



May 5, 2020

**Via Email and First-Class Mail**

Mayor London Breed  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
[MayorLondonBreed@sfgov.org](mailto:MayorLondonBreed@sfgov.org)

Dear Mayor Breed:

We write on behalf of the Coalition on Homelessness San Francisco (“COH”) to demand the City and County of San Francisco’s (“City”) compliance with recent local legislation requiring the procurement of hotel and motel rooms for unhoused people as a critical public health response to the COVID-19 pandemic and with Welfare and Institutions Code section 17000.

First, COH demands that the City immediately and fully comply with Ordinance No. 69-20 (“Ordinance”) by (1) procuring the number of hotel or motel rooms<sup>1</sup> that the Ordinance requires the City to procure, and (2) promptly activating and filling those rooms to ensure that everyone in San Francisco who is experiencing homelessness has access to individual housing during the Declaration of Local Health Emergency Regarding Novel Coronavirus Disease 2019 should he or she want it.

Second, COH demands pursuant to Welfare and Institutions Code section 17000 that the City accept the offer of the genetic research company Color to test all of the City’s homeless shelter residents for COVID-19, to allow testing to proceed immediately, and, consistent with Ordinance No. 69-20, to offer housing in hotel rooms or other individual housing to anyone who tests positive, even if they are asymptomatic.

COH is a non-profit organization that organizes unhoused people and front-line service providers to create permanent solutions to homelessness while working to protect the human rights of those forced to remain on the streets. COH is deeply concerned by the increasingly crowded nature of shelters and homeless encampments in the City during the COVID-19 pandemic and the risk of ongoing community spread of the virus among unhoused San Franciscans who do not have

---

<sup>1</sup> For efficiency, this letter will use “hotel rooms” to refer to both hotel and motel rooms.

access to safe indoor, individual housing units where they can shelter in place. The City's refusal to take reasonable steps now to provide substantially more housing options that allow people experiencing homelessness to shelter in place is dangerous and contrary to law. It threatens the health of unhoused people and the community as a whole. As numerous studies confirm, unhoused people are disproportionately at risk for contracting the virus and suffering severe symptoms. And a further outbreak among the unhoused population threatens to undo the City's laudable success in "flattening the curve."

### **I. The Risks of Community Spread and Severe Illness Bear Heavily on the City's Unhoused Population, Who Cannot Shelter in Place without Government Support.**

There are over 8,000 unhoused people in San Francisco, including 5,180 who are unsheltered, according to the 2019 point-in-time street and shelter count.<sup>2</sup>

San Francisco's large unhoused population is at increased risk of contracting COVID-19 because they do not have safe places to self-isolate or adequate access to hygiene facilities and medical care.<sup>3</sup> Nearly 100 residents tested positive for COVID at Multi-Service Center South ("MSC South"), demonstrating the enormous risk of the virus spreading quickly through shelters, encampments, and single room occupancy facilities.<sup>4</sup> In Boston, universal testing at a large shelter resulted in 146 positive tests—all of whom were asymptomatic—demonstrating the risk of the virus spreading within shelters even when residents show no physical symptoms of infection, yet remain highly contagious.<sup>5</sup>

A number of recent reports and studies confirm that unhoused people are exceptionally vulnerable to infection and serious illness or death from COVID-19. Dr. Margot Kushel, Director of the UCSF Center for Vulnerable Populations and an expert on the health effects of homelessness, notes that homeless individuals' health resembles that of people twenty to twenty-

---

<sup>2</sup> Applied Survey Research, San Francisco Homeless Count & Survey Comprehensive Report (2019) at 9, [http://hsh.sfgov.org/wp-content/uploads/2019HIRDReport\\_SanFrancisco\\_FinalDraft.pdf](http://hsh.sfgov.org/wp-content/uploads/2019HIRDReport_SanFrancisco_FinalDraft.pdf). This letter uses "unhoused" to refer to people experiencing homelessness, including people living outdoors or in shelters, transitional housing, and in vehicles. We use the term "unsheltered" to refer to the subset of this group whose primary nighttime residence is a public or private space not designed or ordinarily used as a regular sleeping accommodation for human beings.

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

<sup>4</sup> Vivian Ho, "'It could have been averted': How 92 residents at a San Francisco homeless shelter got Covid-19," *The Guardian* (Apr. 15, 2020), <https://www.theguardian.com/us-news/2020/apr/15/san-francisco-homeless-coronavirus-msc-shelter>.

<sup>5</sup> Drew Karedes, "CDC reviewing 'stunning' universal testing results from Boston homeless shelter," Boston 25 News (Apr. 15, 2020), <https://www.boston25news.com/news/cdc-reviewing-stunning-universal-testing-results-boston-homeless-shelter/Z253TFBO6RG4HCUAARBO4YWO64/>; see also Mosites et al., *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters – Four U.S. Cities, March 27 – April 15, 2020*, MMWR Morb Mortal Wkly Rep (May 1, 2020), <http://dx.doi.org/10.15585/mmwr.mm6917e1> (study showing prevalence of COVID-19 among shelter residents).

Mayor Breed

May 5, 2020

Page 3 of 10

five years older.<sup>6</sup> A University of Pennsylvania study found that unhoused individuals infected with COVID-19 are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times more likely to die from the virus than the general population.<sup>7</sup> These risk factors have a particularly devastating impact on people of color, who are far more likely to be homeless than white people in San Francisco.<sup>8</sup> The significant racial disparities in outcomes related to COVID-19 are therefore amplified among the unhoused populations in San Francisco.

## **II. The City Has Significant Financial Support and Thousands of Vacant Rooms Available to Provide Individual Housing to Unhoused People During the Local Emergency.**

At the same time that over 5,000 people are living unsheltered in San Francisco, there are tens of thousands of unoccupied hotel rooms in the City.<sup>9</sup> When the City first requested proposals from hotels in late March, over thirty hotels immediately offered 8,310 rooms at discounted rates.<sup>10</sup> And even if the City were not able to negotiate reasonable rates for vacant hotel rooms during the Local Emergency, it has legal authority and ample resources to procure the rooms, including through its power to commandeer private property during a declaration of local emergency.<sup>11</sup>

Moreover, the City can finance procurement of thousands of hotel rooms with substantial support from the State and the Federal Emergency Management Agency (“FEMA”). On April 3, 2020, Governor Newsom announced Project Roomkey, a statewide program to prevent the spread of COVID-19 among unhoused individuals by providing temporary housing in hotels. Through Project Roomkey, FEMA reimburses 75% of the cost to rent hotel rooms for individuals who have tested positive for COVID-19, have been exposed to COVID-19, are over 65 years old, or have underlying medical conditions that put them at high risk.<sup>12</sup>

---

<sup>6</sup> 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>.

<sup>7</sup> Dennis Culhane et al., “Estimated Emergency and Observational/Quarantine Capacity Need for the US Homeless Population Related to COVID-19 Exposure by County; Projected Hospitalizations, Intensive Care Units and Mortality,” University of Pennsylvania (Mar. 27, 2020), [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).

<sup>8</sup> See Applied Survey Research, *supra* note 2, at 16.

<sup>9</sup> As of late March, there were an estimated 30,000 empty hotel rooms. Katie Canales, “There are more vacant hotel rooms in San Francisco than there are homeless people as the city decides whether to house its 8,000 homeless in empty hotels,” Business Insider (Apr. 10, 2020), <https://www.businessinsider.com/coronavirus-vacant-hotel-rooms-san-francisco-homeless-people-2020-4>.

<sup>10</sup> *Id.*

<sup>11</sup> This legal authority is described in a letter submitted to Mayor Breed by the undersigned organizations and others on April 13, as well as in an April 13 memorandum prepared by the City Attorney’s Office.

<sup>12</sup> Office of Governor Gavin Newsom, “At Newly Converted Motel, Governor Newsom Launches Project Roomkey: A First-in-the-Nation Initiative to Secure Hotel & Motel Rooms to Protect Homeless Individuals from COVID-19” (Apr. 3, 2020), <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governor-newsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protect-homeless-individuals-from-covid-19/>.

It is estimated that it would cost approximately \$105 million to rent 7,000 hotel rooms for unhoused individuals as required by the Ordinance, and FEMA funding will cover \$55 million.<sup>13</sup> San Francisco's share of the \$150 million in funds Governor Newsom previously allocated to counties throughout the State to for protecting unhoused Californians could also be allocated to the cost of leasing these hotel rooms.<sup>14</sup>

### **III. The City's Refusal to Comply with Ordinance No. 69-20 Sets a Dangerous Precedent of Illegality and Defiance of the Legislative Branch that Endangers the Entire Community.**

#### **A. Ordinance No. 69-20 Authorizes and Requires that the City Use Available Resources and Legal Authority to Lease a Set Number of Hotel Rooms.**

Consistent with state policy to rapidly house significant numbers of unhoused people, on April 14, the Board of Supervisors unanimously enacted Ordinance No. 69-20 as an emergency ordinance. Most relevant to the demands in this letter, section 3(a) requires the City to procure 8,250 private hotel rooms. Seven thousand are to be procured for people experiencing homelessness in San Francisco, including people residing in a City shelter or navigation center, people who are currently unsheltered, and unhoused people being released from jails. This obligation is *not* limited to people experiencing homelessness who have tested positive for COVID-19, have been exposed to someone with COVID-19, or are experiencing COVID-19 symptoms. It applies to any person experiencing homelessness in San Francisco.

The Ordinance took effect upon adoption by the Board of Supervisors and was returned unsigned by Mayor Breed. It is therefore the law of the City. April 26, the deadline for procuring the required number of rooms, has passed. The City has not leased the required number of rooms for unhoused people, and Mayor Breed has repeatedly made public statements indicating that her administration does not intend to do so. According to one report, she was "adamant that it's not realistic to move the entire homeless population inside [and stated that] '[i]f it were that easy we would have done it a long time ago.'"<sup>15</sup> And indeed to date, it has come nowhere close to

---

<sup>13</sup> Joe Eskenazi, "Breaking: San Francisco now planning to obtain 7K hotel rooms for COVID-19 crisis," *Mission Local* (Apr. 8, 2020), <https://missionlocal.org/2020/04/breaking-san-francisco-now-planning-to-obtain-7k-hotel-rooms-for-covid-19-crisis/>; Katie Canales, "An emergency measure just assed that will require San Francisco to rent 7,000 hotel rooms to house its entire homeless population." *Business Insider* (Apr 14, 2020), <https://www.businessinsider.com/san-francisco-emergency-measure-homeless-hotel-rooms-2020-4>. San Francisco's guidelines slightly expand Project Roomkey's criteria by categorizing people experiencing homelessness who are over the age of 60 years as vulnerable. Thus, the amount recovered will be slightly less than Project Roomkey allows.

<sup>14</sup> Office of Governor Gavin Newsom, "Governor Newsom Takes Emergency Actions & Authorizes \$150 Million in Funding to Protect Homeless Californians from COVID-19" (Mar. 18, 2020), <https://www.gov.ca.gov/2020/03/18/governor-newsom-takes-emergency-actions-authorizes-150-million-in-funding-to-protect-homeless-californians-from-covid-19/>.

<sup>15</sup> Heather Knight, "Tenderloin buckles under weight of coronavirus," *San Francisco Chronicle* (Apr. 17, 2020), <https://www.sfchronicle.com/bayarea/heatherknight/article/The-problem-is-getting-worse-SF-s-15206953.php>; *see also* London Breed, "Homelessness, Hotels, and Covid-19," Medium (Apr. 29, 2020), <https://medium.com/@LondonBreed/homelessness-hotels-and-covid-19-dac646fb6b51> (statement by Mayor Breed that she would not comply with Ordinance No. 69-20); Tim Redmond, "Mayor defies supers, says she won't open

Mayor Breed

May 5, 2020

Page 5 of 10

meeting the legislative mandate. As of May 4, the City had leased only 1,632 rooms for unhoused individuals, and only 1,045 of those rooms were occupied.<sup>16</sup> This record cannot support a defense that the City has “exhaust[ed] reasonable options for securing” the required 8,250 rooms. *Cf.* Ordinance 69-20 § 3(e).

Ordinance No. 69-20’s imperative to provide individual housing units for unhoused people on a broad scale is supported by interim guidance from the U.S. Centers for Disease Control and Prevention (“CDC”).<sup>17</sup> The CDC warns that congregate settings can facilitate the spread of infection<sup>18</sup> and urges local jurisdictions to establish isolation sites such as hotels and alternative care sites for individuals or families with suspected or confirmed COVID-19 who are experiencing unsheltered homelessness.<sup>19</sup>

COH appreciates the steps the City has taken to place approximately 1,100 people experiencing homelessness in hotel rooms. But the City’s actions fall far short of complying with the legislative mandate to make individual, safe housing available to 5,900 more of San Francisco’s most vulnerable residents who are currently living in congregate shelters or on the streets and in crowded encampments where social distancing and adequate hygiene is impossible. The City’s refusal to take additional, legislatively required steps that are intended to reduce further community spread of this deadly virus is endangering lives of people experiencing homelessness and the community as a whole.

Section 3 of Ordinance No. 69-20 imposes clear, objective, mandatory duties on the City. The City’s refusal to comply with section 3 is subject to challenge through a petition for writ of mandamus. *See, e.g., Adams v. Ziegler* (1937) 22 Cal. App. 2d 135 (mandamus was proper to compel mayor to take action required by city council through a valid legislative act); *Independence League v. Taylor* (1908) 154 Cal. 179 (granting writ of mandate compelling mayor to take action required by statute). COH would have standing to bring such an action. Code of Civ. P. § 1086; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 245 P.3d 1005, 1011.

In a legal challenge, the City would not be able to defend its failure to abide by the mandate in Ordinance No. 69-20 section 3(a). It can afford to house 7,000 unhoused people for the duration of the Local Emergency. For unhoused people who fall into the three FEMA categories (including those who test positive), the City will be reimbursed for 75% of the cost to house,

---

hotel rooms for all homeless,” 48hills (Apr. 26, 2020), <https://48hills.org/2020/04/mayor-defies-supes-says-she-wont-open-more-hotel-rooms-for-homeless/>.

<sup>16</sup> *See* COVID-19 Alternative Housing, <https://data.sfgov.org/stories/s/4nah-suat>. (Last Visited May 4, 2020).

<sup>17</sup> *See* Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Interim Guidance for Homeless Service Providers* (Apr. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>; Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People Who Are At Higher Risk* (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

<sup>18</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Homelessness* (Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>.

<sup>19</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Interim Guidance on People Experiencing Unsheltered Homelessness* (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#isolation>.

feed, and provide wraparound social services to unhoused people who are provided hotel rooms, and Governor Newsom has provided significant additional emergency funding for responding to the needs of counties' unhoused populations during the pandemic. The City moreover has \$1.2 billion in rainy day funds.<sup>20</sup> As noted above, hotels have been willing to offer reduced rates, and even if that were not the case, the City has the authority to commandeer rooms and pay just compensation, based on market rate, which is currently very low.

Nor does any justification based on staffing difficulties pass muster. San Francisco's Board of Supervisors prepared a comprehensive plan explaining how the City could immediately and dramatically increase staffing by more efficiently recruiting and placing the City's Disaster Service Workers and by utilizing existing shelter workers, non-profit staff who work with people experiencing homelessness, and volunteers.<sup>21</sup> Indeed, there are significant numbers of non-profit workers from shelters and homelessness service providers who are currently unemployed. They have experience and expertise in working with unhoused people, and they are ready and able to support the City in moving thousands more people into hotel rooms with the full range of support required. In fact, the City's head of human resources stated on April 30 that meeting staffing demands for hotels is not an issue.<sup>22</sup> Still, we would be happy to connect the City with several nonprofit organizations who could assist in rapidly signing up workers to staff up hotels for unhoused people.

As the federal district court in San Francisco very recently held, exposure to COVID-19 is not "a significant danger merely to people in high-risk groups . . . it is dangerous to everyone." *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC (N.D. Cal. Apr. 29, 2020) (citing *Savino v. Souza*, No. 20-10617-WGY (D. Mass. Apr. 8, 2020)). "[T]he congregation of large groups in cramped spaces" threatens the health of the entire community. *Id.* at 4-5. The City has both the duty and the ability to reduce the danger to the City's vulnerable unhoused people and the community as a whole by using its legal authority and available financial and human resources to place thousands more people into hotel rooms where they can safely shelter in place.

#### **IV. The City's Refusal to Test All Homeless Shelter Residents for COVID-19 Is Contrary to Prevailing Public Health Recommendations and Violates Its Duties under Welfare and Institutions Code Section 17000.**

##### **A. The City Has Refused to Provide Comprehensive COVID-19 Testing to Shelter Residents Despite the Availability of Tests at No Cost to the City.**

In recent weeks, the Bay Area-based genetic research company Color offered to test all of the City's homeless shelter residents, which Color said it could complete in twelve days. It was ready to start testing residents at two shelters on April 22. That testing effort could have been

---

<sup>20</sup> See City and County of San Francisco, *California Adopted Five-Year Financial Plan Fiscal Years 2017-18 through 2021-22*. (May 17, 2017), [https://sfmayor.org/sites/default/files/Five%20Year%20Financial%20Plan%20FY17-18%20through%20FY21-22%20%28Updated%29%20FINAL\\_0.pdf](https://sfmayor.org/sites/default/files/Five%20Year%20Financial%20Plan%20FY17-18%20through%20FY21-22%20%28Updated%29%20FINAL_0.pdf).

<sup>21</sup> Apr. 28, 2020 "Hotel Staffing Memo" from Supervisors Haney, Ronen, Preston, Walton, and Peskin to Trent Rhorer.

<sup>22</sup> Hillary Ronen (@HillaryRonen), Twitter (Apr 30, 2020, 3:19 PM), <https://twitter.com/HillaryRonen/status/1255985247751041025>.

Mayor Breed

May 5, 2020

Page 7 of 10

completed by May 4, at no cost to the City. COH was prepared to cover the partial cost of the tests (\$75 per test) and fundraise. A UC Berkeley professor of public health was prepared to serve as the ordering doctor, and volunteers from the Do No Harm Coalition were prepared to facilitate the tests.<sup>23</sup> Yet after initial support from the Department of Public Health for this initiative, the plans were abruptly dropped. On April 28, a representative of Color informed advocates who had been working to facilitate testing of shelter residents that the City had decided to prioritize testing of “higher priority” groups such as nursing home residents and essential workers exhibiting COVID-19 symptoms.<sup>24</sup>

Governor Newsom’s blueprint for reopening the State requires testing 60,000 to 80,000 people each day.<sup>25</sup> The City’s own public health policies have emphasized the imperative to substantially increase the scale of testing. San Francisco’s decision to drop an initiative—that would have been free to the City—to test everyone who remains in a homeless shelter is inconsistent with these policies.

Furthermore, initiatives to test the entire population of homeless shelters in Chicago,<sup>26</sup> Boston,<sup>27</sup> and San Francisco’s MSC South<sup>28</sup> confirmed high rates of infection in congregate shelter settings. Many of those who tested positive for COVID-19 were asymptomatic or had only mild symptoms. By testing the entire shelter populations in these case studies, officials were able to better understand the scale of infection and to quarantine those who tested positive, thereby preventing further transmission in the community.

These examples demonstrate why testing everyone currently living in the remaining congregate shelters in San Francisco is a sound public health decision. It would both allow necessary quarantining of people with positive tests and the ability to conduct contact tracing, essential components of an effective ongoing response to the pandemic. The City could have obtained this benefit at no cost to the City and without having to allocate any staff time. Of course, if the City did allow the initiative to test every shelter resident to go forward, that initiative would almost certainly yield positive COVID-19 diagnoses among additional shelter residents. Under current

---

<sup>23</sup> Brian Howey, “City Kills Plan for Mass Coronavirus Testing in S.F. Homeless Shelters,” San Francisco Public Press (updated Apr. 30, 2020), <https://sfpublicpress.org/news/2020-04/city-kills-plan-for-mass-coronavirus-testing-in-sf-homeless-shelters>.

<sup>24</sup> *Id.*

<sup>25</sup> Catherine Ho, “To reopen, California must test at least 60,000 people daily for coronavirus – up from 16,000,” San Francisco Chronicle (Apr. 22, 2020), <https://www.sfchronicle.com/bayarea/article/To-re-open-California-must-test-60-000-people-15219607.php>.

<sup>26</sup> Cecilia Reyes, “At some Chicago homeless shelters, half of staff and residents tested positive for COVID-19. Advocates say better housing is crucial,” Chicago Tribune (Apr. 22, 2020), <https://www.chicagotribune.com/coronavirus/ct-homeless-shelter-positive-cases-coronavirus-cha-vacant-units-20200421-vrvjo3vjyneh5ldn2cloauctpi-story.html>.

<sup>27</sup> Drew Karedes, “CDC reviewing ‘stunning’ universal testing results from Boston homeless shelter,” Boston 25 News (Apr. 15, 2020), <https://www.boston25news.com/news/cdc-reviewing-stunning-universal-testing-results-boston-homeless-shelter/Z253TFBO6RG4HCUAARBO4YWO64/> (of 397 people tested, 146 people tested positive, though none exhibited any COVID-19 symptoms).

<sup>28</sup> Morgan McFall-Johnsen, “San Francisco seems to have flattened the curve, but an outbreak at a nursing home, jail, or homeless shelter could change everything,” Business Insider (Apr. 28, 2020), <https://www.businessinsider.com/san-francisco-covid-19-surge-homeless-shelter-jail-nursing-home-2020-4> (almost two-thirds of residents and 10 staff members tested positive).

Mayor Breed

May 5, 2020

Page 8 of 10

City policies (which we support), those unhoused people with positive tests would be eligible for a hotel room. The City's decision to decline the testing initiative for shelter residents suggests that the City is trying to avoid its obligation to move shelter residents who have COVID-19 out of shelters and into hotels.

### **B. Welfare and Institutions Code Section 17000 Requires the City to Provide COVID-19 Testing for the City's Unhoused Population.**

Not only is testing everyone in homeless shelters sound policy, but it is legally required. The City, in its capacity as the County of San Francisco, is violating its mandatory duties under Welfare and Institutions Code section 17000<sup>29</sup> by refusing to allow available testing during the COVID-19 pandemic. Section 17000 requires that counties have a minimal, last resort subsistence benefit and medical care program for severely indigent county residents who cannot obtain (or have not yet qualified for) any other cash or medical benefits to meet their basic needs:

Every county . . . shall relieve and support all incompetent, poor, indigent persons . . . lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

Section 10000 further mandates that:

aid shall be administered and services provided promptly and humanely . . . That aid shall be so administered and services so provided . . . as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society.

Section 17000 imposes an independent duty on counties to provide a subsistence medical care program. See *Hunt v. Super. Ct.* (1999) 21 Cal. 4th 984, 991. The California Supreme Court has interpreted this statute as imposing a mandatory duty to provide a system of "last resort" subsistence medical care—a level of care which does not lead to unnecessary suffering or endanger life and health—to *all* medically indigent residents. *Id.* at 1012-15.

Section 10000 requires that subsistence medical services be provided promptly and humanely. *Alford v. County of San Diego* (2007) 151 Cal. App. 4th 16, 28; *see also Cooke v. Super. Ct.* (1989) 213 Cal. App. 3d 401, 413-16 (a standard of dental care which excludes any diagnostic, preventive, therapeutic or restorative dental care is inhumane). During a pandemic in which the death rate is 3.7%, diagnostic testing for COVID-19 constitutes a subsistence medical service.<sup>30</sup> The necessity of testing is perhaps the greatest for unhoused individuals who have been living in encampments or congregate shelters, where both the risk of contracting COVID-19 and the potential for negative health consequences are higher than they are for other population groups.

---

<sup>29</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>30</sup> *See Statewide Case Statistics, California Case Statistics*, Tableau (May 3, 2020), [https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Public?%3Aembed=y&%3Adisplay\\_count=no&%3AshowVizHome=no](https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Public?%3Aembed=y&%3Adisplay_count=no&%3AshowVizHome=no) (showing death rate for the Bay Area is 3.7%).



Mayor Breed

May 5, 2020

Page 9 of 10

The City's failure to test its unhoused residents for COVID-19—especially in shelters, where tests have been offered at no cost—constitutes the denial of subsistence medical care that is needed by this vulnerable population. It defeats the goals of sections 10000 and 17000, subjects the City's residents to unnecessary suffering, and endangers the life and health of not just individuals who may have COVID-19, but others in the community as well. It is a violation of the City's mandatory duties to fail to provide this very basic medical service, and the City must allow testing for unhoused residents, at a minimum, by accepting tests for those in shelters. Governor Newsom has made it clear that testing and treatment are covered expenses in California. Los Angeles Mayor Eric Garcetti announced on April 29 that all residents of Los Angeles can get a test if they want one. Not only is San Francisco lagging behind other jurisdictions, it has refused to allow available tests to be used for a population that is inherently at risk—those living in congregate shelters. This arbitrary denial of crucial medical care is in violation of its mandatory duties under section 17000.

\* \* \* \* \*

San Francisco is poised to go down in history as a bellwether in fighting the COVID-19 pandemic and saving lives. Yet the City has to date refused to use existing resources and its clear legal authority to procure several thousand more hotel rooms, so that people currently experiencing homelessness in San Francisco have a safe, clean place to shelter in place like the rest of us. It has moreover refused an offer that would yield valuable testing results for everyone living in a San Francisco homeless shelter, at no cost to the City. This Administration's record will be tarnished, and the success the City has achieved to date in "flattening the curve" risks being eviscerated, if it does not change course to more rapidly and ambitiously address the critical housing needs of the City's thousands of unsheltered residents.

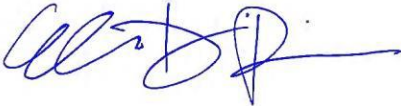
The availability of rooms is not the reason. There are tens of thousands of vacant hotel rooms in the City. Money is not the reason. The City has \$1.2 billion available funds, and for anyone who falls into the three Project Roomkey priority categories, the federal government will reimburse 75% of the cost, and the State has provided additional emergency homelessness funds. Staffing is not the reason. The Board of Supervisors prepared a comprehensive plan explaining how the City could immediately and dramatically increase staffing with available City and non-profit workers who are already skilled in working with unhoused populations.

The City's decision not to make testing and hotel rooms available to more of its unhoused residents, despite the mandate of Ordinance No. 69-20 and the requirements of Welfare and Institutions Code section 17000, is legally and morally untenable. We demand that the City act now and to utilize the legal authority and financial resources at its command, to accept the testing initiative from Color, COH, and the Do No Harm Coalition, and to place every person experiencing homelessness in San Francisco who wants one in a hotel room or other individual housing unit, before community spread of COVID-19 in the City's unhoused population skyrockets, risking more lives.

We look forward to your response to our demands by May 12, 2020.

Mayor Breed  
May 5, 2020  
Page 10 of 10

Sincerely,



Elisa Della-Piana  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area



Victoria Larson



Jamie Crook  
American Civil Liberties Union Foundation of Northern California



Abre' Conner

/s/Lauren Hansen  
The Public Interest Law Project

/s/ Tristia Bauman  
The National Law Center on Homelessness and Poverty

Cc: Abigail Stewart-Kahn, Dr. Grant Colfax, Dr. Tomás Aragón, Trent Rhorer, San Francisco Board of Supervisors via email