

CLAIM AGAINST THE CITY OF SAN DIEGO

Present claim by personal delivery or mail to the **City of San Diego, Risk Management Department, 1200 Third Avenue, Suite 1000, San Diego, CA 92101** or via email to RiskManagement@sandiego.gov. Including the claimant's email address on the returned claim form is highly recommended. Claims for death, injury to person or personal property must be filed no later than six (6) months after the occurrence (Gov. Code Section 911.2). All other claims must be filed within one (1) year of the occurrence.

Time Stamp

*** = Required** (Gov. Code Section 910)

Received Via ☐ **Email** ☐ **US Mail** ☐ **Over the Counter** ☐ **Inter-Office Mail**

A.						
Claimant Name* (First, Middle, Last) Alcer Studios Homeowners Association [Additional claimants attached Ex. 1]			Claimant Date of Birth <table border="1"> <tr> <td>Mo</td> <td>Day</td> <td>Year</td> </tr> </table>	Mo	Day	Year
Mo	Day	Year				
Claimant Address* 1027 10th Ave [Additional claimants attached Ex. 1]			Claimant Phone Number (858) 505-9500			
City* San Diego	State* CA	Zip* 92101	Claimant Social Security Number ____			

B.	
Send Official Notices and Correspondence To: * Craig L. Combs	Phone Number (858) 505-9500
Address* 7955 Raytheon Rd	
City* San Diego	State* CA
Zip* 92111	Email Address ccombs@wk4law.com

C.				
Date of Incident* 4/1/2023 - present	Mo	Day	Year	Time of Incident <input type="checkbox"/> AM <input type="checkbox"/> PM
Location of Incident or Accident (Be Specific)* Tenth Ave. between A St. and Market St.				
Basis of Claim - State in detail all facts and circumstances of the incident.* See attached Ex. 2				

State why you believe the City is responsible for the alleged injury, property damage, or loss
See attached Ex. 2

D.
Description of Alleged Injury, Property Damage, or Loss* See attached Ex. 2

CLAIM AGAINST THE CITY OF SAN DIEGO

Vehicle Information - If your claim relates to a motor vehicle or impound, provide the following information and attach proof of insurance and a copy of the current registration.

Year	Make of Vehicle	Model	License Plate No.	Driver's License No.
Insurance Company		Policy Number	Claim Number	
Contact Name	Phone Number ()		Email Address	

Additional Information - Please provide any additional information that might be helpful in considering your claim, including names of witnesses, treating physicians, hospitals, proof of damages such as invoices, receipts, estimates, a diagram, and photographs.

E.

Name and Department of City Employee who Allegedly Caused Injury or Loss (If Known)*	City Vehicle Type/Description	License Plate No./Unit No.
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F.

Damages Claimed*- If your claim does not exceed ten thousand dollars (\$10,000), state the basis of your computation of the amount claimed. (Attach supporting medical bills, invoices, repair estimates, etc.)

a.	Amount claimed as of claim date	\$	E 3 - 2,541,800
b.	Estimated amount of future costs	\$	820,000 per year
Total Amount		\$	3,361,800

If your claim exceeds ten thousand (\$10,000), Government Code 910(f) requires that you indicate whether or not the claim is a "limited civil case." Check one.*

☐ **Limited** (up to \$25,000) ☒ **Unlimited** (over \$25,000)

G.

Signature* - Claim form must be signed by claimant or party filing the claim. (Gov. Code Section 910.2)

Warning: It is a criminal offense to file a false claim. (California Penal Code § 72). I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters. I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Craig L. Combs - Attorney for Claimants

Printed Name of Signatory and Relationship to Claimant

Craig L. Combs

Digitally signed by Craig L. Combs
Date: 2023.06.26 09:53:17 -07'00'

Signature of Claimant or Person Acting On Behalf of Claimant*

June 26, 2023

Date

Exhibit 1: Additional Claimants

Empanada Kitchen

819 C St, San Diego, CA 92101

Phone: (619) 228-9419

Capri Enterprises USA

925 B. St. San Diego, CA 92101

Phone: (619) 798-3801

Vi Vi Investment Company LLC

1059 10th Ave, San Diego, CA 92101

Phone: (619) 239-0170

Bud And Rob's New Orleans Bistro

815 F St, San Diego, CA 92101

(619) 542-9002

Damiani Law Group

1059 10th Ave, San Diego, CA 92101

Phone: (619) 239-0170

Davy Architecture, Inc.

1053 10th Ave, San Diego, CA 92101

(619) 238-3811

Exhibit 2 - Basis of Claim - State in detail all facts and circumstances of the incident.

This claim is about the City of San Diego's failure to address- and its exacerbation of - the growing homelessness crisis within the city. Plaintiffs are residents, business owners, and property owners who live, work, or own businesses and property in the City of San Diego between both sides of the street on 8th Ave to both sides of the street on 11th Ave and A St. to the north, and 8th Ave to 11th Ave and Market St. to the south (referred to herein as the as an “open air drug zone,” or simply, the “Zone”). In the Zone and its environs, laws are violated with impunity; residents are subject to violence, property damage, and other criminal and civil violations of laws designed to protect the quality of life of residents; property values have been erased; trash and human waste litter streets and yards; and death. This claim challenges the legality and constitutionality of the City of San Diego’s policies and actions with respect to homelessness and the open-air drug market in the Zone, which have simultaneously neglected and exacerbated the crisis.



Not only is the City failing to provide these individuals with housing and needed services, it refuses to enforce in and around the Zone quality of life and health ordinances prohibiting loitering, disturbing the peace, drunken and disorderly conduct, drug use, obstructing sidewalks, obstructing streets, public urination, public defecation, vandalism, littering, waste disposal, tampering with public electrical and plumbing lines, and fire safety laws. Instead of seeking to solve the homelessness crisis, the City has effectively invited this population to construct semi-permanent tent dwellings on the public sidewalks and rights of way in Claimants’ neighborhood, and to make the Zone their home. The City has not only permitted this illegal conduct and maintained in on public lands within its control, but has encouraged it.



An example of the City promoting and encouraging a permanent open air drug market and homeless encampments is directly in front of the San Diego County Health And Human Services Agency at 1130 Tenth Ave. Despite the open and obvious criminal activity that occurs here, the City does nothing to deter it.

The City's policies are not rationally designed to address any of the social ills facing the residents of the Zone and are exacerbating rather than alleviating their problems. The City is entitled to adopt irrational policies; but if its policies create a continuing nuisance and cause damage to the residents, workers, and property owners in the Zone, as they have and are, then the City is liable for those damages and a court may enjoin the continuing nuisance.

Unless action is taken by the City in response to this claim, Claimants will seek a declaration from the Superior Court that the public encampments on City-controlled property and on the public easements in the Zone constitute a continuing public nuisance. Because the claimants have established herein beyond any doubt that the present conditions constitute a continuing public nuisance, the City has several options.

It may, consistent with Ninth Circuit precedent, remove the encampments to other public lands where they would not constitute a nuisance. Or it may create structured camping grounds on city lots where cleanliness is maintained and other laws enforced. Or it may establish sufficient appropriate shelter space and once again begin enforcing the prohibitions on public camping. There is no shortage of options by which the City can comply with the laws against public nuisance. Claimants, whose property and pecuniary interests are directly and especially affected by the City's policies, are making this claim to force the City to do something about this crisis.

Legal Basis for City Liability

The City is liable for injuries and damage caused by dangerous conditions of public property under its jurisdiction pursuant to Cal. Gov. Code § 835.

“Dangerous condition” is defined as “a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” (Cal. Gov. Code, §830.) To be liable under Section 835, a public entity must be the owner or in control of the property at issue at the time of the injury. (*Tolan v. State of California ex rel. Dept. of Transportation* (1979) 100 Cal.App.3d 980, 983.) Additionally, claimants can establish that: (1) the property was in a dangerous condition at the time of the injury, (2) the injury was proximately caused by the dangerous condition, (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and (4) that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

The claimants here can meet all of these elements to establish City liability.

Further, there is no doubt that the City has actual notice of the dangerous conditions of the open air drug market and other dangerous and noxious conditions in the Zone.

San Diego Municipal Code (“Mun. Code”) section 11.0210 defines “Public Nuisance” as:

[A]ny condition caused, maintained or permitted to exist which constitutes a threat to the public’s health, safety and welfare or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons. A public nuisance also has the same meaning as set forth in California Civil Code Section 3479.

“[A]ll weeds, waste or **other obstructions** found **upon** . . . **streets** [and] **sidewalks** . . . within the City of San Diego are public nuisances that adversely affect the public health, safety, and general welfare.” (Mun. Code, §54.0201(f).) The City Council recognizes “a need for further emphasis on the maintenance of **public** . . . **property** in a clean, waste free condition because numerous locations throughout the City have become sites for the collection of waste and illegal dumping.” (Mun. Code, §54.0201(b).)

Article 4 of the Mun. Code, titled “Public Hazards and Public Nuisance” specifically states, “It is unlawful for **any person to** erect, place, **allow to remain, construct, establish, plant, or maintain** any . . . **object on any public street, alley, sidewalk, highway, or other public property or public right-of-way.**” (Mun. Code, §54.0110.) The Mun. Code also prohibits littering and unlawful deposit or dumping of any waste on any public road, right-of-way, or other public property without the consent of the state or local agency, or on any private property without the permission of the owner. (Mun. Code, §§54.0209, 54.0210.) The Code makes any violation of Article 4 a **strict liability offense regardless of the intent.** (Mun. Code, §54.0205.) Each day the waste remains placed, dumped, or deposited in violation of the Mun. Code section 54.0209 is a separate violation. (*Id.*)

Further, Sections 12.0102 and 54.0203 of the Mun. Code grant authority to the City Manager, the City Clerk, and other designated Enforcement Officials (collectively, “Authorized Person”) to gain compliance with the Mun. Code and other state codes concerning private and **public property**. Such authority includes issuing misdemeanor field citations to anyone who has committed a violation of the Mun. Code in Authorized Person’s presence. (Mun. Code, §§12.0105, 54.0204.) The Authorized Person may also seek injunctive relief and city penalties in the Superior Code according to the Mun. Code section 12.0202. (Mun. Code, §54.0204.)

California Civil Code section 3479 *et seq.* address the law of public nuisance. Section 3479 defines “Public Nuisance” as:

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary

manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Claimants in the Zone have suffered special injury distinct from the injury to the general public by the virtue of their ownership of properties and operation of businesses in the feces-ridden, urine-soaked, open air drug market which the City has permitted and encouraged to exist as they have lost sales, tenants and suffered a diminution in property values which is directly connected to the unsafe and dangerous condition of City property.

Descriptions of Conditions and Statements of Damages

Impacts on Businesses

Businesses in the Zone experience the following challenges due to the public nuisance maintained by the City:

Customer perception and foot traffic: The presence of homeless people near a business creates a negative perception among potential customers, actively discouraging them from entering the establishment. This directly results in reduced foot traffic, lower sales, and reduced occupancy rates.

Safety and security concerns: Homeless individuals often struggle with mental health issues, addiction, or other challenges, leading to unpredictable behavior. This raises legitimate concerns about the safety and security of customers, employees, and the business property.

Sanitation and cleanliness: Homeless people frequently lack access to proper sanitation facilities, resulting in public urination, defecation, or littering around a business. This creates an unhygienic environment, tarnishing the business's overall image and customer appeal.

Loitering and panhandling: Homeless individuals loitering or panhandling near businesses create an unwelcoming atmosphere for customers and employees. This further contributes to negative customer perception and reduced foot traffic.

Cost implications: The presence of homeless people around a business necessitates increased spending on security measures, clean-up efforts, or property repairs. This leads to higher operating costs and diminished profits.

Employee morale: Employees may feel uneasy or unsafe working in an area with a high homeless population. This adversely impacts employee morale and productivity, resulting in higher staff turnover and recruitment challenges.

Legal and ethical dilemmas: Business owners face legal or ethical dilemmas when addressing the issue of homelessness near their establishments. For instance, removing homeless individuals from the vicinity can be perceived as harsh or inhumane, potentially leading to negative publicity and damage to the business's reputation.

Claimants' Accounts of the Effect of the Public Nuisance

Alcer Studios Homeowners Association

Alcer Studios (the “Project”) is a four-unit condominium project located at 1027 10th Ave. The owners of the Units have put in substantial time, effort and money to rehabilitate and beautify the Project, doing exactly what every community would hope its property owners do to enhance property values. However, the owners’ efforts were met with an endless surge of homeless persons vomiting, urinating, and defecating on the beautiful modern murals painted on the exterior; the constant presence of needles and other drug paraphernalia immediately outside its doorsteps and garage; constant vandalism and theft; erratic, drunken, drugged out homeless persons constantly accosting residents and guests.



There is not merely a substantial loss in property values caused by the public nuisance maintained and encouraged by the City, there is also long-term psychological trauma to the Project’s residents in seeing, hearing and smelling these conditions everyday outside one’s home with no hope that things will ever change for the better; instead they only grow worse. The conditions create a constant and palpable fear of disease and crime.

Bud And Rob's New Orleans Bistro

815 F St

Statement from the business owners:

“For well over two years, streetlights on both sides 8th Avenue between G Street and F Street have been out of commission. The open drug zone (buying/selling/using of many different drugs completely out in the open or inside the pop-up living rooms they operate out of) that took over the block and has operated without law enforcement consists of a multitude of drug dens which steal power from the streetlights and the water/maintenance lines along the sidewalk.

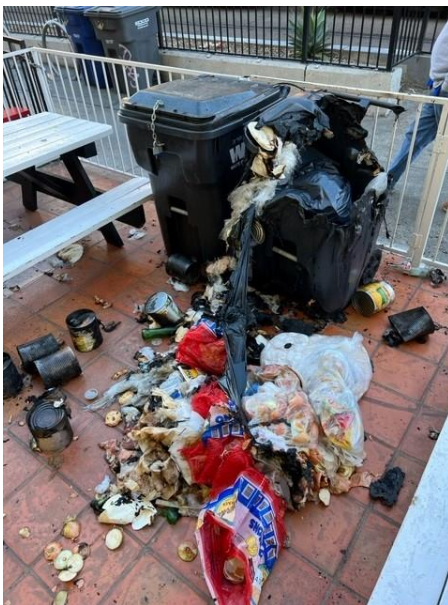
“This continues around the corner to F Street (directly across from our business) where the street lights have been off and an open drug zone has operated for the same time line. Patrons have told us they had to stop coming to our business for fear of tripping over power cords, being

accosted by drug users, being caught in the middle of a turf war, etc. We have witnessed senior citizens walking or riding their mobility carts out in the street against the flow of traffic because there simply is not a sidewalk for them to use.

“It is our belief that the City has provided use of public right of way, power usage and an open drug zone which amount to a gift of public funds/land which has caused damaged to our business. We have had feces and urine around our front door constantly in addition to drug paraphernalia. Drug addicts have come into our business and harassed customers and staff and made them fear for their safety. Not only has the City failed to provide the base level services (streetlights and usable sidewalk) that we pay taxes for, but they have provided public right of way, and electricity to drug dealers/users/buyers without a vote of the citizens.

Empanada Kitchen
819 C St.

Empanada Kitchen is yet another beloved restaurant reeling from the effects of the open-air drug market and homeless encampments in the Zone. The photos from their restaurant are heartbreaking.



Statement from the business owners:

"We have been dealing with an encampment located right in front of the restaurant for over a year. The scene is catastrophic, there is trash everywhere, we have to sanitize our patio constantly. On top of that, this situation has impacted negatively in our sales. Many guests tell us that the homeless situation, the trash, and the unsafe conditions in our area negatively affect their decision to go to our restaurant further. We feel completely abandoned by the City"

Capri Enterprises USA
925 B. St.

The commercial building at 925 B. St. is the perfect example of how the City grants greater rights to homeless persons than it does to property owners who pay substantial taxes to the City. Homeless persons regularly camp on private property, blocking entrances. Statement from the property owner:

"Capri Enterprises USA, Inc. owns a building located at 925 B Street, just on the corner of 10th Avenue and B Street. Every day we are faced with many serious challenges. Additionally, to the overall high costs of doing business, the impact of the city's homeless crisis is taking a real toll on our revenue.

"Even though we pay the city more than \$120,000 in property taxes, we feel alone in our fight to keep our building fronts clear of loitering homeless, which deter tenants, customers, and visitors from entering our building and their offices. Encampments usually result in our Lobby, sidewalk, handicapped ramp and parking entrance filled with infected needles, feces, and garbage.

"Even though we make a daily vigorous effort to keep our building and sidewalks clean and safe, there is a much bigger issue—the effect of homelessness and the open-air drug zone on the psychology of the tenants. In the last 3 years we have lost 6 tenants that were paying more than \$350,000 a year of rent. They left due to the homeless crisis on 10th Avenue and B Street. Our janitor's life was recently threatened by a homeless woman with a knife. One of our tenants was punched in the face by a homeless man in April of 2023. Homelessness also brings about more theft, which further erodes our tenants' confidence and desire to stay. Four of our tenants have experienced car burglary inside our own parking lot.



Vi Vi Investment Company LLC
1059 10th Ave

Vi Vi has lost tenants, who told us they are leaving due to the unhealthy environment created by the homeless encampments and the related conditions. New prospects show interest, do a drive by and cancel the walk through. They have lost significant rents because of the public nuisance created and encouraged by the City.

Damiani Law Group APC
1059 10th Ave

The Damiani Law Group APC has lost cases to other firms merely due to the fact that its offices are located in an area that is unhealthy and scary.

Alternate Camping Locations are Available

Sunbreak Ranch

<https://sunbreakranch.com/>



“We have a moral obligation to help the homeless. But we are not obligated to cede our downtowns, our tourist attractions, and our residential neighborhoods to homeless encampments. And as a society, we also have a moral obligation to protect the general population from rampant infectious diseases.”

One location in San Diego to relocate the homeless is on the unused empty federal lands just east of Interstate 15 on the Marine Corps Air Station Miramar. This location is at the geographic and population heart of San Diego County and easily accessible to everyone. City leaders should immediately engage the federal government based on the “Federal Leadership, Local Control” approach to homelessness.

Alternative Locations

The City has other alternatives for homeless encampments other than the Zone, in front of homes and businesses of innocent taxpayers.

Exhibit 3: Statement of Damages

Alcer Studios

Loss in property value:	\$1,000,000
Loss in rent :	30,000
Total Alcer:	\$1,030,000

Empanada Kitchen

Loss of business profit:	\$360,000
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Capri Enterprises USA

Loss in rent:	\$750,000
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Vi Vi Investment Company LLC

Loss in rent:	\$84,800
Increased security:	2,000
Property damage:	25,000
Total Vi Vi:	\$111,800

Bud And Rob's New Orleans Bistro

Loss of business profit:	\$225,000
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Damiani Law Group

Rent increase due to vacancy	
in other units:	\$65,000

GRAND TOTAL DAMAGES FOR ALL CLAIMANTS: \$2,541,800

All damages based upon three years statute of limitations for bringing an action for nuisance. Since the nuisance created in a continuing nuisance, every day gives rise to a new claim, but the damages claimed here are for a maximum of three years prior to the submittal of the claim.