April 28, 2020

Via E-mail: cityclerk@sandiego.gov

Mayor Kevin Faulconer  
City Councilmember Gomez  
City Councilmember Montgomery  
City Councilmember Ward  
City Councilmember Campbell  
City Councilmember Kersey  
City Councilmember Cate  
City Councilmember Sherman  
City Councilmember Moreno  
City Councilmember Bry  
202 C St, San Diego, CA 92101  
San Diego, CA 92101

Re: Demand to Stop Unlawful Discrimination Against Homeless Individuals with Disabilities and Request for Reasonable Modifications

Dear Mayor Faulconer and Councilmembers:

We urgently write on behalf of individuals with disabilities who are experiencing homelessness. The City must stop law enforcement activity against homeless individuals which recklessly threatens the health and safety of individuals experiencing homelessness, and instead provide them the necessary services to manage their disabilities, health, and basic needs.

Homeless individuals with disabilities rely on the City of San Diego’s administered “Homeless Programs”, city-led programs and services, to manage the symptoms of their disabilities especially during this pandemic. However, the City discriminates and denies homeless individuals from accessing the Homeless Programs as detailed below and as raised by Community Advocates for Just and Moral Governance in their cease and desist letter dated April 13, 2020, which this letter supplements. Attached as Exhibit A.
To enable individuals experiencing homelessness to access the City’s Homeless Programs, we ask that the City cease its discrimination against homeless individuals with disabilities and modify its programs, as requested below.¹

These demands are urgent and underscored by the two homeless individuals at the Convention Center who tested positive for COVID-19.² The City is failing to provide non-congregate housing options for its most vulnerable residents and, instead, placing people in congregate housing options which subjects individuals to higher risk of exposure to and transmission of COVID-19. At a time when the region is experiencing its highest daily COVID-19 infection and death rates, the City’s actions pose a threat to public safety.

The City’s administration of its COVID-19 related programs and services discriminates against homeless individuals with disabilities in violation of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the California Disabled Persons Act. The City’s actions, including its ongoing law enforcement activity against homeless individuals, violate the constitutional rights of homeless individuals with disabilities, endanger them, exacerbate their disabilities, and risk their lives.

A. The City of San Diego’s Homeless Programs Includes Services and Programs That Enable Homeless Individuals to Manage Their Health and Disabilities.

In San Diego, a high number of homeless individuals have disabilities. The Regional Task Force on the Homeless found that 39% of homeless people in San Diego reported mental health disabilities and 40% reported a physical disability.³ Some surveys have found even higher rates of disability. For example, of the 1,145 persons attending a one-day resource fair for the

1 Disability Rights California’s clients, homeless individuals with disabilities, request reasonable modifications as detailed in Section C of this demand.
homeless in the City, 60.2% reported a long-lasting medical condition and 49.5% reported having a mental illness.⁴

1. The City of San Diego’s Homeless Programs

The City’s fiscal year 2020 budget for homeless services and programs (“Homeless Programs”) exceeded $116 million.⁵ The City’s funding includes Federal, State, and local sources. Through its Homeless Programs, the City administers millions in funding from the Department of Housing and Urban Development (HUD)’s Continuum of Care, a program designed to end homelessness by quickly rehousing homeless individuals and families while minimizing trauma and dislocation.

The City identified the Homeless Programs to include: “[a]ssist individuals and families to gain stable housing after experiencing homelessness or a housing crisis by providing appropriate housing and service solutions grounded in best practices”; identify health care and mental health resources as vital services for homeless families to achieve stability; and, include as homelessness programs and services – shelters, transitional housing, permanent supportive housing options, outreach and engagement, housing location assistance, medical services, substance abuse recovery, mental health care, veteran services, and storage.⁶ In addition to federal funding, the City received Homeless Emergency Aid Program (HEAP) funds for homeless programs to connect homeless individuals to mental health services through the jurisdiction’s Continuum of Care program.

2. The City’s Homeless Programs During COVID-19

During the COVID-19 pandemic, the City expanded its Homeless Programs through Federal, State, and local funding to include programs and services that the City intended to meet the needs of the homeless population and is comprised of various components. The City combined the $3.7 million it had received in state emergency homelessness grant funding with $3.4 million

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⁷ Id.
from the County of San Diego and the Regional Task Force on the Homeless to house and provide services to homeless individuals. This plan included the opening of an emergency homeless shelter at the Convention Center that includes a capacity of up to 1,500 people.\footnote{City of San Diego Staff Report: \textit{COVID-19 Emergency Homelessness Grant Funding}. Dated March 27, 2020. Available online at: \url{https://onbase.sandiego.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=3965&doctype=1#}.} Homeless Programs also included placing high risk homeless individuals in non-congregate housing options, including hotels and motels.

The City also set in place plans to complete the following: installation of 257 handwashing stations throughout the region; procurement of hotel and motel rooms by the County to temporarily isolate individuals who may have symptoms; deployment of public health nurses to shelters across the region, including the San Diego Convention Center; and assignment of public health nurses to Homeless Outreach Teams to educate individuals living on the streets, in the canyons and in the riverbed about COVID-19.

Excluding the City’s plan to place unsheltered homeless individuals in the Convention Center, the Homeless Programs aimed to follow the guidance set forth by the State of California by focusing on infection prevention efforts, with the primary strategy being the provision of single occupancy housing.\footnote{State of California Recommended Strategic Approaches for COVID-19 Response for Individuals Experiencing Homelessness (March 2020). Available online at: \url{https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Protocols-Homeless-Pop.pdf}.} This protocol is demonstrated in the attached flow chart.\footnote{State of California COVID-19 Recommended Protocol for People Experiencing Homelessness. Available online at: \url{https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/flowchart-COVID19-homelessness.pdf}.} Attached as Exhibit B. These protocols are also consistent with CDC guidance.\footnote{CDC Interim Guidance for Responding to Coronavirus Disease 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness. Available online at: \url{https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html} (“The balance of risk should be considered for each individual experiencing unsheltered homelessness.”).}
B. The City of San Diego’s Actions Deny Homeless Individuals the Ability to Prevent the Contraction of COVID-19 and Discriminate Against Homeless Individuals With Disabilities.

As of March 18, 2020, San Diego had already experienced two COVID-19 outbreak scares at two of the region’s largest homeless shelters.11 As of April 13, 2020, 15 homeless individuals had tested positive for COVID-19.12 On April 26, 2020, two homeless individuals at the Convention Center tested positive for COVID-19.13

On April 21, 2020, San Diego experienced its largest number of fatalities in one day, and largest one-day increases in new cases.14 As of April 23, 2020, the total deaths from COVID-19 numbered 96 with 2,491 individuals testing positive.15 The number of cases in San Diego has not yet peaked, and according to Eric McDonald, Medical Director with the County Epidemiology Immunization Branch, the number of people actually infected is likely ten times the reported total.16

Yet, the City continues to force homeless people into congregate shelters, deny housing placement and services as offered in its Homeless Programs, and sweep people living in self-isolated encampments. The City’s actions deny homeless individuals the ability to practice the recommended preventative measures during the COVID-19 pandemic.

1. The City plans to shelter 1,500 homeless individuals in a single congregate facility, despite availability of non-congregate housing options, is discriminatory.

Using state and federal COVID-19 funds, the City is carrying out plans to house and serve 1,500 homeless individuals in a single congregate setting.

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13 See fn. 2.
15 Id.
16 Id.
despite the availability of non-congregate housing options. By conducting encampment sweeps, citations, tickets, arrests, and impoundments, the City uses law enforcement to disperse homeless encampments, and push homeless individuals into congregate settings or unprotected on the streets. The City’s policies and actions defy CDC guidelines, State of California guidelines, and recent COVID-19 reports, including those released by the CDC and UC Berkeley School of Public Health.

Recent medical reports and studies illustrate the threat congregate settings, specifically homeless shelters, pose to not only homeless individuals but to entire communities’ efforts to prevent rapid community spread. The reports illustrate how dangerous the virus is for residents in homeless shelters.

Moreover, because homeless individuals with disabilities face higher risk of exposure to and transmission of COVID-19, the City’s policy to force individuals into congregate shelters place homeless individuals at higher risk. Homeless individuals are not only more likely to become infected with COVID-19, but are two or three times more likely to require hospitalization, two to four times more likely to require ICU care, and twice as likely to die. Congregate housing, even housing that complies with CDC guidelines on distance between beds, increases the risk of COVID-19 exposure and transmission.

Non-congregate housing options should be made available to all homeless individuals with disabilities to protect their health and safety and prevent the contraction of COVID-19. Instead, the City administers Homeless Programs


19 Id. at 18. (Even in a newly opened shelter in Seattle that complies with CDC guidelines, homeless individuals have tested positive for COVID-19.)
against public health directives – self-isolate only after a homeless person has contracted or displayed symptoms of COVID-19.

2. The City’s Homeless Programs fail to provide meaningful access to non-congregate housing placement.

The City’s Homeless Programs only allow self-isolation if a homeless individual has contracted COVID-19 or displays symptoms of COVID-19. This is contrary to the public health directive for housed residents of San Diego. The inability for homeless individuals in San Diego to access non-congregate housing – as recommended by the CDC – is disability discrimination.

The City is failing to provide non-congregate housing options to homeless individuals with disabilities. The City has ample resources to facilitate non-congregate housing options for those who cannot utilize shelters through the Homeless Programs, but the City is failing to administer the program in a way that gives meaningful access to homeless individuals with disabilities. The City is enforcing restrictive requirements for placement – conditioned on evidence of symptoms or a COVID-19 positive test – which places homeless individuals with disabilities in a position of having no option for prevention of contracting the coronavirus but instead is only allowed self-isolation upon contracting the disease. Actions that condition access to these programs and services on moving to a congregate setting deny meaningful access to homeless individuals with disabilities.

The City must give every homeless individual an option to prevent the contraction of this disease, not push them into a situation that will increase their chances of contracting the disease.

3. The City’s failure to cease law enforcement activity forces homeless individuals into high risk situations during COVID-19.

As described above, CDC and State of California guidelines make clear that encampments should not be cleared unless individual housing units are available. When individual housing units are not available, the guidelines direct the City to ensure access to sanitary and hygiene materials, in the form of accessible restroom facilities or through the provision of portable latrines.

However, in San Diego, law enforcement displaces homeless individuals from encampments by harassing, threatening citations and arrests, and creating a hostile environment for homeless individuals with disabilities based on
“qualify of life” ordinance violations. All with the intent of moving homeless individuals away from encampment or moving them into congregate shelters.

The City’s law enforcement activity discriminates against individuals with disabilities and places them at higher risk of contracting COVID-19. Until such time that permanent, accessible, affordable housing is available to homeless individuals with disabilities, law enforcement activity against homeless individuals will continue to disproportionately impact persons with disabilities.

C. Individuals with Disabilities’ Request for Reasonable Modifications of the City’s Homeless Programs.

We request reasonable modifications on behalf of our individual clients with disabilities, who are not able to access the services and program that will enable them to prevent the contraction of COVID-19. The City’s administration of its services and programs directly affects all homeless individuals with disabilities.

On behalf of our clients and those similarly situated, we request that the City modify its programs and services to: (1) provide non-congregate housing options to homeless individuals with disabilities upon request for preventative care, without requirement of a positive COVID-19 test or COVID-19 symptoms, (2) provide programs and services to homeless individuals with disabilities in a way that evaluates each person’s immediate needs and accommodates their disabilities, and (3) until permanent, accessible, affordable housing is available to homeless individuals with disabilities, cease all law enforcement activity that disperses or displaces homeless individuals or encampments.20

Conclusion

The City’s administration of homeless services and programs during the COVID-19 pandemic excludes and denies access to homeless individuals with disabilities, places homeless individuals with disabilities at greater risk of

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20 "A public entity shall make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity." 28 C.F.R. Section 35.130(b)(7)(i). Government entities may be required to modify neutral policies if they bear more heavily on people with disabilities than on others, even if there are insufficient grounds for a disparate treatment claim. See Crowder v. Kitagay, 81 F.3d 1480, 1484-1485 (9th Cir. 1996); Fry v. Saenz, 98 Cal. App. 4th 256, 264 (2002).
COVID-19, and defies medical guidance aimed at mitigating community spread. The City must immediately stop enforcement against homeless individuals and instead provide necessary services.

In addition, the City should grant homeless individuals with disabilities the requested reasonable modifications. Our clients cannot afford housing and, without access to the City’s services and programs, cannot manage the symptoms of their disabilities and suffer higher risk of COVID-19 exposure.

If the City fails to provide homeless individuals with disabilities equal access to homeless services and programs, our clients must pursue further action. To further discuss, please contact me at (619) 814-8518 or Parisa.Ijadi-Maghsoodi@disabilityrightsca.org by May 4th.

Sincerely,

Parisa Ijadi-Maghsoodi
Lili Graham
Tiffany Nocon
Ann Menasche

Attorneys

cc: City Attorney Mara W. Elliott, cityattorney@sandiego.gov
April 13, 2020

San Diego Mayor Kevin Faulconer
202 C Street, San Diego, CA 92101

San Diego Police Chief David Nisleit
1401 Broadway, MS 700, San Diego, CA 92101

Via Electronic Transmission

Urgent - Demand to Cease and Desist from: Ticketing Unsheltered San Diegans for Illegal Lodging, Sleeping in the Park, Encroachment, Vehicle Habitation, and Other Quality of Life Offenses; Impoundment of Vehicle Shelters; and Sweeps and All Other Displacement of Unhoused Persons During The COVID-19 Crisis

Dear Mayor Faulconer and Chief Nisleit:

I write on behalf of Community Advocates for Just and Moral Governance (MoGo) urging you to immediately (1) cease and desist from engaging in sweeps and clearing homeless encampments and (2) suspend the ticketing of persons who are experiencing unsheltered homelessness for “quality of life” offenses in light of the COVID-19 pandemic that is ravaging our global community. This letter comes on the heels of the San Diego Police Department (SDPD) ordering humans, sheltering under the awning of a closed public building during back-to-back days of torrential downpour, to move off of city property into the rain. Please see attached. This letter also comes five days after eight (8) local community organizations sent a letter to Mayor Faulconer and San Diego City Council President Georgette Gomez respectfully asking for a “moratorium on all arrests and ticketing of homeless people for Vehicle Habitation, illegal lodging and encroachment during the Coronavirus outbreak.” They also called for a moratorium on the “impoundment of vehicles used by homeless people for shelter.”

Nonetheless, SDPD has continued to harass unhoused San Diegans. It has been business as usual for the City of San Diego and SDPD, in particular, as it relates to ticketing unsheltered community members for encroachment, illegal lodging, and sleeping in public places - even after a state of emergency was declared by Governor Newsom (on March 4, 2020) and Mayor Faulconer himself (on March 12, 2020). Worse even, within the last few days (and since receiving the letter from community organizations on April 8, 2020), SDPD has continued its sweeps, clearing of encampments, ticketing, and impounding of vehicle shelters. Please see attached.
In response to its failure to implement a real plan to address our longstanding housing crisis - which fuels our homelessness issue making us fifth in the nation for the largest homeless population - the City of San Diego consistently relies on punitive measures as the remedy. Through its policies and ordinances that target unhoused individuals for doing acts that are basic human needs, the City of San Diego needlessly unhoused San Diegans into our criminal courts. Targeting unhoused individuals through the enforcement of ordinances that prohibit encroachment, sleeping, sitting, and resting in public places, and vehicle habitation is terrible public policy on its own. When coupled with the pandemic we now face as a global community, such practices are an even greater affront to the very notions of basic decency and humanity. Moreover, such practices run in clear contravention of what health experts are advising everyone - elected and appointed officials, professionals, and laypeople - to do.

The City’s policy and practice of breaking up existing homeless encampments directly conflicts with the prevention measures spelled out by the Centers for Disease Control and Prevention (“CDC”) to be used as guidelines, which instruct as follows: “Unless individual housing units are available, do not clear encampments during community spread of COVID-19. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” Simply put, by continuing to conduct sweeps on any scale, the City of San Diego is directly endangering the lives of thousands of San Diego residents, housed and unhoused alike. A moratorium on all sweeps is essential to curb the spread of the virus and to protect against preventable hospitalization and death, as it would significantly minimize the risk of exposure to not only unhoused San Diegans but also to the broader public.

Despite Governor Newsom’s Executive Order N-33-20, issued March 19, 2020 which “order[s] all individuals living in the State of California to stay home or at their place of residence[,]” San Diego police officers continue to conduct sweeps of persons who are experiencing homelessness moving them from one location to another. This, without providing any viable, adequate, or even alternative options for shelter for those displaced. The reality is that San Diego is home to many thousands of persons whose current residences are the streets, homeless encampments, parks, under freeway overpasses (even where the City has placed sharp rocks), and by the riverbed.
These locations *are* the residences of the individuals who live at these sites¹. Therefore, by breaking up existing encampments, i.e. the residences of unhoused San Diegans, under any pretext and sweeping unsheltered persons from location to location, the City of San Diego is violating California State Executive Order No. N-33-20 and is adversely affecting its goal to “bend the curve and disrupt the spread of the virus.”

Accordingly, for the reasons stated above, we are urging police and all other city departments to immediately cease and desist from clearing homeless encampments and to suspend ticketing for the above-listed quality of life offenses and all sweeps of persons who are experiencing unsheltered homelessness, and get in compliance with both Executive Order N-33-20 and the guidelines promulgated by the CDC. The City has had ample time to consider and implement Governor Newsom’s directives, the CDC’s guidelines, and the requests of local organizations; it, however, has yet to act. Under these circumstances, it is more than reasonable to request that the City issue a written order suspending the ticketing of unsheltered community members for “quality of life” offenses along with homeless sweeps and the clearing of encampments by close of business tomorrow, April 14, 2020. For the sake of all members of our community, we look forward to your issuance of the requested order and to receiving a copy of this order upon its issuance.

Be advised that MoGo will continue to work with unhoused persons, other community advocates, and organizational allies to support the broader homeless community, which will include monitoring and documenting the actions of the City and its departments for possible legal action to enjoin your continued endangerment of public safety.

Sincerely,

Geneviéve L. Jones-Wright, Esq., LL.M.
Executive Director
Community Advocates for Just and Moral Governance (MoGo)

¹ California Voting Rights law permits an unhoused person to register to vote by merely describing streets, parks, or other locations where they live, or, in most cases, are forced to live for lack of affordable housing. (See Voter Registration Application at California Secretary of State website.)
Attachments: Screenshot of video footage showing SDPD officers ordering unhoused San Diegans off of city property and into the rain during an early morning sweep on 4/9/20. Citations given to unhoused San Diegans by SDPD after COVID-19 was believed by the mayor to have reached “community spread status” in San Diego County (7 total pages of attachments)

cc:
Governor Gavin Newsom
San Diego City Council
San Diego County Board of Supervisors
Wilma J. Wooten, M.D., M.P.H., San Diego County Public Health Officer
Michael McConnell @Ho... · 4h
"You can't stay here, it's city property" - San Diego Police pushing people out into the rainy weather early this morning.
2298402

1700 IMPERIAL AVE
CITY OF SAN DIEGO, CA

P. MUXILLO 4/11/20
L.D. No. Command/Shift Beat

ARRESTING OFFICER

DATE: ON OR BEFORE THIS DATE, YOU MUST FOLLOW THE INSTRUCTIONS ON THE REVERSE.

WITHOUT ADMITTING GUILITY, I HEREBY DECLARE: TIME AND PLACE INDICATED BELOW

MISDEMEANOR ARRAIGNMENT DEPT.
SAN DIEGO 1111 BROADWAY
SAN DIEGO, CA 92101 (619) 533-4600

SOUTH BAY COURT

director@moralgovernance.org
Attachment B
**State of California**  
**COVID-19 Recommended Protocol for People Experiencing Homelessness**

### STEP 0: Current status
- **In medical care**
- **In a shelter**
- **Unsheltered**

### STEP 1: Screening check
- **Check done while in medical facility**
  - **Treated & discharged** (but still contagious)
  - **Self-presenting & discharged**
  - **COVID + or PUI**

### STEP 2: Priority & wellness categorization
- **COVID + or PUI**
  - If HIGH risk & limited ADLs: **Alternative Care Center**
  - If LOW risk & ADL independent: **Motels, Hotels, or Trailers**

### STEP 3: Move to destination
- **Presumed COVID – & HIGH risk of complications**
- **Presumed COVID – & LOW risk of complications**

**Basic screening check done by shelter/outreach staff.**

If individual answers yes to triage questions, connect to centralized health staff for further evaluation and placement recommendation.

If determined low likelihood COVID+, place based on “not positive” categorization in Step 2.

See attached page for screening check procedure.

**NOTE:** Separate locations for COVID + vs. COVID -

**NOTE:** Shelter should meet social distancing protocol & unsheltered protocols should follow CDC guidance.

*Developed in partnership with Margot Kushel, MD and the UCSF Benioff Homelessness and Housing Initiative*