

The Honorable Holly Mitchell
Chair, Senate Budget Committee
State Capitol, Room 5050
Sacramento, CA 95814

The Honorable Phil Ting
Chair, Assembly Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

April 15, 2020

Dear Senator Mitchell and Assemblymember Ting:

On behalf of the ACLU of California and our approximately 230,000 members/supporters across the State, we acknowledge and are grateful for the State and Legislature's efforts to take care of Californians, especially our most vulnerable unhoused residents, during this challenging public health emergency. It is our intention to continue working alongside you, the Governor, state and local agencies and their staff to ensure that California's approach to the crisis is humane, safe, and in accordance with public health recommendations.

The State of California has made commendable attempts to anticipate the potentially devastating impact of COVID-19 on unhoused Californians and has provided substantial funding. But six weeks after the Governor declared a State of Emergency, less than 1 percent of California's unhoused population has been moved into individual housing where they can practice physical distancing and self-quarantining. And congregate shelters throughout the State are reporting outbreaks. There is no time to waste. We ask that your budget subcommittees use their critical oversight role to investigate the barriers to progress at the state and local levels to ensure that the state and local governments immediately implement programs designed to protect unhoused Californians from COVID-19. Your investigative and oversight functions can literally save lives and ensure that our state's 151,000 unhoused Californians' safety and health are protected during the COVID-19 pandemic.

**Protecting Unhoused Californians During the COVID-19 Pandemic:
Executive Order N-32-20 and Project Roomkey**

Governor Newsom's March 18th Executive Order N-32-20¹ directed \$150 million to cities, counties, and continuums of care to provide immediate congregate and non-congregate housing for unhoused people in California during the COVID-19 pandemic. These emergency funds were

¹ *Governor Newsom Takes Emergency Actions & Authorizes \$150 Million in Funding to Protect Homeless Californians from COVID-19* (March 18, 2020), available at <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/>.

allocated² by March 23, 2020 and allowed localities discretion on how to use this funding to build emergency shelter and/or lease hotels and motels.

Governor Newsom followed this order on April 3, 2020, with Project Roomkey,³ the first-in-the-nation partnership with the Federal Emergency Management Agency (FEMA) to provide emergency non-congregate housing for the immediate protection of people experiencing homelessness who are at “high risk” of negative outcomes from the COVID-19 virus. Most Project Roomkey expenditures are federally reimbursable through FEMA, for both hotel/motel room occupancy agreements and operating services with an emphasis that congregate care for those with high-risk factors is not recommended. This project benefits from a 75 percent federal share of cost. Project Roomkey was implemented using a similar local-control/collaboration model that relies on localities to initiate forming occupancy agreements with local hotels and motels and to move significant proportions of their unhoused populations into individual housing units.

Dangerous Delays in Implementation

Despite the urgency of this moment, most jurisdictions throughout California have not taken the urgent action that is needed to implement Executive Order N-32-20 and Project Roomkey. As of April 3rd, three weeks following the Governor’s executive order directing funding to localities, it appears that only 900 unhoused Californians, or less than 1 percent of California’s unhoused population, have been placed into hotels and motels. Although at least 7,000 rooms have been secured through Project Roomkey and 1,300 trailers have been purchased by the State from FEMA, the majority of both reportedly remain unoccupied. Simultaneously, we are seeing the spread of COVID-19 among unhoused people throughout California, including an outbreak in San Francisco’s largest shelter⁴ in which at least 70 residents and staff have tested positive for COVID-19. The updated number of positive cases is now 91. The failure to move individuals into non-congregate housing is having devastating consequences for communities and could jeopardize the provision and guarantee of state and federal emergency funding to do so.

Progress has been impeded, in part, by local community dynamics and lack of local leadership. For example, last week Orange County scuttled plans⁵ to open a hotel for unhoused people who may have contracted the coronavirus when local residents protested the location. In other cases, local governments seem to be suffering from a lack of resources or technical expertise. Immunocompromised residents at one homeless shelter report that new trailers have sat empty

² *COVID-19 EMERGENCY HOMELESSNESS FUNDING GRANT ALLOCATIONS*, available at <https://www.besh.ca.gov/hcfc/coronavirus19/allocations.pdf>.

³ *Project Roomkey Fact Sheet*, available at <https://www.cdss.ca.gov/Portals/9/FEMA/Project-Roomkey-Fact-Sheet.pdf>.

⁴ *70 people test positive for the coronavirus at SF’s biggest homeless shelter*, San Francisco Chronicle (April 10, 2020), available at <https://www.sfchronicle.com/bayarea/article/70-people-test-positive-for-the-coronavirus-at-15193234.php>; *‘Outbreak’ at SF’s largest homeless shelter, as 70 test positive for COVID-19 — shelter to become medical facility*, Mission Local (April 10, 2020), available at <https://missionlocal.org/2020/04/outbreak-at-sfs-largest-homeless-shelter-as-70-test-positive-for-covid-19/>.

⁵ *Senior residents protest hotel planned for homeless coronavirus patients, operator says it will be isolated and locked down*, OC Register (April 3, 2020), available at <https://www.oregister.com/2020/04/03/senior-residents-protest-hotel-planned-for-homeless-coronavirus-patients-operator-says-it-will-be-isolated-and-locked-down/>.

on the premises for a week. Staff members told them it will be two more weeks before the trailers are ready to accommodate shelter residents who need to self-isolate, reportedly because it will take time to connect them to sewage, water, and electrical systems. We are also troubled to see that instead of investing in non-congregate housing San Diego converted⁶ its Convention Center into an emergency shelter that could hold up to 1500 beds.

The Importance of Oversight When Responsibility is Diffuse and Unaccountable

Your oversight function is particularly critical given the discretion given to local governments under Project Roomkey and Executive Order N-32-20. In order to mount a rapid, coordinated, and effective response to this deadly pandemic, local control should not supersede public health and the lives of our most vulnerable Californians—especially when local governments have demonstrated a lack of capacity or willingness to immediately implement the life-saving provisions of the orders.

To underscore the importance of legislative oversight we note that, in general, the systems that provide essential services to unhoused community members often operate with an almost total lack of accountability. California's homeless shelter system, for example, is unlicensed and largely unregulated. Shelters operate with a mix of public and private dollars, often with little or no accountability. Programmatic services of publicly funded shelters are usually contracted out to third party vendors, further blurring the locus of accountability. The result is a patchwork system of oversight, with no one public entity in charge of making sure the shelters are safe and sanitary. And as a recent ACLU Southern California report⁷ found, conditions inside these shelters are often dangerously unsafe and unsanitary. Not surprisingly, shelter residents now report⁸ that some of the programs are out of compliance with CDC guidelines, with beds packed close together, filthy bathrooms, and shortages of toilet paper, paper towels, and handwashing soap.

We have also found that shelter operators and local governments sometimes evade responsibility by denying unsafe conditions and lack of adequate care, and at worst, blaming shelter residents for their own shortfalls. In the last couple of weeks, for example, after two staff members at an Anaheim-funded shelter tested positive for COVID-19, the OC Register reported⁹ that the city initially stated that many shelter residents had refused testing to determine whether they had been infected. In fact, the residents had not been offered the testing.

⁶ *Convention Center homeless shelter expands to 800+*, San Diego Union Tribune (April 7, 2020), available at <https://www.sandiegouniontribune.com/news/health/story/2020-04-07/convention-center-homeless-shelter-reaches-800/>.

⁷ *THIS PLACE IS SLOWLY KILLING ME: ABUSE AND NEGLECT IN ORANGE COUNTY EMERGENCY SHELTERS*, ACLU of Southern California (March 2019), available at https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf.

⁸ *THERE IS ENOUGH HOUSING FOR PEOPLE UNHOUSED, WE MUST ACT NOW*, ACLU of Southern California (April 6, 2020), available at <https://www.aclusocal.org/en/news/there-enough-housing-people-unhoused-we-must-act-now>.

⁹ *Coronavirus: Anaheim rents motel rooms for vulnerable homeless people, thrift store being converted*, OC Register (April 8, 2020), available at <https://www.ocregister.com/2020/04/08/coronavirus-anaheim-rents-motel-rooms-for-vulnerable-homeless-people-thrift-store-being-converted/>.

Recommendations

We request your committees ensure that local governments have the clarity, incentives, and accountability they need to proceed expeditiously to protect this State's most vulnerable residents and that the State takes action when local governments are unable or unwilling to act.

We request that you immediately:

- 1. Investigate the actions or inaction of localities to implement Housing First and non-congregate housing options (trailers/RVs, hotel and motel rooms) as a response to COVID-19 and homelessness in their communities.**
 - Require local governments to explain why there have been delays in implementing Project Roomkey and other emergency funding provided by the Executive Order N-32-20 and why their response has been so small in volume compared to the localities' unsheltered point-in-time-counts? Require localities to provide deadline for the fulfilment of their obligations, which should be completed no later than April 26, 2020.
 - Require that localities detail and submit summaries to the State about what their respective allotments of the \$150 million issued by the Business, Consumer Services and Housing Agency went towards, i.e., emergency shelter, services, or housing in hotel and motels and then publicize this data. Require reasons be stated if funding has not been spent and require returns of their allocation so it can be repurposed for other jurisdictions and/or for the State to take action in that respective jurisdiction to meet the need.
- 2. Provide rigorous oversight of efforts to relocate people to non-congregate housing.** Require localities to provide daily reports on how many people have been moved from shelters, encampments, and residential hotels into hotels, motels, or other housing where quarantine is possible.
- 3. Require that localities engage in widespread and immediate relocation of people living in congregate shelters to non-congregate housing.** Require cities and counties receiving state emergency funding to depopulate shelters by diverting highest-risk clients into housing options via Project Roomkey hotels and motels and/or commandeering or otherwise acquiring rooms where unhoused people can safely shelter in place.
- 4. Provide rigorous oversight of response of local governments to COVID-19 threat in shelters.** For localities that used state emergency funding to expand congregate shelter space, require reporting of what specific actions they have taken to protect clients and prevent the transmission of COVID-19 and whether they are in compliance with CDC guidelines regarding physical distancing, hygiene, and sanitation standards. Collect information from shelter residents on conditions and compliance with CDC guidelines. For any in-progress plans to expand congregate shelters, provide notice to respective localities requiring they halt those plans and instead use funding for non-congregate housing options.

Thank you for your consideration and swift action to expedite progress and oversight in this critical moment. By acting now, you will help protect the health and welfare of California's

unhoused residents, slow COVID-19 infection rates across the state and more specifically in congregate shelter settings, prevent overwhelming need for hospital resources, and avert thousands of preventable deaths.

Sincerely,

Maya Ingram
Legislative Attorney, ACLU of California

Clarissa Woo Hermsillo
Director of Economic Justice/Deputy Director of Advocacy, ACLU of Southern California

Eve Garrow
Policy Analyst and Advocate, ACLU of Southern California

Jamie Crook
Senior Staff Attorney, ACLU of Northern California

Christie Hill,
Deputy Advocacy Director, ACLU of San Diego & Imperial Counties

CC: Members and Committee Staff, Assembly Budget Subcommittee #6 and Senate Subcommittee on COVID-19