



Item #8E

May 7, 2021

MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION
FROM: DARREN KETTLE, EXECUTIVE DIRECTOR
SUBJECT: TRESPASS REMOVAL POLICY

RECOMMENDATION:

- Approve Trespass Removal Policy.

BACKGROUND:

In October 2019, VCTC General Counsel's Office conducted a review of law regarding criminalizing behavior associated with homelessness and the removal of encampments. Counsel advised that, as long as proper notice and claims procedures are followed, VCTC may remove encampments from its property, and that VCTC rail operators may remove encampments and trespassers from their portion of the leased right-of-way via enforcement of trespass laws, providing notice and coordinating with local law enforcement and social service agencies. Counsel also prepared a draft Trespass Removal Policy in November 2019 based on a Bay Area Rapid Transit (BART) policy upheld in *Sullivan v. City of Berkeley*.

VCTC staff was in the process of coordinating with local partners to implement the policy, notably storage of personal property, when the COVID-19 global pandemic changed the landscape for government actions. In early 2020, the Centers for Disease Control and Prevention (CDC) issued guidance advising against removal of homeless encampments unless the individual(s) can be provided non-congregant shelter, to prevent the potential spread into the community of the virus that causes COVID-19. Given this guidance, VCTC did not remove homeless encampments on its property, principally railroad right-of-way.

Instead, VCTC staff worked to address the impacts of encampments to VCTC-owned property and the surrounding neighborhoods, such as removal of accumulated trash, and conducted prevention activities, such as tree pruning and weed abatement. During the first eight months of Fiscal Year 2020/2021 (July 1, 2020 – February 28, 2021), VCTC expended \$54,315.32 for trash removal, weed abatement, and tree pruning on the Santa Paula Branch Line (SPBL). It is not known what portion of the debris is generated by homeless encampments or illegal dumping; however, problem areas occur in proximity to observable encampments. Staff also communicated with the County Continuum of Care and other partners, requesting support from the Backpack Medicine team and other support to determine whether shelter or care is available for the encampment residents, but refrained from removing encampments.

However, in recent months, several incidents raised serious safety concerns for rail operations on the Santa Paula Branch Line railroad, notably two incidents where residents of nearby encampments jumped onto moving trains (one in which the individual was carrying a fuel can), and repeated incidents of an individual sleeping on the Santa Paula Creek Bridge. Fillmore & Western called police and the individuals were

arrested in each instance. Encampments have also caused damage to drainage structures and rail infrastructure and caused several small fires. Given these incidents of increasing severity, VCTC staff sought guidance from General Counsel on implementing the draft Trespass Removal Policy. General Counsel advised that VCTC and its rail operators may still remove homeless encampments provided that proper notice and claims procedures are followed.

DISCUSSION:

The Trespass Removal policy is presented for Commission approval. The purpose of the policy is to provide clarity and coordination around all aspects of trespass identification, removal, and storage of collected property located on VCTC property, which principally includes railway right-of-way property. General Counsel developed the policy in accordance with relevant case law concerning protection of personal property under the Constitution. The draft policy outlines identification, site inspection, notice, removal procedures, and personal property storage requirements. The policy designates the Executive Director as the VCTC Trespass Removal Official responsible for delegating removal responsibilities to Staff and contractors. The draft policy has been shared with rail right-of-way corridor cities, partner agencies, and law enforcement for awareness.

RECOMMENDATION:

Staff recommends approval of the Trespass Removal Policy as presented.

VENTURA COUNTY TRANSPORTATION COMMISSION
TRESPASS POLICY

The purpose of this policy is to provide clarity and coordination around all aspects of trespass identification, removal and storage of collected property located on Ventura County Transportation Commission (“VCTC”) property which principally includes railway right-of-way property. This policy addresses the manner in which trespass items are removed, including which entities are involved in the process. The existence of trespassers on VCTC property presents unsafe and unhealthy conditions for these trespassers and impinges upon VCTC property interests and the safe use thereof.

In particular, health and safety concerns include, but are not limited to:

- Objective hazards to trespassers such as proximity to rail lines and steep slopes;
- Difficulty in extending emergency services to the trespass area due to factors such as location or density of the trespass;
- Fire hazards, including potential and actual fire activity;
- Presence of garbage, trash, or debris;
- Uncontrolled presence of needles, human waste, or other hazardous material;
- Vector hazards (e.g. rats); and
- Other active health hazards to trespassers and the surrounding community.

In addition, the trespass incident may have the following impacts on VCTC property:

- Obstruction of work scheduled at the VCTC property;
- Damage to environmentally critical areas; and
- Damage to public infrastructure.

The following Policy shall be followed to protect the constitutional rights of trespassers whose personal property remains on VCTC property after a Notice of Trespass expires.

I. Notice of Trespass

Incidents of trespass on VCTC property are to be reported to the Executive Director or the Executive Director’s designee (“VCTC Trespass Removal Official”).

Once the VCTC Trespass Removal Official receives notification of an incident of trespass, the following procedures shall be implemented.

II. Initial Assessment

Determine VCTC's interest in the property upon which the trespass is located, if any. A site inspection may be necessary.

- 1 . If VCTC owns the property in fee or possesses a permanent easement that includes the right to maintain and operate the property, then proceed to implement the steps outlined in this Policy.

2. If VCTC does not own the property in fee or does not possess a permanent easement that includes the right to maintain and operate the property, then review the form of property interest (e.g. lease, license agreement, etc.) to determine what entity is responsible for removing the trespass. If a third party is responsible for removal, notify such third party and request, in writing, that it remove the trespass.
3. Notify a contractor hired to assist VCTC with removal (“Removal Contractor”) that you are investigating a possible trespass and may be contacting them in the near future to remove it. Identify dates when the Removal Contractor is available to remove the trespass which shall be at least 72 hours after the date of the site inspection.

III. Site Inspection

1. Contact the appropriate law enforcement unit in the Sheriff’s Department or other applicable local police department and set up an appointment for a police officer/deputy sheriff to accompany the VCTC Trespass Removal Official and/or the Removal Contractor to the Property to assess the situation.
2. Inspect the site and confirm that the trespass is occurring on Property. A trespass exists if either personal items have been left by trespassers or trespassers are physically present.
3. Should shelter or other housing be available in the surrounding community, provide such information to the trespassers regarding the options.
4. Post the Property with the appropriate Trespass Notice attached hereto as Attachment B. The Trespass Notice is to be securely affixed to multiple locations on the Property, or as near as possible if access is restricted. If the apparent owner of the personal property is encountered while posting the Notice, hand him or her a copy of the Notice. More than one Trespass Notice may be necessary to cover the area on which the trespass is occurring.
5. Photograph the trespass, showing all personal property and debris, and the posted Notice(s) and create a trespass area summary which should include at a minimum:
 - a. Size of the trespass area (footprint)
 - b. Number of tents/structures/vehicles
 - c. Number of people
 - d. Presence of aggressive dogs
 - e. Presence of syringes
6. Mark the location of the trespass on a VCTC property map.
7. If the trespass is in a VCTC construction area, notify the project Engineer and Project Manager as soon as possible.

8. Notify VCTC Trespass Removal Official and appropriate law enforcement unit in the Sheriff's Department or applicable police department of the date the Notice was posted and date indicated on such Notice when trespass removal is scheduled to occur, if the trespass is not removed by such time.

IV. Trespass Removal

1. Request applicable law enforcement unit in the Sheriff's Department or police department to arrive at the Property 30-60 minutes prior to VCTC Trespass Removal Official and/or Trespass Contractor to encourage the trespassers to remove their personal property.
2. The VCTC Trespass Removal Official or Trespass Contractor shall photograph the trespass area prior to any removal.
3. If personal property is still being removed by the trespassers when VCTC Trespass Removal Official and/or Removal Contractor arrives, then the VCTC Trespass Removal Official shall instruct and supervise the Removal Contractor to remove debris first and allow the trespassers to continue removing their personal property. VCTC Trespass Removal Official shall further instruct and supervise the Removal Contractor to immediately dispose of belongings that are considered to be clearly debris or are unsafe for storage, such as food or food wrappers, soiled items, or used personal hygiene items. See the list of examples of items that shall be immediately discarded attached hereto as Attachment A.
4. All obvious illegal contraband or other evidence of a crime shall be turned over to the appropriate law enforcement unit in the Sheriff's Department or applicable police department.
5. Removal of Personal Property. The VCTC Trespass Removal Official and the Removal Contractor will not search through piles or bags of items for valuables or personal property, instead, personal property will be removed as follows:
 - a. Post Notice(s) of Collected Property attached hereto as Attachment C on the same locations in the trespass area as the Notices(s) of Trespass were posted.
 - b. Photograph any personal property removed.
 - c. If possible, bag the removed personal property and tag the bag. The tag should state the location from which the property was found, including the VCTC Parcel Number, Assessor's Parcel Number, City name, the nearest street and cross street, and the date that it was removed.
 - d. If the personal property cannot be bagged, then affix a tag to it including all the information as set forth in subsection c.

- e. The properly bagged and/or tagged personal property shall be transported to a secure storage location.
 - f. If the property seized requires refrigeration such as medications, then the items shall be stored during the 90 day period before destruction in appropriately refrigerated storage.
6. If trespassers are at the site during removal, then they should be provided with the inventory of the removed items, if possible, along with Notice(s) of Collected Property.
 7. The appropriate law enforcement unit in the Sheriff's Department or applicable police department will verify that all trespassers have left the Property during the removal, or will have the remaining trespassers leave.

V. Documentation

The VCTC Trespass Removal Official shall create a file to document all activities concerning the trespass. At a minimum the file should include:

1. A copy of the VCTC Right of Way Map with the location of the trespass marked.
2. A log listing by date all activities relating to the Property, including the details of all conversations, if any, with third parties, including the trespasser(s) or others, concerning the trespass and the date any personal property and debris were removed from the site by VCTC.
3. Photographs of the trespass area marked with the date each photograph was taken.
4. A copy of the Notice(s) posted at the site, with the date posted written in the upper right hand corner of the photograph.
5. An inventory of personal property removed from the Property including date, time and location of removal corresponding to the photographs taken during removal and location where the personal property was stored.

VII. Storage and Property Claims

1. The seized property shall be stored for a period of 90 days from the date of removal. If unclaimed at the end of that period, it shall be considered abandoned and thereafter permanently disposed of.
2. If an individual makes a claim to recover property from storage, he or she shall be required to describe property, state date and location of property from which it was removed and prove ownership as necessary.

3. If an individual seeks to recover property from storage and makes a request for a reasonable accommodation of program procedures based upon his/her disability, the VCTC shall process that request as it does all other reasonable accommodation requests.

VIII. Minimize Trespass

There are several ways to minimize the use of VCTC property by trespassers as follows:

1. Keep trees and shrubs trimmed back. Trespassers often live or loiter in areas protected by low hanging trees and/or defense shrub.
2. Seal/screen off any culverts large enough for a trespasser to sleep in.
4. Regularly inspect fencing and properties.

Attachment A:
Guidelines for Property Identification

VCTC Trespass Removal Official and Removal Contractor will not search through piles or bags of items for valuables or personal property.

Priority items to take to storage: *The following items are considered to have a good likelihood of being considered as valuable or personal property*

- ID/Social Security cards
- Medications
- Photos/Photo Albums
- Tax/medical records
- Jewelry
- Eyeglasses
- Purses/backpacks
- Suitcases
- Tents
- Phones
- Radios & Electronics
- Briefcases
- Tools
- Stoves & Generators
- Bicycles that are whole

All obvious illegal contraband or other evidence of a crime will be turned over to the appropriate law enforcement unit in the Sheriff's Department or other applicable police department.

Items that will not be taken to storage: *The following items are considered to be debris or are unsafe for storage*

- **Dirty or Soiled:** items that smell or are stained with urine, bodily waste, or mud
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or other risk of biohazard (i.e. used toothbrushes, hairbrushes, washcloths and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storage (i.e. car batteries, gasoline cans, and propane tanks)
- **Broken or Disassembled:** items broken, damaged or stripped of parts (i.e. electronics stripped for copper, flat tires, torn up clothes, bicycle parts)
- **Weapons:** weapons will be turned over to the appropriate law enforcement unit in the Sheriff's Department or other applicable police department
- Food/beverage wrapper or containers
- Tissue/paper napkins
- Open household product containers
- Bedding/Sleeping Bag
- Pots & Pans
- Books
- Shopping carts

VCTC Trespass Removal Official shall use common sense when determining what is personal property and what is debris. If in doubt, consider the item personal property, as long as it does not pose a health or safety risk.

ATTACHMENT B
NOTICE OF TRESPASS

DATE: _____

NOTICE OF TRESPASS

TO ALL PERSONS USING THESE PREMISES:

You are trespassing on private property in violation of California Penal Code 602(m) and are hereby ordered to vacate the premises and PERMANENTLY remove all of your property.

ALL ITEMS NOT REMOVED WITHIN 72 HOURS OF THE DATE OF THIS NOTICE WILL BE REMOVED BY VCTC ON

_____.

CREWS WILL REMOVE ALL ITEMS REMAINING ON THE PROPERTY ON THE DATE SPECIFIED ABOVE OR THE NEXT BUSINESS DAY. ANY PERSONAL PROPERTY REMAINING ON THIS PROPERTY AT THE TIME OF REMOVAL WILL BE REMOVED FROM THE SITE AND STORED BY VCTC. HOWEVER, PROPERTY THAT IS UNSAFE OR HAZARDOUS TO STORE AS WELL AS PROPERTY THAT IS CONSIDERED DEBRIS WILL BE IMMEDIATELY DISCARDED. UNATTENDED WEAPONS, OBVIOUS ILLEGAL CONTRABAND AND OTHER EVIDENCE OF A CRIME WILL BE IMMEDIATELY CONFISCATED

IF YOU HAVE ANY QUESTIONS OR CONCERNS PLEASE CALL
[phone number of responsible person for coordinating a response
to trespass]

ATTACHMENT C
NOTICE OF COLLECTED PROPERTY

DATE: _____

NOTICE OF COLLECTED PROPERTY

TO ALL PERSONS USING THESE PREMISES:

A Notice of Trespass was posted at this location on _____. Pursuant to that Notice all personal property and debris remaining on VCTC Property after expiration of the Notice period has been collected.

Items considered by VCTC to be debris have been disposed of permanently.

Items considered by VCTC to be personal property will be stored by it and may be claimed no later than 90 days from the date of this Notice. All belongings not claimed within 90 days will be considered abandoned and will be disposed of permanently.

Personal property by be claimed by calling _____ at (____)____ - _____ between the hours of _____ and _____.

Prior to return of property, owners will be required to describe property, state date and location of property from which it was removed and prove ownership as necessary.