

January 13, 2017

Laguna Beach City Council
505 Forest Ave
Laguna Beach, CA 92651

Re: Opportunity to Settle Litigation Concerning Laguna Beach's Homelessness Program

Dear Laguna Beach City Council:

On behalf of some of the most vulnerable members of the Laguna Beach community – individuals with disabilities who experience chronic homelessness – we appeal to leadership of the City of Laguna Beach to settle the current litigation concerning its homelessness program. As invited by the federal judge presiding over the current lawsuit against the City, there is an opportunity for Laguna Beach to avoid further costly litigation by committing to new policies that will substantially improve the lives of homeless persons with disabilities in Laguna Beach. By taking even modest steps, Laguna Beach can serve as a model for eradicating homelessness in all of Orange County, and save taxpayers the considerable costs of defending outdated, unlawful police tactics and programs that fail to accommodate the needs of persons with disabilities.

As you are aware, members of the Laguna Beach homeless community are plaintiffs in *Glover v. City of Laguna Beach*, a lawsuit brought in 2015 alleging that aggressive policing tactics against homeless persons with disabilities violate the 8th Amendment of the United States Constitution, and that the City's operation of its Alternative Sleeping Location ("ASL") violates the Americans with Disabilities Act (the "ADA") and the Rehabilitation Act (the "RA"). The case asserts that the City's policing tactics of harassing and issuing citations to persons with physical and/or mental disabilities who are experiencing homelessness in Laguna Beach and have nowhere else to sleep constitute cruel and unusual punishment – because the City is, in effect, criminalizing the involuntary human act of sleeping for persons who have no other place to sleep. The case also asserts that the ASL (intended as a "temporary" emergency shelter, though many of its residents have lived there for years) is overcrowded and inadequate to meet the needs of persons with mental and/or physical disabilities – in violation of the ADA and the RA. For many with disabilities, the ASL is an entirely inhospitable environment. Just as local municipalities must operate schools and other public facilities in compliance with federal laws that protect persons with disabilities, the City's operation of a homeless shelter must be similarly compliant.

Homelessness certainly is not a problem unique to Laguna Beach. It is a challenging issue for cities, counties and states throughout the nation. Unfortunately, homelessness has been on the rise in Laguna Beach and other cities in Orange County, and it is not a problem that will simply go away by ignoring it, criminalizing it, or trying to pressure individuals experiencing homelessness to leave town (and become some other city's problem). A broad consensus has developed that heavy-handed policing is ineffective in combatting homelessness and often makes things worse, particularly for the significant portion of the homeless population with mental and physical disabilities who need housing and social services.

Many cities and counties have turned to solutions that focus on creating permanent housing and providing needed social services as a means to move people off the streets. Salt Lake City has nearly eliminated chronic homelessness with this approach,¹ and cities like Los Angeles are taking similar steps. The evidence is clear that a housing-first approach is a more effective and cost-efficient way to easing homelessness over the long term, especially for people with disabilities. Several years ago, Laguna Beach considered a proposal to implement permanent supportive housing for homeless persons, but the City's political leadership rejected the proposal in favor of continued operation of the ASL and strict police enforcement aimed at driving homeless persons elsewhere.

Some have expressed the view that homelessness must be addressed at a regional or countywide level so that individual cities do not end up caring for a disproportionate share of Orange County's homeless population. We agree that regional solutions are preferred and most effective, but the lack of political consensus or will at the county level does not justify unlawful treatment of homeless persons by the City of Laguna Beach. Instead of throwing up its hands, the City should use its influence to be part of influencing and implementing a regional solution. Orange County previously expressed an intent to address the problem, adopting in 2010 a Ten-Year Plan to eliminate homelessness in the County, which prioritizes permanent supportive housing. Thus far, however, the County has done nothing to implement or fund its own housing-first strategy. The opportunity exists for the Laguna Beach City Council to call upon and work with Orange County and other municipalities to implement a countywide solution to the growing homelessness epidemic.

The plaintiffs in the current litigation are willing to settle and dismiss their case if the City of Laguna Beach will commit to these actions:

1. Support for Countywide Plan to End Homelessness.

- a. The Laguna Beach City Council would adopt a resolution expressing public support for Orange County's Ten-Year Plan to End Homelessness, adopted in January 2010, and calling for Orange County to fund and implement the plan with the cooperation of its municipalities.
- b. The City would commit to contributions of land and/or financial support for construction of permanent supportive housing units (or conversion of existing housing stock) for persons who are chronically homeless in Laguna Beach, to be conditioned on (i) raising county, state, federal and/or private financing to fund at least 80% of the construction and operating costs (and 100% of the cost of providing wrap-around social services) and (ii) contacting other cities in Orange County with at least 40% of the county's population encouraging them to make similar pledges of resources for similar use.

¹ K. McEvers, Utah Reduced Chronic Homelessness By 91 Percent; Here's How, (Dec. 12, 2015) available at <http://www.npr.org/2015/12/10/459100751/utah-reduced-chronic-homelessness-by-91-percent-heres-how>.

2. *Improvements to Make Laguna Beach's Existing Homelessness Program Accessible to Individuals with Disabilities.*

- a. The City would implement the following reforms of its overall homelessness program:
 - i. Designate a City employee to serve as an "ADA Coordinator" (as required by the Americans with Disabilities Act), with responsibility to ensure that the City's homelessness program is ADA-compliant;
 - ii. Establish a mechanism for individuals to file (without fear of retaliation), and the ADA Coordinator and the City to resolve, individual complaints that the City's homelessness program is not accessible to individuals with physical and/or mental disabilities; and
 - iii. Establish a mechanism to create or provide access to opportunities for individuals experiencing homelessness, and in particular such individuals with disabilities, to secure employment or otherwise contribute to the maintenance of public spaces frequently used by homeless individuals, such as the ASL, the parking lot adjacent to the ASL, the nearby dog park and/or park areas in downtown Laguna Beach.
- b. Many structural features of the ASL and adjacent parking lot make the City's homelessness program inaccessible to people with mental and physical disabilities. For example, the crowded, chaotic and noisy congregate-living environment negatively impacts the mental health symptoms of some homeless residents and often leads to deterioration in their conditions. The shelter provides thin mats on the ground that are difficult for people with mobility impairments to use. Many people who stay at the ASL remain in the shelter's parking lot during the day because they are too ill or disabled to leave. Because the parking lot has no amenities, they must sit or lie on the ground all day with no access to water or bathroom facilities. Further, the restrooms at the ASL are not adequate to meet the needs of the residents. To accommodate the needs of people with disabilities, the City would make the following physical modifications to the ASL and adjacent parking lot:
 - i. Provide private or semi-private areas in the ASL, at least for individuals with mental disabilities, for sleeping (e.g., cubicles/barriers between sleeping spaces);
 - ii. Provide elevated beds or cots in the ASL, at least for individuals with physical disabilities;
 - iii. Provide accessible bathrooms and potable water for those sleeping in the ASL parking lot, either by granting access to the bathrooms and water in the ASL or making them available in or adjacent to the parking lot;
 - iv. Provide benches or seating in the ASL parking lot; and

- v. Expand accessibility of existing (and any new) bathrooms to ensure more than one is ADA-compliant.
- c. Many of the regulations at the ASL make the City's homelessness program inaccessible to people with disabilities. For example, the ASL prohibits people from re-entering the facility when they attempt to step out after the doors are closed for the evening. Enforcement of this rule forces people with conditions such as schizophrenia and anxiety disorder to sleep outside when they attempt to leave the shelter, even for a few minutes, to manage their mental health symptoms. ASL staff members often ban people from accessing the shelter for other behaviors, such as being disrespectful to staff, that are rooted in their disabilities. In fact, ASL staff is empowered to eject an individual at any time, prohibiting them from re-entering until the end of their "sentence," which is set at the discretion of the staff. To accommodate the needs of people with disabilities, the City would make the following modifications to rules and policies applicable to the ASL and adjacent parking lot:
 - i. Streamline and post clear information about a revised process for determining who will be given access to the ASL each night, including: (a) eliminating preference for local "residents" of Laguna Beach (given that it has been selectively and inconsistently applied in the past), and (b) making access decisions earlier in the day (with results accessible via an online or phone system) so that individuals denied access have more time to seek a legal place to sleep elsewhere;
 - ii. Establish and post clear written rules for when individuals can be banned from the ASL. Those rules should permit denial of access only when an individual poses a threat to the health and safety of others and only on the basis of an individualized determination, communicated in writing, as required by ADA regulations;
 - iii. Establish and post a bill of rights and a set of client and staff rules and expectations for the ASL (reflecting the rights of homeless individuals to receive non-discriminatory, safe, humane, and respectful services, to ensure due process and otherwise accommodate the needs of individuals with disabilities);
 - iv. Appoint and publicize the existence of a neutral ombudsperson (independent of the ASL operator and the Laguna Beach Police Department) to whom individuals can appeal disciplinary actions and/or denials of access to the ASL (including past decisions to exit or ban persons from the ASL) and through whom individuals can provide input about ASL operations and rules;
 - v. Allow those who are granted a place to sleep indoors at the ASL the ability to enter and exit at will;

- vi. Eliminate prohibitions on individuals receiving food, water or clothing from volunteers so that deprivation of necessities is never used as a form of discipline;
 - vii. Lengthen bathroom access time or reform policies governing access to give individuals with disabilities greater and lengthier access;
 - viii. Allow individuals reasonable access to drinking fountains at the nearby dog park by unlocking the gate close to the ASL; and
 - ix. Allow all individuals experiencing homelessness to store personal belongings during the day, which would formalize a pilot program already being tested at the ASL.
- d. The City would make the following improvements to staffing and/or the manner in which ASL staff are trained:
- i. Ensure provision of additional, adequate case management services (equivalent to one dedicated full-time case manager) for individuals experiencing homelessness in Laguna Beach, which would formalize a proposal already being pursued by the ASL operator (such case management services would contribute to coordination of care and access to services and programs offered to individuals with disabilities experiencing homelessness in Orange County as well as programs offered to such individuals by the City of Laguna Beach, including County medical and mental health care and services, general relief, accessible transportation and ombudsperson provisions to be established by this settlement); and
 - ii. Establish uniform training requirements for all ASL staff, including training on interacting with individuals with mental and physical disabilities and de-escalation, and understanding of ADA rules relating to the limitations on barring people from access to the program and other disciplinary actions.
- e. The City would: (i) ensure that the van providing transportation to and from the ASL has a ramp or lift to assist persons with disabilities, (ii) use the van and/or provide bus passes to facilitate access of and transportation to services and programs offered to individuals with disabilities experiencing homelessness in Orange County, and (iii) use the van and/or provide bus passes to facilitate transportation to other Orange County shelters for homeless persons denied access to the ASL during winter months (after confirming availability at other shelters). (Clauses (ii) and (iii) merely codify what we understand already is done on an ad hoc basis.)

3. *Law Enforcement Reform.*

- a. The Laguna Beach Police Department would not enforce anti-sleeping/camping ordinances during the evenings in the parking lot outside the ASL for persons

denied access to the ASL, which would formalize current practice followed by some or all Laguna Beach Police Department officers to stop issuing citations to individuals in the parking lot who are unable to gain access to the ASL.

- b. The Laguna Beach Police Department would formally adopt guidelines discouraging police officers from issuing citations for violations of anti-sleeping/camping ordinances to a person experiencing homelessness on any night if a police officer knows or has a reasonable basis to know such person cannot gain access to the ASL, the ASL parking lot or another safe place to sleep on such night.
- c. The City would commit to training all officers on a policy and protocol for interaction with individuals with disabilities experiencing homelessness (which emphasizes de-escalation and limits on use of force), and commit to training all officers in a recognized curriculum to convey evidence-based best practices for interacting with individuals with disabilities (including individuals with serious mental disabilities and/or in mental health crisis).

We hope the Laguna Beach City Council will give serious consideration to this proposal. Settling this case could free up taxpayer dollars used to defend lawsuits (and potentially pay the attorneys' fees of Plaintiffs' lawyers) and instead allow such funds to benefit the City and its homeless population. We look forward to working together to aid the City's homeless population and promote Laguna Beach's leadership in tackling these issues head-on. Should you, or your constituents, wish to discuss these issues, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Hernand", with a long horizontal line extending to the right.

David M. Hernand
of Paul Hastings LLP

A handwritten signature in dark ink, appearing to read "I. Kysel", with a long horizontal line extending to the right.

Ian M. Kysel
American Civil Liberties Union of Southern
California Foundation