

August 29, 2023

Regina Romero
Mayor, City of Tucson
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Kevin Dahl
Councilmember, Ward 3
ward3@tucsonaz.gov

Michael Ortega
City Manager, City of Tucson
citymanager@tucsonaz.gov

Via Email

Re: Hedrick Acres Neighborhood Homeless Encampments

Dear Mayor Romero, Councilmember Dahl, and Mr. Ortega,

We have been retained to represent Adrian Wurr and other residents of the Hedrick Acres Neighborhood in Tucson, who are abutting Navajo Wash (“Wash”) or live immediately nearby. As you are surely aware, the Navajo Wash area has become an attraction for several unsheltered individuals who have set up semi-permanent encampments. The Navajo Wash runs from the northwest corner of N. Mountain Avenue and E. Hedrick Drive to Fairview Avenue, where it merges with the Flowing Wells Wash just south of Erma Avenue; the portion in question is between E. Hedrick Drive and E. Fort Lowell Road.

This area, as well as the University of Arizona parking lot (#9007) and the vacant land to the north of the parking lot and bordered by E. Fort Lowell Drive, is the property of the City of Tucson; however, for many years, the Hedrick Acres Neighborhood Association (HANA) and its volunteers have taken it upon themselves to maintain the Navajo Wash area, including tree trimming, trash pickup, and weed whacking as needed. In the past, the Wash was used by many local residents, including families with children, as a place to walk dogs, a place for the neighborhood association to meet, and for all to enjoy the nature and wildlife.

Unfortunately, in the last few years, Navajo Wash has become a magnet for unsheltered individuals, making it impossible for residents to use the Wash as in the past. Because until recently the camps for the most part had been small and few, HANA has usually left them alone, only calling for their removal if there was disruptive or illegal behavior, or when the accumulation of garbage and debris became excessive. When necessary, HANA has contacted the Ward 3 office and/or Mari Vasquez, City of Tucson Multi-Agency Resource Coordinator. The response has often been unsatisfactory, with representations that the City is monitoring the Wash; but action is rarely taken.

Over the past two months, the situation has significantly deteriorated. The number of camps has grown and the camps contain more inhabitants, who seem intent on making the Wash a permanent home. The neighborhood has been negatively impacted by the masses of garbage and human waste, and by the increase in illegal drug use and other criminal activity, not just in the Wash, but spilling into alleys and streets and on to private property. The residents can no longer use the Wash for the activities they used to enjoy. The presence of the homeless encampments has had a devastating impact on Hedrick Acres' only park, and on residents' quality of life. This is an untenable situation and needs to end.

As you are aware, Tucson City Code specifically prohibits the various activities in which the unsheltered individuals are engaging in Navajo Wash. The City Code provides that no person shall "[e]mit, eject or cause to be deposited any excreta of the human body, except in those places designated for such purposes." *Id.* § 21-3(7)(5)(a). Further, "It is unlawful for any person to urinate or defecate in a public place, or in any place exposed to public view, except an established lavatory or toilet." *Id.* § 11-54. The City Code defines obstructions resulting from encampments, as well as public urinations and defecation, to be public nuisances: "Anything that is injurious to health, or is indecent or offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, is hereby declared to be a public nuisance." *Id.* § 16-34.

Tucson City Code further provides that burning materials in open fires constitutes a public nuisance: "The burning of garbage, rubbish, trash, grass clippings, tree prunings, waste trade materials, junk auto bodies or parts thereof, or tires, and any other articles in open fires, bonfires, incinerator or burning devices, or in other manner, outside of a regular building and within the city is hereby prohibited except as specifically permitted. Except as specifically provided, any such fire or burning is hereby declared to be a public nuisance and unlawful." *Id.* § 11-5.

The Code also specifically declares the presence of garbage, trash, and refuse in a wash to be a public nuisance: “The presence of garbage, trash, refuse, grass clippings and other waste materials, or the accumulation and presence of weeds, brush and natural vegetation to the extent that it impedes, obstructs or hinders the easy natural flow of drainage or floodwaters in any arroyo, water ditch, acequia or natural drainage channel is hereby declared a public nuisance; such nuisance may be abated by appropriate action in any court of competent jurisdiction by the city in addition to other remedies provided by law.” *Id.* § 11-62.

The City Code also defines “[a]bandoned shopping cart” to mean “a shopping cart, whether marked or unmarked, located outside the premises or parking area of a retail establishment, which parking area shall include parking areas of common usage in multi-store complexes and shopping centers.” *Id.* § 16-39(a)(1). And it provides that “[u]nmarked abandoned shopping carts are declared a nuisance.” *Id.* § 16-39(b).

As you are probably already aware from HANA’s communications with the City, all of these Code provisions have been violated and continue to be violated by the presence of the encampments and associated activities. For example, fires have been set by the unsheltered living in the Wash and have burned out of control at least twice in the recent past, requiring the assistance of the fire department. One partially burned one of two park benches in the Wash; the other scorched a quarter-acre of grass and mesquite and left burnt out shopping carts, tents, and debris behind, which neighborhood volunteers cleaned up. The carbon scars on landscaping rocks that HANA and the City purchased will remain for many years. Mr. Wurr and others have photographic evidence of these activities.

Additionally, human waste, drug paraphernalia, and other trash dumped by unsheltered persons in the Wash leech into the soil and into the ground water with each rainstorm. One resident who spent over a decade participating in park maintenance in the Wash but who no longer frequents the Wash because of the present conditions explains that in recent years the monthly maintenance pickups often included scraping vomit out of the dirt, picking up human excrement, picking up used condoms, and finding stolen mail. Such environmental degradation violates not only the City Code, but state public nuisance laws as well. A.R.S. § 36-601(A)(5) (“All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons” is a “public nuisance dangerous to the public health”); *id.* § 36-601(A)(9) (“The pollution or contamination of any domestic waters.”).

More still, camping debris and trash has blocked storm drains at Mountain Avenue and Hedrick Drive and resulted in flooding throughout the neighborhood in at

least two instances; that constitutes illegal environmental discharge under state law. A.R.S. §§ 49-201(32) (prohibiting “discharge” of pollutants); 49-201(12) (defining “discharge” as “the direct or indirect addition of any pollutant to the waters of the state”); 49-201(35) (defining “pollutant” to include “solid waste,” “sewage,” and “garbage”). In recent storms, a tent from Navajo Wash even landed in the backyard of HANA’s president, Mr. John Pendolino; his yard was also flooded as water backed up in the Wash. Mr. Wurr and others have photographic evidence of these occurrences. They also have photographic evidence of shopping carts and encampments in the Wash.

People living in Navajo Wash have also been observed violating laws against public indecency and intoxication and have been observed engaging in sex acts in public. There has also been an increase in criminal activity such as mail theft, smash and grab thefts on cars, homes, and businesses in the neighborhood. At least three stolen vehicles have been dumped in the University of Arizona parking lot and several university students have had their cars broken into during daylight hours while attending classes. Dozens of HANA neighbors have also reported mail and package thefts, petty thefts of items in their yards, breaking and entering of homes and personal vehicles, and many more minor crimes that rise or fall with the number of unsheltered individuals living in Navajo Wash. Several nearby businesses have also sustained thousands of dollars in damages from stolen tools and equipment; broken doors, windows, locks and fences; polluted pools; and loss of business traffic. As a general matter, the increase in violent crime in the area has been well documented by the Tucson Police Department. <https://nsn.soaz.info/incidents/zhedrick.html>.

As you may be aware, the Superior Court for Maricopa County has recently held that, under Arizona’s statute and common law, the City of Phoenix could be held liable for a public nuisance resulting from homeless encampments on its lands. Private individuals such as those in the Hedrick Acres community may bring a suit to enforce the public nuisance laws if they suffer special damages above and beyond those experienced by the general public. As neighbors and businesses abutting the Wash, they are entitled to bring such a suit.

Additionally, state law provides that “[a]ny place . . . controlled . . . by any governmental agency and that is not maintained in a sanitary condition” is a public nuisance “dangerous to the public health.” A.R.S. § 36-601(4). And the Restatement (Second) of Torts, which the Arizona Supreme Court has adopted in this context, provides that “[a] possessor of land” is liable for nuisances on his property if he “knows or should know of the condition and the nuisance” and fails “to take reasonable steps to abate the condition.” Restatement (Second) of Torts § 839. It further provides that “[a]

possessor of land upon which a third person carries on an activity that causes a nuisance is subject to liability for the nuisance” if the possessor “knows or has reason to know” of the activity and “consents to the activity or fails to exercise reasonable care to prevent the nuisance.” *Id.* § 838.

Finally, the Restatement (and therefore state law) provides that “[a] public nuisance is an unreasonable interference with a right common to the general public,” and that “[c]ircumstances that may sustain a holding that an interference with a public right is unreasonable include . . . [w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or . . . whether the conduct is proscribed by a statute, ordinance or administrative regulation.” *Id.* § 821B. Here, as noted above, not only is there a significant interference with the public health, safety, comfort, and convenience, but several of the activities are specifically “proscribed by . . . ordinance.”

We understand from residents and news reports that the City now has a three-tier monitoring system for homeless camps. According to this system, residents of “Tier 3” encampments are asked to leave and the campsites are cleared because there is ongoing illegal and disruptive behavior, or some other health or safety risk that the City deems unacceptable. Residents of “Tier 2” encampments purportedly do not engage in disruptive activities and are left alone. “Tier 1” means the encampment is empty of inhabitants. Unfortunately, this tiered system does not work well, and it certainly does not abate the nuisance that exists in the Navajo Wash area. Residents have observed City workers parking at a distance to assess the camps; but residents of the neighborhood who can observe the encampments close up routinely notice evidence of illegal drug use and other disruptive activity at the encampments that the City apparently does not notice or that it chooses to ignore. The reality is, even “Tier 2” encampments are extraordinarily disruptive for the residents in whose neighborhoods such encampments exist. So-called “Tier 2” encampments are still public nuisances under Arizona law, and as declared by Tucson City Code; the residents are entitled to have such nuisances abated.

As you know, representatives of the neighborhood, and multiple residents, have met with all City officials with jurisdiction over Navajo Wash, including former and current Ward 3 Councilmen and their staff; TPD homeless Outreach officers and their supervisors; Mari Vasquez, the City of Tucson’s new Multi-Agency Resource Coordinator for homeless outreach services; Tucson Department of Transportation (which is responsible for clearing washes of debris to prevent flooding); Tucson Clean & Beautiful; University of Arizona Parking & Transportation; University of Arizona Police; and the Tucson Fire Department and EMT personnel responding to fires and

overdoses in the wash. They have written dozens of letters to these officials, outlining concerns and asking for assistance and relief from the problems the encampments create for the neighborhood. Unfortunately, the responses have usually been entirely dismissive; certainly, they have been inadequate.

The residents we represent are hoping to have a constructive dialogue with the City. Please let us know if City decisionmakers are willing to meet to discuss how to resolve these issues so that litigation can be avoided. Please respond no later than September 11, 2023.

Sincerely,



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