



NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY



April 13, 2020

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Dear Supervisors:

Disability Rights California, the National Law Center on Homelessness & Poverty, and the ACLU of Northern California submit this additional letter in advance of your April 14th meeting in support of our request that the City of Santa Cruz and the County of Santa Cruz (“City and County”) use their emergency police power to commandeer hotel and motel rooms to provide individual housing units for unhoused people in the City and County during the COVID-19 State of Emergency.

Based on the agenda for your April 14th meeting, it appears that despite the announcement of Project Roomkey by Governor Newsom and the provision of substantial funding for housing unhoused people, the County has been able to lease only one motel with 27 rooms. The City and County have the power to acquire vacant motel and hotel rooms that could be used to house unhoused people starting tomorrow. We urge you to do so immediately.

Article XI, section 7 of the California Constitution provides all counties and cities with the authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI, §7. The police power “is as broad as the police power exercisable by the Legislature itself.” *Candid Enters., Inc. v. Grossmont Union High Sch. Dist.*, 39 Cal. 3d 878, 885 (1985). California courts have recognized that cities have the authority – under their police power – to commandeer property to protect the public from a health emergency. *See Holtz v. Super. Ct.*, 3 Cal. 3d 296, 305-6 & n.10 (1970); *Teresi v. State*, 180 Cal. App. 3d 239, 243 (1986). Municipalities are justified in invoking this power in times of emergency that require urgency to act, especially when, as here, the municipality has declared a local emergency. *Cf. Los Osos Valley Assocs. v. City of San Luis Obispo*, 30 Cal. App. 4th 1670, 1681 (1994).

The ability to commandeer private property to protect the public welfare is a long-held constitutional power. U.S. Const. amend. V; Cal. Const. art. I, § 19. Commandeering hotel rooms to allow unhoused individuals to safely shelter in place throughout the COVID-19 crisis is consistent with this inherent constitutional authority of the City and County during this public health crisis, and will allow the City and County to comply with the CDC Interim Guidance for

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Responding to Coronavirus Disease 2019 Among People Experiencing Unsheltered Homelessness.

Not only will commandeering allow the City and County to act more quickly, but it may be less costly than negotiating lease agreements. For temporary physical takings, government must pay the reasonable value of the government's use of the property. *See Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949); *United States v. General Motors Co.*, 323 U.S. 373, 383 (1945). When possible, the appropriate measure of the reasonable value is the "rental value of the property for the period of the taking." *Yuba Nat'l Res., Inc. v. United States*, 904 F.2d 1577, 1580-81 (Fed. Cir. 1990). Significantly, lost profits are not included in determining the reasonable value of the taking. *Id.* at 1581-82; *United States v. Gen. Motors Corp.* at 379. As such, just compensation for hotel rooms commandeered by the City or County under the Takings Clause will be determined by the current rental value of the property for the period of the taking. Hotels will not be able to introduce evidence of lost profits in determining the reasonable value. With drastically reduced hotel demand throughout the ongoing COVID-19 crisis, rental value of the hotel rooms during the pandemic is likely far less than typical market rate.¹

There is no more time for delay. The City and County must use all available measures right away to move unhoused people into non-congregate housing in response to the COVID-19 public health crisis. COVID-19 is rapidly spreading throughout the country, and unhoused individuals are at incredibly high risk of contracting the virus based on their rapid aging,² lack of access to hygiene facilities, and inability to self-isolate.³ On April 10th, the City of San Francisco announced that 70 people tested positive for the virus at a congregate shelter. In Boston, one in three unhoused individuals have tested positive for COVID-19.⁴ In Seattle, two homeless shelters have "clusters" of the virus.⁵

¹ Melissa Wiley, "Nearly 80% of hotel rooms across the US are empty because of the coronavirus outbreak," *Business Insider* (Apr. 9, 2020), <https://www.businessinsider.com/nearly-80-percent-us-hotel-rooms-empty-coronavirus-travel-str-2020-4>.

² *See* Heather Knight, "Fast-aging homeless population may lead to public health crisis," *San Francisco Chronicle* (Mar. 5, 2016), <https://www.sfchronicle.com/bayarea/article/Fast-aging-homeless-population-may-lead-to-public-6871865.php>.

³ *See* Emily Shapiro, "Coronavirus and the homeless: why they're especially at risk, ways to stop spread like 'wildfire,'" *ABC News* (March 11, 2020), <https://abcnews.go.com/Health/coronavirus-homeless-risk-ways-stop-spread-wildfire/story?id=69505076>.

⁴ Isaiah Thompson, "One in Three Amount Boston Homeless Have Tested Positive For Coronavirus, City Officials Say," *WGBH News* (April 7, 2020), <https://www.wgbh.org/news/local-news/2020/04/07/one-in-three-amongboston-homeless-have-tested-positive-for-coronavirus-city-officials-say>

⁵ Scott Greenstone and Sydney Brownstone, "27 people test positive for coronavirus in King County homeless shelters, public health officials say," *The Seattle Times* (April 8, 2020), <https://www.seattletimes.com/seattlenews/>

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The time for waiting for each hotel to negotiate has passed. Any concerns of hotel owners or neighbors about the prospect of housing unsheltered people in the abundance of vacant units pale in comparison to the loss of health and lives that will plague unsheltered residents in Santa Cruz in the absence of prompt, definitive action by the City and County.

In sum, we urge you to act immediately to protect the public health of the entire Santa Cruz community by implementing these three measures. Please contact Jamie Crook (jcrook@aclunc.org, (415) 293-6311) if you could like to discuss the issues raised in this letter.

Sincerely,



Zeenat Hassan

DISABILITY RIGHTS CALIFORNIA



Lili Graham



Tristia Bauman

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY



Jamie Crook

ACLU FOUNDATION OF NORTHERN CALIFORNIA



Abre' Conner

cc: Councilmember Martine Watkins
Councilmember Cynthia Mathews
Councilmember Sandy Brown
Mayor Justin Cummings
Vice Mayor Donna Meyers
Councilmember Katherine Beiers
Councilmember Renee Golder

[homeless/27-people-test-positive-for-coronavirus-in-king-county-homeless-shelters-public-health-officialssay/](#).