



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Wilcox

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

DATE: April 6, 2020

Approved

Date

4/6/20

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

On March 30, 2020, Mayor Liccardo issued a memorandum under this item which, among other things, requested that staff provide the City Council with information on the extent to which the Federal Emergency Management Administration (FEMA) can be expected to reimburse the City for the expense of establishing non-congregate shelters as part of the City's response to the coronavirus pandemic. On April 3, 2020, Mayor Liccardo, Vice Mayor Jones, and Councilmembers Peralez and Davis issued a memorandum recommending that the City Manager be directed to allocate \$17,232,510 in Homeless Housing Assistance and Prevention (HHAP) funding for the lease, purchase, and/or construction of emergency housing, including prefabricated modular units, as part of the COVID-19 response.

In response to the Mayor's March 30, 2020 memorandum, this memorandum describes FEMA's criteria for reimbursing state and local government for non-congregate shelter expenses and describes the City's collaboration with the County of Santa Clara to provide a range of shelter options. Also, given the interest in pursuing modular units as a shelter solution, as expressed in the April 3, 2020 memorandum, this memorandum evaluates the likelihood of receiving reimbursement for such units under FEMA's non-congregate shelter funding criteria.

The Administration's initial analysis indicates it is unlikely the purchase of modular housing would be reimbursable by FEMA under current rules. However, the City may have another opportunity to request federal reimbursement for this purpose. Speaker Pelosi and House Democrats are already developing a fourth stimulus package. If the Council desires to pursue reimbursement for modular housing, the Administration could work with the City's federal lobbyists to identify opportunities to advocate for reimbursement opportunities in the next stimulus bill.

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BACKGROUND

On March 13, 2020, President Trump issued a national emergency declaration for the COVID-19 pandemic. This declaration makes it possible for FEMA to reimburse State and local governments for eligible disaster-related expenses through its Public Assistance grant program. Under Category B of this program, which sets aside funds for emergency protective measures that save lives and protect public health, State and local governments are eligible to be reimbursed for expenses incurred providing shelter to residents affected by the disaster.

On March 18, 2020, the City entered into an agreement with Witt O'Brien, an emergency management firm, to assist the City with a number of services for the City's COVID-19 response, including the FEMA Public Assistance grant program. Witt O'Brien's expertise has been used to develop the Administration's analysis below.

Typically, FEMA provides reimbursements under this program for congregate shelters—a type of shelter that houses people in a communal space without separate rooms. These shelters are usually set up in facilities whose day-to-day purpose is something other than providing shelter or housing. Examples of congregate shelters include shelters the City has established in the South Hall Tent and Parkside Hall as part of the COVID-19 response.

Due to the risk of disease transmission inherent in a pandemic, FEMA has announced that in addition to providing reimbursements for congregate shelters, it will also provide reimbursements for non-congregate shelters, provided certain criteria are met. A non-congregate shelter provides residents with individual rooms, thus facilitating social distancing and reducing disease transmission. A private motel where individuals are housed with room nights purchased by the City is one example of a non-congregate shelter.

Non-congregate shelters must meet several criteria to qualify for reimbursement from FEMA. On March 25, 2020, Governor Newsom's Office of Emergency Services sent a letter to FEMA requesting that FEMA approve Public Assistance funding for non-congregate shelters. On March 27, 2020, Robert Fenton, FEMA's regional administrator for Region IX, responded with a letter approving California's request for non-congregate shelter reimbursement funding and outlining the criteria FEMA will use to determine whether non-congregate shelter costs are eligible for reimbursement (this letter is included as Attachment A). The City will be sending a letter to the Governor's Office of Emergency Services requesting approval of public assistance money for non-congregate shelters after further coordination with the County. The City's proposal is in compliance with the criteria set out in the March 27, 2020 FEMA letter.

These criteria are described in detail in the Analysis section of this memorandum, below. The Analysis section also includes a description of the City's collaboration with the County of Santa Clara to provide a range of shelter options to serve vulnerable residents, along with an evaluation of whether prefabricated modular units would qualify for reimbursement as non-congregate shelters under FEMA's criteria.

ANALYSIS

FEMA Non-Congregate Shelter Reimbursement Criteria

FEMA's March 27, 2020 letter establishes the below criteria for providing Public Assistance funding to California to reimburse costs for non-congregate shelters. Note that these criteria can be found on pages 2 and 3 of Attachment A.

1. **Eligible Populations:** FEMA will only reimburse non-congregate shelter costs for sheltering of the following populations:
 - a. Individuals who test positive for COVID-19 that do not require hospitalization, but need isolation or quarantine (including those exiting from hospitals)
 - b. Individuals who have been exposed to COVID-19 (as documented by a state or local public health official, or medical health professional) that do not require hospitalization, but need isolation or quarantine
 - c. Individuals who are asymptomatic, but are at "high-risk," such as people over 65 or who have certain underlying health conditions (respiratory, compromised immunities, chronic disease), and who require Emergency non-congregate shelters as a social distancing measure.
2. **Non-Eligible Populations:** Reimbursements will not include costs for the sheltering of asymptomatic individuals that are not among the populations identified above, but whose living situation may make them unable to adhere to social distancing guidance.
3. **Eligible Services:** Reimbursement will include costs incurred for wrap-around services directly necessary for the safe and secure operation of non-congregate shelter facilities. However, costs associated with the provision of support services such as case management, mental health counseling, and similar services are not eligible for reimbursement under the Public Assistance program.
4. **Cost Effectiveness:** Reimbursement is limited to costs that are reasonable and necessary for providing Emergency non-congregate shelter to eligible individuals (as identified in bullet point 1 above). In this regard, please note that FEMA does not mandate that the State pursue a specific option or options for temporary facilities to be used for emergency non-congregate shelters, but FEMA will only approve Public Assistance funding for cost-effective and practical options.
5. **Timeframe:** Reimbursement is limited to costs associated with sheltering individuals through April 30, 2020, unless the public health needs should sooner terminate. At this time, the Administration believes the April 30th date will be pushed back, allowing additional time. The State must obtain FEMA's approval for any time extensions, which should include a re-assessment of the continuing need for non-congregate shelters from a State public health official, as well as a detailed justification for the continuing need for emergency non-congregate sheltering
6. **Conversion for Emergency Medical Care:** Reimbursement is limited to costs associated with the provision and operation of facilities for non-congregate shelters and does not include the approval of costs for the conversion of facilities for the provision of emergency medical care.

7. **Subject to Guidance:** Approval is subject to, and limited by, non-congregate shelter guidance issued by FEMA, including in the form of Fact Sheets.

In particular, note bullets 1, 4 and 5. Bullet 1 specifies that non-congregate shelters are only eligible for reimbursement if they serve individuals who have tested positive, been exposed to, or are at high risk from COVID-19. Bullet 4 indicates that the agencies may choose what type of facility hosts the non-congregate shelter—for example, a motel or modular housing—but whatever the choice, must be able to demonstrate that it is “cost-effective and practical.” Bullet 5 establishes a short initial timeframe for reimbursements through the end of April.

City/County Collaboration on Shelter Plan

The City is engaged collaboratively with the County of Santa Clara to provide appropriate shelter options for vulnerable populations, including both congregate and non-congregate shelters. The City and County have agreed to split lead responsibility for shelter based on the type of population served. The County is taking the lead on shelter for individuals who need to be isolated or quarantined, whether because they have tested positive for COVID-19, have been exposed to it, or are a member of a population that has high risk of complications from it. These groups will be accommodated at non-congregate shelters with individual rooms to facilitate their isolation. Non-congregate shelter locations include private motels, residential trailers provided by the State of California, and the City’s Bridge Housing Community (BHC). Note that the populations served by non-congregate shelter under this plan are consistent with the eligible populations identified by FEMA in bullet 1 above. The City is taking lead responsibility for sheltering homeless individuals who have not tested positive or been exposed to the disease and do not need to be isolated. These individuals will be accommodated at congregate shelters in the South Hall Tent and Parkside Hall that are carefully laid-out to promote social distancing.

Eligibility of Modular Units for FEMA Reimbursement

As discussed above, FEMA has set criteria for reimbursement of costs for non-congregate shelters. In evaluating whether prefabricated modular units may qualify for reimbursement, it may be useful to consider bullets 1, 4, and 5 from the above list of criteria.

First, as discussed in bullet 1, non-congregate shelters are only eligible for reimbursement if they serve individuals in need of quarantine or isolation, either because they are positive for COVID-19, have been exposed, or are at high risk. Consequently, to be eligible for reimbursement, modular units would need to shelter these populations. They would not be available to shelter homeless individuals who do not need to be isolated. While there have been some placements of vulnerable populations in City sites, the majority of these populations are being housed in County facilities because of the need to provide medical services. As a result, use of modular units would require coordination with the County, to ensure they serve populations eligible for reimbursement.

Second, as discussed in bullet 4, agencies must be able to demonstrate that non-congregate shelters are cost effective and practical. Cost analysis is built into the FEMA procurement

process: any procurement over \$250,000 must undergo a cost or price analysis to determine whether the price is fair and reasonable. Failure to perform such analysis may be grounds for FEMA to disallow reimbursement. Given the cost of modular housing as compared to other shelter options, it may be difficult to demonstrate that it is cost-effective.

FEMA will likely require a cost comparison between providing non-congregate shelters through private motels and through modular housing. Private motels will be used as part of the joint shelter plan with the County, and as such staff has developed rough estimates for the number of room nights that will be required and the resultant total cost. While the Administration's cost analysis continues, current 1,000 individuals will need to be sheltered in private motels, with an average stay of 14 days. Based on current analysis an approximate cost per room night of \$120 or a total cost of roughly \$1.7 million (excluding costs for operation and services.) Staff has also developed preliminary cost estimates for modular housing. Depending on the type of unit, total site development costs for a 40-unit modular housing project would range from approximately \$2 million to \$2.5 million (again, excluding costs for operation and services.) First, despite the similar price point, a 40-unit modular housing complex would provide less capacity than a private motel approach that could expand shelter beds to meet the need based on the availability of motel rooms. Second, modular housing would take a number of months to bring online, while private motel rooms could be provided more quickly to meet the immediate need. Given these considerations it could be difficult to demonstrate that modular housing is cost effective in comparison with private motels.

Finally, bullet 5 sets an initial timeframe for reimbursable costs that runs through April 30, 2020. This short timeframe is consistent with FEMA's focus on immediate emergency management needs, as opposed to longer term problems not directly caused by the emergency, such as homelessness. FEMA makes this priority even more explicit in a fact sheet for non-congregate shelters released on March 19, 2020, which state that "any approval [for non-congregate shelters] is limited to that which is reasonable and necessary to address the public health needs of the event and should not extend beyond the duration of the Public Health Emergency."¹ Over the long-term, the City may benefit from repurposing modular housing to shelter the homeless after the emergency is over, and the cost effectiveness of modular housing might be more favorable if those long-term benefits were taken into account, but FEMA prioritizes short-term utility in addressing emergency conditions.

Potential Emergency Interim Housing/Shelter Site Summary

Separate from the issue of FEMA reimbursement lies the homelessness crisis our City faces, and will continue to face beyond the City's COVID-19 response. As outlined in the Informational Memo on March 19, 2020, the City, County, and Desintation:Home have been leading the new Countywide Community Plan to End Homelessness. While still in draft form under "Strategy 3: Improve quality of life for unsheltered individuals and create healthier neighborhoods for all" calls for doubling the number of year-round temporary housing beds and offer a variety of welcoming housing options throughout the County. Over the past several years, the Housing

¹ <https://www.fema.gov/news-release/2020/03/19/public-assistance-non-congregate-sheltering-delegation-authority>

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Department has also worked to advance goals that meet the immediate needs of our unhoused residents. Over the last several years the department has led implementation of Overnight Warming Locations, safe parking, Bridge Housing Communities (BHC), and shelter expansions. With County and City permanent supportive housing coming online the next several years, providing additional non-congregate interim housing in a diverse range of formats is critical. For example, creation of a navigation center, which could house roughly 100 of our unhoused residents, would be one strategy to increase shelter options. A navigation center is a low-barrier shelter and is designed to address the needs of the hardest to house. From a cost efficiency perspective, rapidly expanding shelter and interim housing capacity utilizing HHAP may have better long-term advantages for our City.

As part of implementing the Countywide Community Plan to End to Homeless the Administration re-evaluated previous analysis around site locations for emergency interim housing. If the Council wishes to move forward with the recommendations outlined in the April 3, 2020, by Mayor Liccardo, Vice Mayor Jones, and Councilmembers Peralez and Davis, the Administration would revisit these sites. The initial re-evaluation and summary list are included in Attachment B.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Housing Department and City's emergency management consultants Witt O'Brien.

/s/

LEE WILCOX

Director

Emergency Operations Center

For questions, please contact Lee Wilcox, Emergency Operations Center Director, at (408) 535-4873 or Jim Ortbal, Deputy City Manager, at (408) 535-3845.

Attachments:

Attachment A: March 27, 2020 FEMA Letter

Attachment B: Potential Emergency Interim Housing/Shelter Site Summary List



FEMA

March 27, 2020

Mr. Mark S. Ghilarducci, Director
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

Re: Request for Approval of Non-Congregate Sheltering
FEMA-4482-DR-CA (COVID-19)

Dear Mr. Ghilarducci:

This is in response to your letter dated March 25, 2020, requesting that FEMA approve Public Assistance (PA) funding for costs related to emergency, non-congregate sheltering.

In accordance with section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, eligible emergency protective measures taken to respond to the referenced Coronavirus Disease 2019 (COVID-19) disaster, at the direction or guidance of state, local, tribal, and territorial public health officials, may be reimbursed under Category B of FEMA's PA program if necessary to save lives, protect improved property, or public health and safety, and/or lessen or avert the threat of catastrophes.

Based on my review of your request and supporting documentation and information provided, I am approving your request for FEMA's reimbursement of costs related to emergency, non-congregate sheltering (Emergency NCS), subject to the conditions and limitations set forth below. The Emergency NCS will be implemented by the State of California (State) pursuant to (1) the Governor's Executive Order No. N-25-20 ordering all residents to obey any orders and guidance issued by state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19, (2) the Governor's Executive Order N-33-20 (a) incorporating the Order of the State Public Health Officer issued on March 19, 2020, that requires all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, and (b) directing the California Governor's Office of Emergency Services to take necessary steps to ensure compliance with the Executive Order, and (3) guidance issued by the California Department of Public Health that includes the need to practice social distancing.¹

¹ <https://www.gov.ca.gov/2020/03/16/california-issues-directive-to-fight-covid-19/>.

My approval of the State's request for PA funding for costs related to Emergency NCS includes the populations identified below, which does not include all populations identified in your March 25 letter. Furthermore, my approval of the State's request is subject to and conditioned by the following:

- FEMA will reimburse Emergency NCS costs incurred for:
 - Individuals who test positive for COVID-19 that do not require hospitalization, but need isolation or quarantine (including those exiting from hospitals);
 - Individuals who have been exposed to COVID-19 (as documented by a state or local public health official, or medical health professional) that do not require hospitalization, but need isolation or quarantine; and
 - Individuals who are asymptomatic, but are at "high-risk," such as people over 65 or who have certain underlying health conditions (respiratory, compromised immunities, chronic disease), and who require Emergency NCS as a social distancing measure.
- My approval does not currently include the reimbursement of costs for the sheltering of asymptomatic individuals that are not among the populations identified above, but whose living situation may make them unable to adhere to social distancing guidance.
- My approval includes the reimbursement of costs incurred for wrap-around services directly necessary for the safe and secure operation of NCS facilities. However, costs associated with the provision of support services such as case management, mental health counseling, and similar services are not eligible for reimbursement under the PA program.
- My approval is limited to costs that are reasonable and necessary for providing Emergency NCS to eligible individuals (as identified in bullet point 1 above).² In this regard, please note that FEMA does not mandate that the State pursue a specific option or options for temporary facilities to be used for Emergency NCS, but FEMA will only approve PA funding for cost-effective and practical options.
- My approval is limited to costs associated with sheltering individuals through April 30, 2020, unless the public health needs should sooner terminate. The State must obtain FEMA's approval for any time extensions, which should include a re-assessment of the continuing need for Emergency NCS from a State public health official, as well as a detailed justification for the continuing need for emergency non-congregate sheltering.³
- My approval is limited to costs associated with the provision and operation of facilities for Emergency NCS and does not include the approval of costs for the conversion of facilities for the provision of emergency medical care.

² *Public Assistance Program and Policy Guide*, FP 104-009-2, at 67 (April 1, 2018) (PAPPG). See also 2 C.F.R. §§ 200.403 and 200.404.

³ PAPPG, at 67.

- My approval is subject to, and limited by, Emergency NCS guidance issued by FEMA, including in the form of Fact Sheets.

Additionally,

- The State must follow FEMA's Procurement Under Grants Conducted Under Exigent or Emergency Circumstances guidance and include a termination for convenience clause in its contracts for sheltering and related services, such as food, security services, and care for those with disabilities or access and functional needs.⁴
- FEMA will not approve PA funding that duplicates funding by another federal agency, including the U.S. Department of Health and Human Services or Centers for Disease Control and Prevention.
- The State must comply with, and enable FEMA to comply with, applicable environmental and historic preservation laws, regulations, and executive orders or funding may be jeopardized.⁵

The State of California will need to maintain tracking mechanisms to provide sufficient data and documentation to establish the eligibility of Emergency NCS costs for which it is requesting PA funding (including the need for non-congregate sheltering of each individual, length of stay, and costs). As with any activity, lack of sufficient support documentation may result in FEMA determining that some or all of the State's claimed costs are ineligible.

If you have any additional questions regarding this matter, please contact Robert Pesapane, Recovery Division Director, at (510) 627-7250.

Sincerely,



Robert J. Fenton
Regional Administrator
FEMA Region IX

cc: James Cho, Response Division Director, FEMA Region IX
Robert Pesapane, Recovery Division Director, FEMA Region IX
John-Paul Henderson, Regional Counsel, FEMA Region IX

⁴ *Id.*, at 68-69.

⁵ *Id.*, at 43-44.

Potential Emergency Interim Housing/Shelter Site Summary - Attachment B

Evaluated Locations	District	Interim Housing Types*	Description	Priority
CITY SITES – Currently controlled by City enabling quickest emergency/interim housing deployment				
Story Road at Knox Ave <i>APN:481-39-013</i>	5	1) MC 2) RV 3) BHC	<ul style="list-style-type: none"> • 1.67 Acres – all usable for development Parkland restrictions • No major development challenges, access to utilities, services, transportation AC paving • Within .35 miles of k-12 school, .1 miles from residential, .7 from BHC 	1
Monterey at Bernal <i>APN:678-03-036</i>	2	1) BHC 2) MC 3) RV	<ul style="list-style-type: none"> • 2.5 acres – partially usable • No residential or shelters near but school within .25 miles • Needs traffic safety enhancements, several mature oak tree reduces the building footprint • Access to utility, services, transportation • 80-unit potential 	2
PRIVATE SITES – Lease and donation process underway with City control anticipated shortly				
2347 1 st Street <i>APN:101-02-011</i>	4	1) BHC 2) RV	<ul style="list-style-type: none"> • Owner willing to lease 1-2 Acres to City for 5 years for BHC and possibly RV • No proximity to schools, residential, other shelters • No major development challenges easy access to utilities, flat, accessible, transit 	3
Private Land at Hellyer Ave	2	All	<ul style="list-style-type: none"> • City Real Estate is negotiating donation of acreage of land East of Hellyer Ave • CEQA completed 	4
CITY SITES – Less than ideal – All sites below present development challenges				
Evans Ln at Almaden Expressway <i>APN:455-31-053</i>	6		<ul style="list-style-type: none"> • 4.99 Acres – designated for Perm affordable Housing development • 30% of parcel is flood plane – will require significant flood mitigation • Adjacent to residential, .45 mile from K-12 school, 1.2miles from BRC shelter 	
Story Road at Remillard Court #1 <i>APN: 472-11-081</i>	7		<ul style="list-style-type: none"> • 2 acres – difficult to develop – Challenges: grading, access, access to utilities • Environmental constraints – flood, adjacent to Bay keeper site, former land fill 	
Story Road at Remillard Court #2 <i>APN: 472-11-062</i>	7		<ul style="list-style-type: none"> • 7 acres – flat, close to utilizes, access • Environmental constraints – flood, adjacent to Bay keeper site, former land fill 	
Monterey Road at Burnett Ave <i>APN:725-01-023</i>	2		<ul style="list-style-type: none"> • Just north of Morgan Hill city limit; Greenbelt, no utilities, north of Sobrato High School 	
Los Esteros Road at Grand Blvd <i>APN:015-30-058</i>	4		<ul style="list-style-type: none"> • Power line towers, marshland, neighboring sites are protected wildlife • Flood Zone 	
Yerba Buena Road @ Chisin Street <i>APN: 679-14-003</i>	8		<ul style="list-style-type: none"> • 9 Acres – mostly unbuildable (hillside), potential open space issues, no access to utilities • Close to residential, no access to transit, services, food 	

* Potential most appropriate emergency/interim housing type deployment based upon property, size, owner requirements, etc
Key (MC) Modular Construction (Large trailers/container conversions; (RV) Recreational Vehicles (Longer term FEMA trailer site);
(BHC) Emergency Sleeping Cabin Communities (City BHC)