



San Diego and
Imperial Counties

March 22, 2020

Matt Hall
Mayor
City of Carlsbad
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council@carlsbadca.gov

Neil Gallucci
Chief of Police
City of Carlsbad
police@carlsbadca.gov

Sent via email

March 22, 2020

Dear Mayor Hall and Chief Gallucci,

I am writing because we are extremely concerned about recent reports that Carlsbad Police officers have been citing unhoused people for failing to comply with the Governor's recent executive order, or for similar offenses. We would appreciate learning whether citations have been issued to unhoused people and if so, under what provisions of law.

I hope this is not the case, but it would be absurd to cite unhoused people for failing to comply with the requirement in the Governor's recent "stay at home" order, Executive Order N-33-20 that they "remain in their homes or place of residence" when, by definition, homeless people in fact have no home or place of residence.

Alternatively, it would violate the Ninth Circuit Court of Appeals' recent decision in *Martin v. City of Boise*,¹ to cite homeless people for sleeping in public or otherwise making use of public spaces when, as I understand it, Carlsbad does not have enough shelter beds to accommodate the city's large homeless population.² As the Ninth Circuit recognized, "resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. ... As long as the homeless ... do not have a single place where they can lawfully be, [anti-public sleeping ordinances] as applied to them,

¹ *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019), *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019).

² According to the 2019 WeALLCount [factsheet](#), Carlsbad has only 59 shelter beds, for a homeless population of 161.

effectively punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct.”³ Regardless of whether the reported citations violate the letter of *Martin*, it makes no sense as a matter of public policy to cite people for violating laws they are incapable of complying with.

People who don't have homes are among the most vulnerable members of our community. The 2017 hepatitis A outbreak in San Diego county should have served as a clarion reminder that health and safety of the unhoused is inextricably intertwined with the health of the larger population. It serves no one's interest to enforce the laws in ways that do nothing but increase the desperation of people who have nowhere to go.

As the City no doubt knows, even if there were an adequate number of available shelter beds, shelters are not a solution for many people as they pose an increased risk of contracting illnesses due to close contact with others. Many will choose to stay on the streets where one can have more space, open air, and better ways to avoid contact spread of the virus. Forcing people to live in close quarters is not an acceptable solution, and penalizing them for declining to stay in such places will only further jeopardize public health.

San Diego County has recognized that the vulnerability of people who are unhoused presents a major public health challenge during the COVID-19 crisis, and have begun to implement measures to protect them from the pandemic, including [securing hotel rooms](#) intended to allow them to self-isolate. Indeed, the Governor's emergency response to the COVID-19 crisis includes setting aside [\\$150 million](#) for local emergency homelessness actions, including \$50 million for travel trailers and hotel and motel rooms for homeless individuals. Using this executive order and available funding, we believe cities and counties and continuums of care can lease existing, unoccupied hotels and motels as the single fastest way to move unhoused individuals into housing and simultaneously advance public health protections during this crisis. This is consistent with the Ninth Circuit's *Martin* decision, and the increased urgency to allow placement of unhoused community members in safe, sanitary places where they can maintain their social networks and personal belongings is consistent with protecting public health.

I hope the City of Carlsbad, now more than ever, is encouraging people who are unhoused to take advantage of government resources that can protect their health. Criminalizing unhoused individuals will only increase their anxiety and distrust of the government, making them reluctant to take advantage of necessary services and resources.

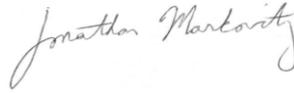
Californians take care of each other. In moments of crisis, Californians know how to pull together. Whether helping our neighbors during an earthquake or opening our homes during a wildfire, we show up for one another. We know that our families and neighborhoods are stronger, safer, and healthier when we show up and represent for one another in moments of illness and crisis. No matter what we look like, where we live, or what's in our wallets, getting sick reminds us that we're

³ *Martin*, 902 F.3d at 1048 (citation and quotation marks omitted).

all human and that we're all interconnected. Now, more than ever, it is imperative that our government officials and law enforcement agencies act in full accord with this principle.

I hope and trust the City of Carlsbad is already doing so and look forward to your response. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Markovitz".

Jonathan Markovitz
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