



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** April 3, 2020

Approved

Date

4/3/2020

**SUBJECT: EMERGENCY ORDER AND SHELTER CRISIS DECLARATION FOR  
COVID-19 EMERGENCY**

## **RECOMMENDATION**

- A. Adopt a resolution:
1. Ordering a suspension of City Zoning Code, the General Plan and other requirements applicable to shelters established or expanded during the COVID-19 emergency pursuant to the City's emergency powers under California Government Code Section 8634;
  2. Declaring the existence of a continued shelter crisis in the City of San José, pursuant to and in accordance with the provisions of California Government Code Section 8698 et seq., Citywide for facilities and properties as authorized by the City Manager during the COVID-19 emergency; and
  3. Ratifying the City Manager's March 20, 2020 declaration of Shelter Crisis;
- B. Direction to the Administration to take actions to address the emergency and Shelter Crisis as set forth in the Resolution.

## **OUTCOME**

Approval of the recommended actions will save lives by reducing constraints on the production and operation of additional emergency shelter to reduce the spread of COVID-19 consistent with the City's COVID-19 response plan. This will include increasing the number of emergency shelter beds to allow the current shelter system to meet COVID-19 social distancing space requirements, to provide shelter in separate rooms or units for the protection of unhoused high risk individuals, isolation of COVID-19 positive individuals, for quarantine of people who have been exposed, and to expand shelter beds for the unhoused population in San José to allow them to comply with the County shelter-in place order.

## **BACKGROUND**

At a White House briefing on March 31, 2020 Dr. Anthony S. Fauci, the leading infectious disease expert in the United States and director of the National Institute of Allergy and Infectious Diseases, reported that most recent transmission modelling estimated COVID-19 will kill between 100,000 and 240,000 Americans.<sup>1</sup> These grim projections—combined with the most recent warning from the director of the Centers for Disease Control and Prevention (CDC) that as many as 25 percent of people infected with the virus may not show any symptoms and are therefore contributing to the virus’ rapid spread—add to the urgency of ensuring people are indoors and taking the necessary precautions to prevent getting sick.<sup>2</sup>

As of March 29, 2020 there were 848 confirmed COVID-19 cases in Santa Clara County, and at least 2,092 confirmed cases and 51 deaths in the seven Bay Area jurisdictions.<sup>3</sup> These deaths accounted for nearly one third of fatalities in California.<sup>4</sup> By April 1, 2020, the County’s Public Health Department reported 956 positive cases, an increase of 108 confirmed cases since March 29, 2020.<sup>5</sup> In the United States, a minimum of 188,247 cases and 3,921 deaths have already been reported as of March 31 2020.<sup>6</sup> The number of cases is expected to continue growing rapidly as the virus is easily transmitted and may result in serious health complications including death.

Although there is limited information regarding risk factors for COVID-19, certain populations are at higher risk for developing severe illness from the disease. According to the CDC, these include people aged 65 years and older, people with underlying medical conditions, among others. Additionally, people experiencing unsheltered homelessness are considered at risk and recommended to take additional precautions.<sup>7</sup>

### *Rapidly Changing Public Health Crisis*

COVID-19 presents a dynamic public health emergency, requiring extraordinary actions by governments and health agencies in a rapidly changing environment where inaction can result in increased lives lost. As the virus’ transmission has changed over the last couple of months, so too has the response at the local, state, and federal level.

On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International concern, and the following day the United States Secretary of Health and Human Services declared a Public Health Emergency. On February 10, 2020, the Santa

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<sup>1</sup> <https://www.nytimes.com/2020/03/31/us/politics/coronavirus-death-toll-united-states.html>

<sup>2</sup> <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html?action=click&module=Top%20Stories&pgtype=Homepage>

<sup>3</sup> Data provided by the 3-31-20 Santa Clara County Health Order to Shelter in Place

<sup>4</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>. CDPH data reported 171 fatalities in California as of March 31, 2020.

<sup>5</sup> <https://www.mercurynews.com/2020/04/01/coronavirus-santa-clara-county-tops-950-covid-19-cases-reports-two-new-deaths/>

<sup>6</sup> [https://www.nytimes.com/news-event/coronavirus?action=click&pgtype=Article&state=default&module=style-coronavirus-world&variant=show&region=TOP\\_BANNER&context=storyline\\_menu](https://www.nytimes.com/news-event/coronavirus?action=click&pgtype=Article&state=default&module=style-coronavirus-world&variant=show&region=TOP_BANNER&context=storyline_menu)

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>

Clara County announced a local health emergency due to the spread of the novel coronavirus. With continued spread across the state, Governor Gavin Newsom issued a Proclamation of a State of Emergency in California on March 4, 2020. Days later, on March 11, the World Health Organization declared the coronavirus outbreak a pandemic and on March 13, 2020 the President issued a Proclamation on Declaring a National Emergency Concerning COVID-19 beginning on March 1, 2020.

Responding to the local context, on March 6, 2020, the Director of the Office of Emergency Services of the City of San José issued a Proclamation of Local Emergency, pursuant to his powers under Chapter 8.08 of the San Jose Municipal Code, finding that the existence and threat of COVID-19 in the community give rise to conditions of extreme peril to the safety and health of persons within the City. This proclamation was quickly followed by the County of Santa Clara, which on March 16, 2020 issued a shelter in place order directing all individuals to shelter in their place of residence unless they must obtain or perform essential services. All businesses, except essential businesses, were required to cease all activities at facilities located within the County. At that time, there were 258 confirmed cases and three deaths in the seven Bay Area jurisdictions. On March 19, Governor Newsom also issued Executive Order N-33-20 directing California residents to follow a March 19 State Shelter Order issued by the State Public Health Officer ordering all individuals to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sector.

On March 20 2020, the Director of the Office of Emergency Services of the City of San José issued a Declaration of Shelter Crisis, consistent with the provisions of the Shelter Crisis Act, under his powers in Chapter 8.08 of the San José Municipal Code.

Most recently, the County issued a second, more restrictive, shelter in place order on March 31, 2020, superseding its initial order as total confirmed cases increased by over 1,800 in just a two-week period. The County's most current order became effective on March 31, 2020 and will remain in place until 11:59 p.m. on May 3, 2020, or until it is extended, rescinded, superseded, or amended.

Importantly, guidance released from the U.S. Department of Housing and Urban Development on March 9, 2020 states that housing instability and frequent mobility increase the risk of exposure to infectious disease. Limited access to health care services and poor living conditions further compound this risk. As a result, the experience of homelessness may place these individuals at greater risk of exposure to a variety of infectious diseases, including COVID-19.<sup>8</sup>

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<sup>8</sup> [https://files.hudexchange.info/public/resources/documents/Specific-Considerations-for-Public-Health-Authorities-to-Limit-Infection-Risk-Among-People-Experiencing-Homelessness.pdf?utm\\_source=HUD+Exchange+Mailing+List&utm\\_campaign=8b1f3959f9-Infectious\\_Disease\\_Guidance\\_Homeless\\_3.9.20&utm\\_medium=email&utm\\_term=0\\_f32b935a5f-8b1f3959f9-19553749](https://files.hudexchange.info/public/resources/documents/Specific-Considerations-for-Public-Health-Authorities-to-Limit-Infection-Risk-Among-People-Experiencing-Homelessness.pdf?utm_source=HUD+Exchange+Mailing+List&utm_campaign=8b1f3959f9-Infectious_Disease_Guidance_Homeless_3.9.20&utm_medium=email&utm_term=0_f32b935a5f-8b1f3959f9-19553749)

The City's Housing Department has been following, analyzing, and quickly responding to public health guidance from the CDC, and the State and County Public Health Officers. Accordingly, on March 10, the City of San José suspended encampment abatements unless they are required for safety or health reasons. This suspension was effective March 10, 2020 and will continue to remain in effect consistent with the County Public Health Order (Shelter in Place) and CDC recommendations.<sup>9</sup> The Homeless Concerns Hotline remains open and the Housing Department continues to send outreach teams to encampments to help homeless individuals understand how best to protect themselves from COVID-19.

#### *Protecting Those Most at Risk*

The most effective means of slowing the transmission of COVID-19, as exemplified in the shelter in place orders at the State and County levels, requires significantly restricting mobility to limit interactions among people, thus slowing the rate of community transmission. Slowing the virus' transmission is essential to protecting the most vulnerable, which includes people experiencing homelessness. Unsheltered populations are especially vulnerable without a place to shelter, quarantine, or self-isolate. In the most recent County Public Health Order individuals experiencing homelessness are strongly urged to obtain shelter, and "governmental and other entities are urged to, as soon as possible make such shelter available." A suspension of zoning codes, the City General Plan, and other regulations, combined with a declaration of shelter crisis is necessary for the City of San José to expeditiously advance the recommendations in the Public Health Order to protect vulnerable homeless residents from COVID-19. Such action would allow the City to rapidly open critically needed shelters and develop housing solutions to both assist current shelters in adhering to social distancing requirements, as well as bring unsheltered residents indoors.

### **ANALYSIS**

#### *Emergency Order*

To ensure that the City can proceed with all haste to provide the additional shelter needed to safeguard the lives of the City's housed and unhoused residents from the risk of COVID-19, the City needs to remove any barriers to this emergency response that exist in its municipal code, land use plans, and policies. Immediate shelter capacity is needed both to protect the vulnerable and combat the spread of COVID-19.

To expand emergency shelter capacity under normal circumstances, City staff would adhere to specific City Zoning Codes, official policy direction represented in the City's General Plan, and other requirements, such as Chapter 6.46 of Title 6 of the Municipal Code (regulating Mobilehomes and Mobilehome Parks) and Council Policy 6-16 (regulating use of City Property) that otherwise might impose limitations or additional standards and processes to the establishment or expansion of shelters or the use of land for shelters. These processes take time, and the City does not have time; the City must act to combat COVID-19 as soon as possible. The order will not suspend any requirements of the City Charter, and the City intends that all such

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<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>

shelter capacity to be added will be consistent with applicable State standards or local building standards in Chapter 5.09 of the Municipal Code.

To save lives and flatten the curve of coronavirus cases, current public health direction mandates that people shelter in place to keep themselves safe and prevent community transmission of COVID-19. Without such suppressing and mitigating policy action, the result will be an inundated and overwhelmed healthcare system. This places residents experiencing homelessness in an exceptionally precarious situation; they're inability to shelter indoors—compounded by the fact that many homeless also experience poor health outcomes as a direct result of living outdoors—puts them at much higher risk for developing severe illness from COVID-19 that can ultimately end in death. California Government Code Section 8634 allows for the City to promulgate orders and regulations to provide for the protection of life and property.<sup>10</sup> Thus, by allowing for the suspension of municipal codes, including the zoning codes, the City's General Plan, and other regulations, the order will allow the Administration to move more expeditiously in providing emergency shelter for its residents, thereby protecting their health and safety, and by extension the health and safety of the community at large.

#### *Shelter Crisis Declaration and Ratification*

The Shelter Crisis Act, California Government Code Section 8698 *et seq*, allows a city to declare a state of emergency due to a shelter crisis, and such a declaration allows the City to suspend certain regulations and standards of housing, health or safety to the extent strict compliance would prevent, hinder, or delay mitigation of the shelter crisis. It also provides that any city may allow homeless persons to occupy designated sites or facilities held by a public entity for the duration of the state of the emergency. To declare a shelter emergency, a city must find that there is an existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety.

San José's 2019 homeless census and survey found 6,097 persons experiencing homelessness in the City of San José, increasing 40% from the 2017 homeless census. Out of the 6,097 people counted, 5,117 (84%) were unsheltered. On any given night, there are 849 shelter beds available Citywide, however, approximately 5,117 homeless people are unsheltered. Given the lack of available shelter and housing to meet the needs of the existing homeless population, Housing Department staff is recommending that the City Council declare a shelter crisis effective immediately until December 2020.

It is intended that the Council's declaration include and apply to public facilities, emergency bridge housing communities, emergency housing and homeless shelters (the "facilities"), all as described in the Shelter Crisis Act, and that to the fullest extent possible the protections and exemptions of the Act, including those provided in Government Code Sections 8698.3 and 8698.4, shall apply. The City has adopted by ordinance reasonable local standards and procedures for the design, site development, and operation of such facilities and determined that strict compliance with state and local standards or laws in existence at the time would prevent,

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<sup>10</sup> [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=8634](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=8634)

hinder, or delay the mitigation of the effects of the shelter crisis. The City reaffirms that determination with respect to the shelter crisis and the COVID-19 emergency.

Should the Council make this declaration, staff will issue an information memorandum to report on specific sites designated by the City Manager at the end of each month.

Pursuant to Section 8.08.250 of Chapter 8.08 of the San Jose Municipal Code, the Director of the Office of Emergency Services is to seek Council ratification of his actions under that Chapter, thus as part of this action, the Administration requests that the Council confirm the March 20, 2020 declaration issued by the Director of the Office of Emergency Services.

## **CONCLUSION**

The COVID-19 pandemic has grown exponentially since the first case reported in Santa Clara County on January 31, 2020. The virus is extremely transmittable and can cause severe illness that may result in death. The rapid transmission rate of COVID-19 has changed the very nature of how residents work, live, and protect others against the spread of this virus. With the closures of libraries, community centers, limited non-profit resources, and lack of shelter space across San José, these impacts are having an even greater direct impact on homeless individuals' ability to protect themselves from COVID-19. Indeed, the CDC considers homeless populations an at-risk population for COVID-19, because they may face issues getting assistance if they become ill, and are therefore recommended to take extra precautions. Upon ordering the suspension of City Zoning Code, General Plan, and other requirements, together with a shelter crisis declaration, the Housing Department will work to quickly identify additional housing opportunities and will deploy resources to protect our most vulnerable unhoused residents as quickly and widely as possible.

## **EVALUATION AND FOLLOW-UP**

The Department will provide a monthly information memorandum on progress updates to the City Council. The Administration will work with the Intergovernmental Relations group to obtain an emergency authorization to use up to 50% of its unencumbered Low and Moderate Income Housing Asset funds to provide initial funding for the purchase, leasing or operation of emergency shelter sites, which funds are to be repaid from grants provided in connections with the COVID -19 emergency. Additionally, the Administration will work with the Intergovernmental Relations group to confirm the State Department of Housing and Community Development acceptance of the standards adopted by the City in Municipal Code Chapter 5.09 for application to homeless shelters.

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo does not relate to Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the April 14, 2020 City Council Meeting.

## **COORDINATION**

Preparation of this report has been coordinated with the City Attorney's Office, the City Manager's Office of Emergency Management, and the City Manager's Budget Office.

## **COMMISSION RECOMMENDATION/INPUT**

This item was not referred to the Housing and Community Development Commission due to the urgent nature of the report.

## **COST SUMMARY/IMPLICATIONS**

The recommended action allows the City to deploy financial resources meet the objectives of the emergency shelter plan described above. Costs related to this plan's implementation, and available funding sources, are under development and will be reported in coordination with all costs related to the City's pandemic response.

## **CEQA**

Statutorily Exempt, CEQA Guideline Section 15209, Emergency Projects.

/s/

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For questions, please contact Housing Director, Jacky Morales-Ferrand, at (408) 535-3855.