016 Homeless Count results conducted in January 2016. Burbank participated in the 2016 Homeless County be enumerating the homeless within the city's boundaries.

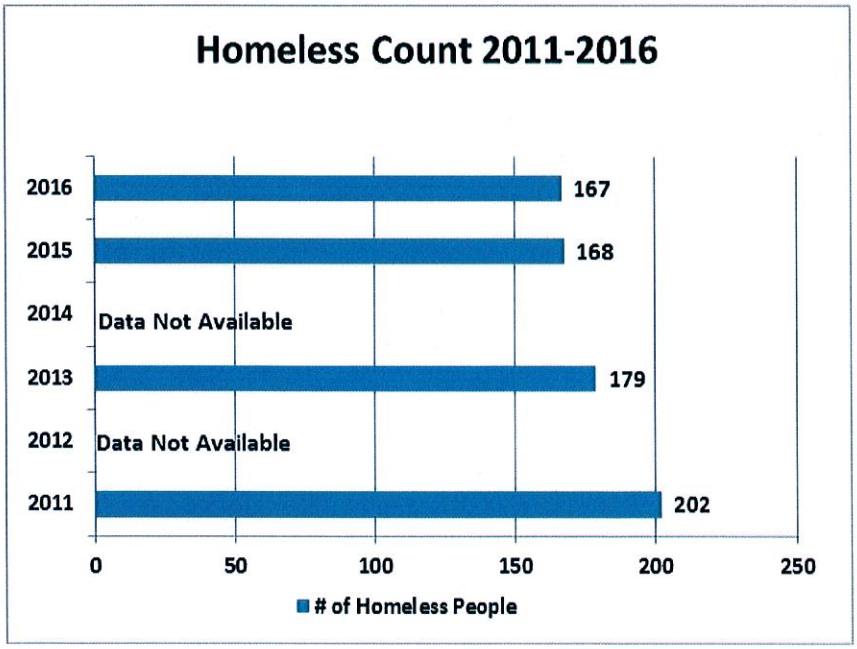
DISCUSSION

According to the United States Department of Housing and Urban Development (HUD) 24 Code of Federal Regulations Part 91.5 (1), a person or family is defined as being homeless when:

1. An individual or family resides:

- In places not meant for human habitation such as cars, parks, sidewalks, abandoned buildings, etc. (on the street).
- In an emergency shelter.
- In transitional or supportive housing for homeless persons who originally came from the streets or emergency shelters.
- In any of the above places but is spending a short time (up to 30 consecutive days) in a hospital or other institution.
- Is being evicted within a week from a private dwelling unit and no subsequent residence has been identified and lacks resources and support networks needed to obtain housing.
- Is being discharged within a week from an institution, such as a mental health or substance abuse treatment facility, or a jail/prison, in which the person has been a resident for more than 30 consecutive days and no subsequent residence has been identified and lacks resources and support networks needed to obtain housing.
- Is fleeing a domestic violence housing situation and no subsequent residence has been identified and lacks resources and support networks needed to obtain housing.

The City of Burbank, for several years, has participated in the Los Angeles Homeless Services Authority point-in-time homeless count. The graph below is a summary of the homeless population from 2011 to 2016. During that time, the homeless totals have decreased by about 17.3%.



The data from the Homeless Count provides a snapshot of the estimated number of persons that are unsheltered or residing in places not meant for human habitation. However, these numbers do not include any individuals or families that are circumstantially homeless or at-risk of homelessness (households who pay more than 50% of income on housing cost).

Causes for Homelessness:

While we can't conclude the main causes of homelessness, the following are some of the main contributing factors linked to someone becoming homeless.

- Unemployment or underemployment.
- Substance abuse issues.
- Unstable or low-paying work, especially in areas with a high cost of living.
- Divorce or legal separation.
- Being kicked out of a living situation and lacking a network of support.
- Domestic violence.
- Evictions and poor credit history.
- Mental health.
- Incarceration and housing restrictions due to probation or parole.

Most people who experience homelessness are not chronically homeless. An individual is defined as chronically homeless if he or she has been consistently without shelter for at least a year or has had multiple shorter periods of homelessness over a period of multiple years, according to HUD. The federal agency's most recent report to Congress (November 2015) estimated that 17% of homeless individuals identified during point-in-time surveys were chronically homeless (https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf). Chronically homeless individuals are likely to be experiencing multiple factors that contribute to their inability to find permanent housing, such as combinations of mental health issues with addiction or multiple mental health issues. It is these chronically homeless individuals who are most visible to the general population.

Homelessness in Burbank:

As noted above, the needs of the homeless are varied and complex. Burbank has demonstrated its support to meet the needs of homeless persons through the provision of services and programs. In partnership with a core set of local service providers, Burbank provides housing and services aimed at homeless assistance and prevention. The City supports and plays a critical role in helping service providers plan programs and services in addition to providing financial resources. Local service providers work in cooperation with each other and with those agencies and organizations outside of Burbank to expand their ability to help the homeless population. The following is a summary of past and present efforts toward addressing homelessness in Burbank.

In a continued effort to address homelessness, the City of Burbank and Ascencia (a non-profit homeless services agency) have partnered to provide an expansion of services in the City. The partnership included Ascencia hiring a full-time Homeless Services Liaison that will benefit Burbank's homeless neighbors and service providers. Mr. Natalis Ng began his new position this past September. He is responsible for coordinating services and programs citywide with local non-profits, coordinating resources with Los Angeles County and City public entities, responding to City intra-departmental programs and homeless related issues, directing services to homeless residents, and fielding community concerns regarding homelessness in Burbank. Natalis is stationed at the Community Services Building and is the main contact for all homelessness issues. Mr. Ng can be reached at 818.626.0518 (cell) or nng@AscenciaCA.org.

In addition to the City's continued financial contribution to the Glendale Winter Shelter Program and Homeless Services Liaison, the City also engages in the following activities:

- A year-round Burbank Street Outreach Program through Ascencia.
- The City supports a motel voucher assistance program administered by Burbank Temporary Aid Center (BTAC) through an annual allocation of Community Development Block Grant funds. The program provides vouchers to homeless persons for limited stays at local motels.
- A partnership with Family Service Agency of Burbank for clinical counseling to homeless persons as well as assistance to victims of domestic violence.
- An ongoing partnership with Family Promise of the Verdugos aimed at providing temporary shelter and supportive services to families that are "situationally" homeless. Family Promise of the Verdugos mobilizes community resources to assist participants with employment and housing.
- Economic Development opportunities are available to the homeless and those at risk of homelessness through the Burbank Workforce Center and Burbank Community Based Development Organizations.
- Fair Housing Counseling services are available to aid in the prevention of homelessness. Housing counseling services include investigating allegations and complaints regarding unfair housing practices, counseling and referrals to other agencies.
- The Landlord Tenant Commission was established by the City Council in 1980. The Commission works to prevent homelessness by minimizing evictions and unjust rent increases through conflict mediation between tenants and landlords.
- The expansion of affordable housing in the Burbank community for low-and moderate-income households including special needs populations such as the disabled, large families, single parent households, seniors, victims of domestic violence, homeless families, and homeless veterans.
- Library staff work closely with BTAC, Ascencia and Family Services Agency to refer people in need to services. Because many people experiencing homelessness spend

extended time in libraries, staff may have the opportunity to build relationships that help people resistant to services ultimately accept help.

- Experience has demonstrated that a large segment of the homeless population in Burbank suffers from mental illness. All Burbank police officers have received formal training in commonly encountered mental illnesses. Complimenting the patrol function is the Department Mental Health Evaluation Team (MHET). MHET is a co-response model comprised of a psychiatric social worker, who is paired with a sworn police officer. The MHET is deployed four days a week, and frequently responds to patrol requests to deal with mentally ill subjects, many of whom are homeless. Burbank police officers routinely attempt to connect homeless individuals with appropriate community services such as counseling, food, medical treatment, etc.
- Broader collaboration between the County, City, and local non-profits to leverage public and private funding. In Fiscal Year 2016-17, new partnerships included an Interagency Agreement with the Housing Authority of the County of Los Angeles for Veterans Affairs Supportive Housing Program.
- Administering a Continuum of Care Grant award of 20 Permanent Supportive Housing Vouchers dedicated to chronically homeless persons. The Burbank Housing Authority will administer the vouchers and coordinate the delivery of supportive services through local non-profit entities.

Homeless Complexities:

The most visible form of homelessness in Burbank, as in other communities, is the presence of homeless people in public spaces during the day and at night. This presence – which does not represent the majority of people experiencing homelessness but does often represent the most difficult cases – can lead to tension and misunderstanding about the use of shared public space. Much public dialogue about homelessness relates to these visible cases, with people living in or near parks, taking up space with their belongings in libraries and recreation centers, blocking sidewalks in business districts or living out of cars in residential areas.

Because of the complex nature of the issue, when identifying potential ways for the City of Burbank to contribute to positive outcomes for people experiencing homelessness, it is necessary to consider several angles. As described below, City departments are working together and with local nonprofits to tackle homelessness by providing education and connection to services as well as enforcement where necessary.

Homeless Legal Challenges:

Homelessness is not a crime and the courts have consistently reinforced this notion. Almost a decade ago, a federal appeals court ruled in what is now known as the *Jones* case that the City of Los Angeles' practice of arresting and ticketing homeless people for sleeping in public was a violation of the 8th Amendment prohibition against cruel and unusual punishment because these residents had no other place to spend the night. Similarly, California courts

recognize under certain conditions that if a homeless person has nowhere else to sleep, that person may have a legal "necessity" which would allow them to sleep in a public space such as a park.

Despite on-going constitutional challenges, some cities continue to enact and enforce laws and policies that criminalize activities associated with homelessness.[2] In contrast, other cities are taking steps to address the underlying social issues contributing to the problem. For example, the City of Pomona recently settled a lawsuit challenging city ordinances that prohibited overnight camping on public property, by agreeing to suspend enforcement and build 388 lockers for the property of homeless people. The City of Pomona and the litigants agreed that enforcement of the overnight sleeping ordinance could resume once sufficient accommodations exist, either in indoor shelters or open spaces designated for overnight stays. Taking the situation a step further, in 2015 the City of Los Angeles updated its municipal code to allow individuals to erect tents on public property to use as nighttime shelter during the evening.

In Burbank it is important to note that there are homeless individuals who legally spend time in a number of City facilities and public spaces including libraries, parks and recreation centers. However, it is important to note that many types of public conduct can be illegal and should be reported to the Police Department. For instance, should anyone observe public conduct by any individual, homeless or not, involving public intoxication, public urination/defecation, trespassing, maintaining open flames, indecent exposure or violence, the police should be called immediately.

In addition, facilities like the libraries and recreation centers have Rules of Conduct – also applicable to all users - that ensure belongings do not block access, restroom facilities are used appropriately, and everyone is sharing space in ways that are not disruptive. Violating these rules can result in temporary suspensions of access to the City facilities, but the rules are not enforceable criminally.

Some City facilities are public spaces that are open to all members of the public such as parks. During the nighttime, entry into parks is restricted by the Burbank Municipal Code from 10 p.m. or sunset to sunrise. Although that Code exists, the City must be mindful about how it enforces the nighttime restriction, as the Courts have ruled that unless the City has a place to take the person for shelter for the evening, it may violate a person's constitutional rights to cite them criminally or remove them from the park. Also, even if the City could legally remove homeless people from the parks in the evenings, alternative places that homeless people could legally spend time are on neighborhood sidewalks, public benches, or other public spaces.

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[2] *See "California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State"* Berkeley Law Policy Advocacy Clinic (June 2016), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2794386.

Although the City contracts with a homeless shelter located in Glendale on a seasonal basis, the shelter has a limited number of beds for homeless individuals (100 beds as of January 2016). Also, like most shelters, this shelter is only open during the evening/night and cannot accommodate people throughout the day. The shelter serves Burbank as well as other neighboring cities, so it does not always have enough space to house all individuals who may need a place to sleep overnight. The City tries to assist homeless individuals in using the seasonal shelter by subsidizing portions of its operating cost and providing bus tokens to homeless individuals to transport them to the shelter. However, the City cannot force homeless individuals to use the shelter if they do not want to go. Further, only having a seasonal shelter with limited beds and without dedicated transportation may be insufficient to meet the spirit of the law's protections for individuals who are truly in need of living accommodations.

With respect to cleanup of personal property left in public spaces, property owners (including homeless individuals) are entitled to due process before being deprived of their personal property. The Burbank Municipal Code has procedures for storing and disposing of lost or abandoned property that is found in public areas. However, the City does not have procedures to handle removing temporarily unattended personal property when we know it belongs to someone. To implement sufficient procedures, a new ordinance would need to be adopted and pursuant to due process the City would need to dedicate staff to engage in activities such as posting notice before and after removing such property, taking inventory of each item that is removed, attempting to contact the property owner, and storing the removed property for an adequate amount of time so that the property owner has an opportunity to collect it (could be up to three months of storage). However, these due process limitations do not restrict the City from removing or destroying debris immediately hazardous to public health.

While the City of Burbank can enact ordinances to address personal property and sleeping overnight in public spaces, we must be mindful of the court rulings, settlements reached and the recent recommendations of the Los Angeles County Civil Grand Jury. Specifically the Civil Grand Jury surveyed all cities within Los Angeles County and found that efforts to accommodate homeless people during the 2015-16 El Nino season were insufficient. Among other things, the Civil Grand Jury has recommended that all cities in Los Angeles County ease restrictions on homeless individuals and even provide resources for homeless people that would alleviate the effects of severe weather conditions (for example providing tarps and ponchos).

CONCLUSION

Possible Strategies:

Public Education

It is clear to staff that more public education of the homeless situation in our community needs to be pursued. The first thing staff has done in this regard is to prepare a Frequently Asked Questions paper on homeless issues (Exhibit A). It is our express hope that this sheet be liberally distributed and shared with the community. The more the community understands the issue, the better we can work together to strategize approaches to effectively address the needs of our homeless population.

Staff believes it would be effective to create a sub-committee of the Interdepartmental Committee on Homelessness to engage members of the public through open forum discussions. Staff has repeatedly found that even though members of the community have expressed their sincere concern and frustration regarding Burbank's homeless issues, they are also compassionate about the issue and have ideas to include as we search for viable solutions.

Management of Homeless through Ordinances

While there are limits to what the City can do constitutionally, there are approaches that could be taken to manage some of the impacts of homelessness. For example, as previously stated, the City could adopt an ordinance for handling private property or even establish a voluntary storage area.

Also the City Attorney's Office in conjunction with the Police Department and its MHET has successfully used criminal statutes, such as trespassing or public nuisance, for handpicked cases to leverage services for a defendant or protect the public generally. For instance, a person was living in a public parking structure and using a pail for a bathroom. Prosecution was initiated and as part of the disposition, the defendant was connected to services including a residential treatment program and ordered to stay away from that particular parking structure. The use of criminal sanctions is not a panacea, but must be thoughtfully utilized where there is a benefit to the defendant, as well as the public.

The Los Angeles City Council voted in early November 2015 to approve an ordinance that would prohibit people from sleeping in their cars between 9:00 p.m. and 6:00 a.m. if they're parked in residential neighborhoods, subject to veto by the mayor. Inherent in this possible legislation is the allowance of sleeping in a car in commercial/industrial sectors of the city. In this regard it appears the city is trying to protect their residences, and has found that other areas of the city would be more appropriate for this activity. Whether this approach will be found constitutional is an open question, and so Burbank may wish to wait and see what happens, if such an ordinance is adopted and enforced. Another approach is the proposal by Pomona whereby they are considering declaring a "shelter crisis" in their city, which would allow the city to authorize individuals to occupy/sleep overnight in designated public facilities during the crisis period.

While there are no easy solutions, the City could look at enacting similar ordinances such as has been done by Los Angeles and other communities and even consider action to prohibit erecting tents in public spaces without a permit or creating a process for removal of personal property left/unattended in public spaces. However, the City must be prepared to address likely protests if such ordinances are adopted, including potential civil rights lawsuits from a myriad of public interest groups who have been active throughout the state (including recent lawsuits in Los Angeles, Pomona, and Sacramento). It is important to know that while these ordinances might provide relief from certain activities, it does not do anything to address homelessness in our community.

Possible Actions to Consider

Homelessness is an evolving topic that is certainly a focus for many communities. If homelessness were easy to solve, it would have been done by now throughout the Nation. There has been a significant amount of money, services and brain power spent on solutions. The problem is there is no one-size-fits-all solution. Numerous communities have created permanent homeless housing yet there are still homeless individuals in their communities. Some communities have focused on providing services such as counseling, food, a place to shower, job searching etc. and while that can be extremely helpful for some, for others it has not been impactful. The fact of the matter is that some homeless individuals would prefer to not be in a restrictive housing setting or provided with services, particularly if they have strings attached or rules to follow. Thus, any action the City of Burbank might take will have to encompass many strategies, and everyone needs to be patient as some will work and some won't. However, the City should still try and work together with nonprofits and other service providers to better address the needs of the homeless in our community.

One idea that staff is contemplating is the possibility of holding a health fair where all homeless individuals in our community would be encouraged to attend. They could be provided with a variety of services including, food, medical attention, personal hygiene services, and connection to resources in and surrounding our community. This fair would allow staff to interact with our homeless population, ensure they are all input in the county system and provide a positive interaction whereby we begin building trust and rapport so that they will feel comfortable working with us to find them the help they need.

As the City's Interdepartmental Committee on Homelessness evolves staff will most certainly work through different strategies in an attempt to find what works for Burbank. We have a number of effective non-profit partners as well as attempted strategies from other communities to work with and learn from. A successful part of this process will be the inclusion of our community members. Overall, this is an issue that will benefit from wide range and extensive community engagement. Further, staff will coordinate with the City Manager's Office toward developing an interdepartmental policy and strategies on homelessness. Staff will schedule a study session in the upcoming months to thoroughly

discuss this matter with the City Council which will encourage a public conversation about this important issue.

EXHIBIT

A: Frequently Asked Questions re: Homeless Issues (Fall/Winter 2016-17)

EXHIBIT A

Frequently Asked Questions re: Homeless Issues

(Fall/Winter 2016-17)

General:

Homelessness is an extremely complex social problem that impacts the quality of life in our community, both for homeless and non-homeless residents. There are no easy solutions.

Q: Can you arrest people for being homeless?

No. Being homeless is not a crime. However, many kinds of public conduct can be illegal and may be reported to the Police Department. For instance, if you observe conduct in public (by any individual, homeless or not) involving public intoxication, trespassing, maintaining open flames, indecent exposure, or violence, you should call the Police Department immediately.

Q: Why can't you remove homeless people from public property?

Currently, the City's Municipal Code only regulates physical presence in City parks, areas near the Starlight Bowl, and property that contains "no entry" signage as posted according to the Municipal Code. (*See* B.M.C. §§ 5-3-410, 5-3-1105, 5-3-501). During the daytime, there are no restrictions on individuals being in the parks. Furthermore, at all times, there are no restrictions barring individuals from remaining on City property unless such property falls within the Municipal Code sections identified above. In general, parks and other City-property are areas open to all members of the public.

During the nighttime, entry into parks is restricted by the City's Municipal Code (for most parks, the restriction lasts from 10pm until sunrise). However, the City is mindful about how it enforces the nighttime restriction. Federal courts recognize that if a person has nowhere else to sleep, it may violate the Eighth Amendment (which prohibits "cruel and unusual punishment") if a law makes it illegal for a person to sleep in the park. Similarly, California courts recognize that if a homeless individual has nowhere else to sleep, that individual may have a legal "necessity" which would allow them to sleep in the park.

Q: Are there other places where homeless individuals may go instead of parks or City-owned property?

Just like the City cannot tell non-homeless individuals where to spend their day, the City cannot tell homeless individuals where to go. Even if the City removed homeless

individuals from parks at nighttime, alternative places that homeless people could legally spend time include any property open to the public (i.e., neighborhood sidewalks, public benches, libraries, etc.)

Although the City contracts with a nearby homeless shelter on a seasonal basis, the shelter only has a limited number of beds for homeless individuals (100 beds as of January 2016). Also, like most shelters, this shelter is only open during the evening and cannot accommodate people throughout the day. The shelter serves Burbank as well as other neighboring cities, so it does not always have enough space to house all individuals who may need a place to sleep overnight. However, individuals unable to obtain a bed will be referred to alternative accommodations, if possible. The City tries to assist homeless individuals in using the shelter by subsidizing portions of the shelter's operating cost and providing bus tokens to homeless individuals to transport them to the shelter. However, the City cannot force homeless individuals to use the shelter if they do not want to go.

Q: Can you remove people's property from public areas?

All individuals are entitled to "due process" before they are deprived of their personal property. The City's Municipal Code has procedures for storing and disposing of lost or abandoned property that is found in public areas. However, we don't have procedures to handle removing temporarily unattended personal property when we know it belongs to someone (for example, a homeless person).

To implement sufficient procedures, under the law the City would need to dedicate staff to engage in activities such as posting notice before removing such property, taking inventory of each item that is removed, attempting to contact the property owner, and storing the removed property for a significant period of time so that the property owner has an opportunity to collect it (could be up to 3 months of storage). However, these due process limitations do not restrict the City from removing and destroying debris immediately hazardous to public health.

Q: Why hasn't the City adopted ordinances that would allow for property removal?

In addition to the large amount of resources (both financial and staff time) that such an ordinance would require, the City must currently be mindful of recommendations issued by the Los Angeles County Civil Grand Jury. The Civil Grand Jury surveyed all cities within LA County and found that efforts to accommodate homeless people during the 2015-2016 El Niño season were insufficient. Among other things, the Civil Grand Jury has recommended that all cities in LA County ease restrictions on homeless individuals and even provide resources to homeless people that would alleviate the effects of severe weather conditions (for example, providing tarps and ponchos).

Burbank is not alone in dealing with this issue. In 2015, the City of Los Angeles (who has over 25,000 homeless people residing in its jurisdiction) updated its Municipal Code to allow individuals to erect tents on public property to use as nighttime shelter during the evening.