



April 9, 2021

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City Councilor Sergio Jimenez, District2@sanjoseca.gov  
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City Councilor Pam Foley, District9@sanjoseca.gov  
City Councilor Matt Mahan, District10@sanjoseca.gov

Via email

Dear Mayor Sam Liccardo and San José City Councilors,

I write on behalf of the National Homelessness Law Center (“Law Center”) to express concern regarding San José’s planned clearance of over a dozen encampments in San José and to inform you that recent guidelines released by the Centers for Disease Control and Prevention (“CDC”) state that homeless encampments should not be evicted during the COVID-19 pandemic unless the city can offer individual housing units to people experiencing homelessness. See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. Fortunately, the Federal Emergency Management Agency (“FEMA”) is currently offering **100% reimbursement funding for non-congregate shelter for the duration of the pandemic**. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>, <https://nlihc.org/resource/new-executive-order-addresses-urgent-health-and-housing-needs-people-experiencing>. This is an exciting opportunity for San José to safely end *all* encampments in its jurisdiction by providing hotel rooms to encampment residents at *zero* cost to the local taxpayers, and the city should take immediate advantage of this.

The Law Center is the only national legal advocacy organization dedicated solely to ending and preventing homelessness. We have published numerous reports, including *Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding* collecting best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [https://nlchp.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf).

The CDC guidelines state in part, “[i]f **individual housing** options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the

potential for infectious disease spread.” As such, the CDC advises that **communities should not clear any encampments unless they can provide individual housing units for those displaced**. Otherwise, the CDC recommends that these individuals be allowed to remain where they are and be provided with necessary sanitation facilities.

According to the CDC, COVID-19 primarily spreads from person-to-person, between people within six feet of each other, and from droplets that are expelled when a person infected with COVID-19 coughs or sneezes. To prevent contracting and transmitting COVID-19, people are encouraged to wash their hands properly and frequently, avoid close contact with others, and to stay home if they are feeling sick. Recent reports indicate that homeless individuals infected by COVID-19 would be twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die of COVID-19 as the general population. See [https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper\\_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf).

For people experiencing homelessness, options for following CDC personal health recommendations are extremely limited since there are too few private housing and shelter options available, even as the pandemic persists. Congregate shelters are not necessarily equipped to truly safeguard against the spread of the virus. This is because congregate shelter settings do not allow for the recommended social distancing, air circulation, and sanitation necessary to stem the spread of the virus. In San Francisco, 144 residents in a single shelter were tested and five were found positive for COVID-19. Less than one week later, 92 of those residents tested positive for COVID-19, along with 10 shelter staff workers. See Colette Auerswald et al., *For the Good of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* (2020), <https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf>.

Fortunately, the Federal Emergency Management Agency (“FEMA”) has recently approved waivers of both its 30-day renewal and 25% match requirements, offering **100% retroactive reimbursement funding for non-congregate shelter for the duration of the pandemic, through September at least**. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>, <https://nlihc.org/resource/new-executive-order-addresses-urgent-health-and-housing-needs-people-experiencing>. San José has **no** excuse not to apply or reapply for this funding so it can offer non-congregate shelter to people experiencing homelessness for the duration of the crisis.

On March 31, 2020, FEMA first issued a press release recognizing non-congregate sheltering as an important tool to combat COVID-19. See <https://www.fema.gov/news-release/20200722/coronavirus-covid-19-pandemic-non-congregate-sheltering>. Here, FEMA provided a non-exhaustive list of examples of appropriate instances to rely on non-congregate sheltering. **FEMA will reimburse for non-congregate sheltering like hotels and motels** beyond just these instances. While FEMA indicated a path for state-wide approval of non-congregate shelter, San José can request additional reimbursement at the guidance of local public health declarations because providing non-congregate shelter and individual housing for all people experiencing homelessness is necessary to reduce the spread of COVID-19.

On February 3, 2021, FEMA issued a press release which expanded its previously issued support for communities using non-congregate housing to combat COVID-19. See <https://www.fema.gov/press-release/20210203/fema-statement-100-cost-share>. First, FEMA will offer 100% reimbursement for “all work eligible under FEMA’s existing COVID-19 policies, including increasing medical capacity, non-congregate sheltering, and emergency feeding distribution.” Once FEMA approves a reimbursement request, it will fund the activity retroactively from January 2020 to September 30, 2021. This is a perfect opportunity to apply to take advantage of FEMA’s expanded reimbursement policy to individually house all people experiencing homelessness for the duration of the pandemic at no local cost.

By definition, people experiencing homelessness are at an increased risk of contracting COVID-19 or  
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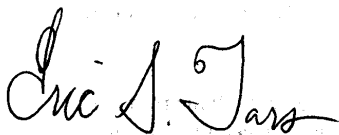
experiencing worse COVID-19 outcomes because they are less able to self-isolate. Transitioning people into individual housing units, such as the many vacant hotel rooms now available, is the best practice and would ensure they would be able to effectively socially distance themselves and have access to adequate sanitation, as well as be easily accessible to health care and other service providers. As noted above, **FEMA is now providing 100% reimbursement for communities providing non-congregate shelter.** Communities are encouraged to “make plans to maintain services for all people experiencing unsheltered homelessness.” See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

San José should apply or reapply for FEMA reimbursement so it can address all encampments in the city by offering hotel rooms to people experiencing homelessness for the duration of the crisis at zero local cost. Rather than waste any more money conducting encampment sweeps, San José owes it to its citizens, housed and unhoused alike, to exhaust every available funding channel and should use this opportunity to secure housing for people experiencing homelessness. When crafting its response, San José can look to states like Vermont and Connecticut which have relied on FEMA reimbursement to support efforts for non-congregate housing. See <https://www.fema.gov/press-release/20210302/fema-awards-more-15-million-covid-19-non-congregate-sheltering-vermont>; <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/09-2020/Governor-Lamont-Coronavirus-Update-September-9>. Additionally, California relied on FEMA reimbursement when working to procure hotel and motel rooms to safely isolate people experiencing homelessness and reduce the risk of COVID-19 spread. See <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governornewsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protect-homeless-individuals-from-covid-19/>.

These approaches are necessary for the current crisis, but they are also best practice for the long term, from both a public health and fiscal policy perspective. We urge you to follow the CDC recommendations, as well as the Law Center’s Encampment Best Practices and Procedures found in the Tent City Report. Only by providing individual housing units will San José stop this wasteful and harmful cycle and combat the spread of COVID-19 among people experiencing homelessness. This is not a matter of charity, but of public health that will not only benefit people experiencing homelessness, but the housed members of your community who will have hospital beds available to them when they need them, instead of having those beds unnecessarily occupied by people who were swept from encampments and subjected to increased risk of infection.

If you would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact us at [etars@nlchp.org](mailto:etars@nlchp.org) or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



Eric S. Tars  
Legal Director