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10/2/17

RESOLUTION NUMBER R- 311331

DATE OF FINAL PASSAGE OCT 03 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING THE EXISTENCE OF A SHELTER CRISIS IN THE CITY OF SAN DIEGO AND SUSPENDING APPLICABLE PROVISIONS OF STATE AND LOCAL LAW PURSUANT TO THE CALIFORNIA GOVERNMENT CODE AND TAKING RELATED ACTIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CALIFORNIA COASTAL ACT, ALL RELATED TO PROVIDING PUBLIC FACILITIES TO MITIGATE THE EFFECTS OF THE SHELTER CRISIS, INCLUDING THE EFFECT THE HEPATITIS A OUTBREAK HAS ON THE SHELTER CRISIS.

WHEREAS, a significant number of persons are living unsheltered in the City of San Diego, without the ability to obtain shelter; and

WHEREAS, the Regional Task Force on the Homeless conducted its Point-In-Time Count on January 27, 2017 to collect data related to homelessness in San Diego, which showed that:

- 9,116 individuals are experiencing homelessness in the San Diego region, 77% of whom indicated they became homeless while living in San Diego;
- 5,619 of those individuals live within the boundaries of the City of San Diego, which number represents a 62% share of the regional total; the city with the next-largest share has a 6% share of the regional total;
- The remaining population of 3,497, which represents 38% of the regional total, is spread among four areas made up of other city jurisdictions and the unincorporated County: North County Inland, North County Coastal, South County, and East County (each with 7%, 8%, 9%, and 14% of the total, respectively);

- The overall population of individuals experiencing homelessness in the San Diego region grew by 5% as compared to 2016 and the share of individuals experiencing homelessness within City boundaries grew by 10% in that one-year period;
- 2,388 members of the City of San Diego's homeless population are sheltered in emergency shelters, safe havens, or transitional housing;
- 3,231 members of the City of San Diego's homeless population are unsheltered; this means that 57% of the total number of unsheltered individuals in the region live within the boundaries of the City of San Diego;
- The number of unsheltered persons in the region has risen each year since 2014; the current number of unsheltered persons region-wide represents a 41% increase as compared to the 2014 count and is the highest number observed since at least 2011; in the City of San Diego, the current number of unsheltered persons represents a 31% increase compared to the 2014 count and an 18% increase as compared to last year's count; and
- In the region, there has been a 58% increase in the number of individuals sleeping in tents or hand-built structures since last year and a 157% increase since 2014; in the downtown area of the City of San Diego, there has been a 263% increase since 2014; and

WHEREAS, individuals without shelter are at risk of injury and harm due to exposure to the elements and due to other health-, safety-, and welfare-related circumstances and consequences associated with living outdoors; and

WHEREAS, such individuals generally camp or lodge overnight on or in City parks, sidewalks, parking lots, and beaches, leading to conditions that are in some cases unsanitary,

both for the population of individuals experiencing homelessness and the members of the public who use those City parks, sidewalks, parking lots, and beaches; and

WHEREAS, the effects and impacts of such camping and lodging activities have an adverse effect on the health and safety of the people in the City, including the population of individuals experiencing homelessness and the public at large, and those effects and impacts constitute a health hazard for which abatement is warranted; and

WHEREAS, these facts, on their own, are a sufficient basis on which to rely in order to declare the existence of a shelter crisis; however, there are additional facts that lend further support for such a declaration; and

WHEREAS, the Health Officer for the County of San Diego (“County”) (the “County Health Officer”) serves as the Health Officer for the City of San Diego and, under the California Health and Safety Code, has the responsibility to take measures to prevent the spread of contagious, infectious, or communicable disease or occurrence of additional cases of such disease; and

WHEREAS, the County Health Officer became aware of facts that indicated a higher-than-normal incidence of Hepatitis A infection in the San Diego region; and

WHEREAS, Hepatitis A is a type of virus and refers to the infection caused by that virus, which causes inflammation of the liver that can last weeks or months and may result in serious illness that, in some cases, may cause death; and

WHEREAS, the strain of Hepatitis A virus found in San Diego County is considered to be spread by close person-to-person contact with infected persons; specifically, by oral ingestion of even microscopic amounts of infected fecal matter; and

WHEREAS, a vaccine exists that provides an effective level of immunity against the infection, and, beginning in March 2017, the County undertook an effort to provide vaccines to the members of the population it deemed most at risk of contracting the infection and the County Health Officer maintains that vaccination is the most effective means to prevent infection; and

WHEREAS, the approach to stemming this outbreak focuses on three efforts: vaccination, sanitation, and education; and

WHEREAS, on August 31, 2017, consistent with and pursuant to the authority over public health vested in its office by state statute, the County Health Officer issued a directive (“Directive”) to the City that described a means by which the City could assist in the abatement of this health hazard by participating in the sanitation effort; specifically, the Directive stated that the City was to implement a specific cleaning and sanitation protocol for sidewalks, streets, and gutters and expand access to public restrooms and wash stations adjacent to at-risk populations, identified by the County in that Directive as homeless individuals and illicit drug users; and

WHEREAS, the County Health Officer indicated as a basis for its Directive that unsanitary living conditions of a segment of the at-risk population contribute to the spread of the infection; and

WHEREAS, concurrent with delivery of the Directive, the County informed the City that this Hepatitis A virus was resilient and was not diminishing; and

WHEREAS, on September 1, 2017, the County Health Officer declared a local health emergency in San Diego County due to the threat to public health caused by the spread of the Hepatitis A virus; specifically citing the existence of contaminants in locations where significant numbers of homeless individuals reside as contributing to the increase and spread of the

infection, which declaration provided the City a means to take action using its emergency procedures; and

WHEREAS, the City provides funding for shelters for individuals experiencing homelessness, which improves access to sanitary conditions for those individuals, but the number of shelter beds that funding provides is at this time insufficient to house the number of unsheltered persons identified in the most recent Point-In-Time Count; and

WHEREAS, data made available by the County as of September 26, 2017 showed that there were 461 confirmed cases of Hepatitis A between that time and November 22, 2016 and that the infection resulted in a 68% hospitalization rate and 17 deaths among those affected; recent data also showed that approximately 42,000 vaccines have been administered, as vaccination efforts continue; and

WHEREAS, this outbreak is the second largest the United States has experienced since the vaccine was introduced to the public in 1995; and

WHEREAS, the City is participating in the efforts to increase the number of vaccinations offered to and accepted by members of the public at risk and to educate the public about the outbreak and, in compliance with the Directive, has implemented sanitation procedures and expanded access to restrooms and handwashing stations; and

WHEREAS, improved sanitary conditions for the population of the City's unsheltered homeless population would reasonably combat exposure to and help slow the spread of the Hepatitis A infection; and

WHEREAS, the sanitation procedures prescribed by the County Health Official for the treatment of sidewalks, streets, and gutters have the incidental but unavoidable effect of requiring individuals that may occupy such public rights-of-way at the time the sanitation

activities are scheduled to occur to temporarily relocate in order to allow the sanitation activities to occur, and the City desires that there be alternate shelter facilities for any of these individuals who lack access to shelter so that the City can properly and effectively carry out its sanitation efforts by cleaning the public rights-of-way and expanding access to restroom and handwashing facilities; and

WHEREAS, the City is pursuing options to open and operate certain public facilities to provide shelter for homeless individuals and their belongings, including on the public right-of-way at the cul-de-sac of 16<sup>th</sup> Street and Newton Avenue in Barrio Logan, on privately-owned property near the intersection of 14<sup>th</sup> and Commercial Streets in the Downtown community, and on a Navy-owned lot near the 2700 block of Sports Arena Boulevard in the Midway neighborhood, for use as shelters, which may include shelters of the type that provide a “bridge” to housing (“Temporary Bridge Shelters”) for individuals who may be eligible for placement in permanent supportive housing, in addition to other public facilities that the City may determine are available for such a purpose or other shelter-related purposes, which facilities may include City-owned or operated buildings, vacant or underutilized land, or parkland, including a site located at 20<sup>th</sup> and B Streets for a temporary camp site specifically to provide facilities that will provide access to restrooms and hand wash stations until one or more of the three aforementioned shelter locations are operational, which use of that parkland location is a legitimate park purpose; and

WHEREAS, strict compliance with otherwise applicable state or local statutes, regulations, and ordinances that prescribe standards for housing, health, and safety would prevent, hinder, or delay the establishment and operation of such facilities for shelter purposes and would prevent, hinder, or delay the mitigation of the effects of the shelter crisis, including by

impeding the City's ability to provide improved sanitary living conditions for individuals experiencing homelessness and including those who are at risk of contracting the Hepatitis A virus; and

WHEREAS, pursuant to the provisions of California Government Code section 8698 et seq., the City may declare that a shelter crisis exists within its territory, and an effect of such a declaration is that state and local statutes, regulations, and ordinances that prescribe standards for housing, health, or safety that would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis shall be suspended, which state and local statutes include, but are not limited to, specific provisions of: the San Diego Municipal Code, including, but not limited to, rules that regulate specific activities that may occur in public facilities and public property; the California Environmental Quality Act (CEQA), the California Coastal Act, and local ordinances related to implementation thereof; and statutes, regulations, and ordinances related to building requirements, among other state and local statutes; and

WHEREAS, the Planning Department has established that, even if CEQA were not suspended for this limited purpose related to abatement of the shelter crisis, the class of activities anticipated to be carried out to mitigate the effects of the crisis would be statutorily or categorically exempt from CEQA pursuant to one or more of CEQA Guidelines sections 15268, 15269, 15302, 15303, 15304, 15311, 15323, and 15327, and that no exception to the exemptions, as set forth in CEQA Guidelines section 15300.2, would apply and, therefore, that the Council of the City of San Diego, using its independent judgment, may determine that the activity will not have a significant effect on the environment; and

WHEREAS, that even if the California Coastal Act were not suspended for this limited purpose related to abatement of the shelter crisis, the shelter crisis herein declared constitutes an

emergency, immediate action is required to protect individuals experiencing homelessness from imminent danger, including the danger associated with the Hepatitis A outbreak, the facilities are necessary and reasonable to prohibit and abate a nuisance, and the facilities will be designed, to the extent deemed feasible by the City, so as not cause or result in any adverse impacts or effects on any coastal resources or environmentally sensitive habitat areas, and to in fact cause or result in a reduction or elimination of current adverse impacts and effects on coastal resources associated with illegal camping and lodging activities by members of the public, including by individuals experiencing homelessness; and

WHEREAS, on October 2, 2017, the Council of the City of San Diego held a duly noticed public meeting and considered the written record for the action, as well as public comment; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego hereby finds and adopts the recitals above as findings and determinations.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego hereby finds and declares the existence of a shelter crisis in the City of San Diego pursuant to and in accordance with the provisions of California Government Code section 8698.2(a)(1) because it finds that a significant number of persons in the City are without the ability to obtain shelter, which results in a threat to their health and safety, which is on its own a sufficient basis for declaration of a shelter crisis and is compounded by the Hepatitis A outbreak.

BE IT FURTHER RESOLVED, that this declaration of the existence of a shelter crisis shall continue in effect until terminated by the Council of the City of San Diego, which termination shall not be effected while a significant number of persons remain without the ability to obtain shelter or while unsanitary sleeping and living conditions or other conditions endanger



the health and safety of those unable to obtain shelter and in no case shall be effected while either the local health emergency or the public health threat related to the Hepatitis A outbreak persists.

BE IT FURTHER RESOLVED, that the City asserts the immunity provided by California Government Code section 8698.1(a), which immunity applies to ordinary negligence in the provision of shelter to mitigate this crisis and that, pursuant to California Government Code section 8698.1(b), the provisions of state or local regulatory statutes, regulations, and ordinances prescribing standards of housing, health, or safety are deemed suspended and inapplicable to activities related to the shelter crisis because strict compliance with such statutes, regulations, and ordinances would prevent, hinder, or delay the mitigation of the effects of the shelter crisis; including specifically that they are suspended and inapplicable to the establishment and operation of the Temporary Bridge Shelters and the establishment and operation of any other public facilities that the City may make available to unsheltered individuals as reasonably determined by the City to be necessary to mitigate the effects of the shelter crisis and that, with respect to such facilities, the Council of the City of San Diego authorizes the Mayor to apply health and safety standards consistent with the requirements of California Government Code section 8698.1(b).

BE IT FURTHER RESOLVED, that, specifically, the provisions of CEQA are deemed suspended and inapplicable with respect to the Temporary Bridge Shelters and any other public facilities that the City may make available to unsheltered individuals, but that, nevertheless, the Council of the City of San Diego determines that the establishment and operation of such facilities is exempt from the provisions of CEQA and that no exception is applicable.

BE IT FURTHER RESOLVED, that, specifically, the provisions of the California Coastal Act are deemed suspended and inapplicable with respect to the Temporary Bridge Shelters and any other public facilities that the City may make available to unsheltered individuals, but that, nevertheless, the Council of the City of San Diego determines that such facilities are exempt from the provisions of the California Coastal Act.


BE IT FURTHER RESOLVED, that the Council of the City of San Diego requests that the City's labor management representatives expeditiously resolve, in accordance with approved memoranda of understanding between the City and its recognized employee organizations and the Meyers-Milias-Brown Act, any labor relations matters related to the City's response to the shelter crisis, including as it relates to the Hepatitis A health crisis, as related to the use of any public facilities that the City may make available to unsheltered individuals.

BE IT FURTHER RESOLVED, that this declaration also constitutes an emergency for the purposes of making applicable the provisions of the City Charter and the San Diego Municipal Code related to emergency procurement of goods and services by contract, and that these facts would provide adequate justification for declaring a local emergency pursuant to California Government Code section 8550 et seq., as the conditions result in extreme peril to the safety of persons within the territorial limits of the City that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City and require the combined forces of other political subdivisions, including but not limited to the County, other cities, and other government or public agencies, which declaration could be made by the Council of the City of San Diego should funding or mutual aid opportunities become available or be identified for this purpose.

BE IT FURTHER RESOLVED, that any one of the reasons stated herein as support for the declaration of a shelter crisis forms a sufficient basis on which to base that determination independent of any other justification for the determination.

BE IT FURTHER RESOLVED, that the Mayor, or designee, is authorized to execute documents and to perform acts as are necessary and appropriate to implement these approvals.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Keely M. Halsey  
Deputy City Attorney

KMH:als  
09/28/2017  
10/02/2017 Cor. Copy  
10/03/2017 Rev. Copy  
Or.Dept: CD 3  
Doc. No.: 1584669\_4

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 02 2017.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 10/3/17  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on OCT 02 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 03 2017.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By Sty Bracy, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 311331