

**American Bar Association  
32<sup>nd</sup> Annual Land Use Institute:  
Detroit, Michigan  
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*Annual Richard F. Babcock Faculty Keynote Address:  
“The Role of Planning and Law in Solving Homelessness”<sup>1</sup>  
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**The Problem**

Today’s talk is about what the law and planning can do to house the homeless. We begin by framing the problem, then to (1) identify the diverse populations that make up homeless society in America, (2) discuss the entrenched reasons for homelessness; (3) discuss homelessness in our history, (4) spend some time discussing the plight of the homeless and why current models do not work, and (5) at last, I will discuss some solutions, including funding.

The assumption is that we all share a goal to get the homeless off the streets, off freeway underpasses, parks, bikeways, busses and subways and into lawful situations. Neither law nor planning alone can solve the curse of homelessness. But law and planning can ease the rules, develop new ones, and provide places where the homeless are allowed to exist. After all, community design has planned for nearly every other human eventuality – commerce, industry, traditional housing, day care, schools, sidewalks and parking stalls for people in wheelchairs, dog parks for people with dogs, day and night parking places for bikes and cars, and jails for criminals. Cities with thousands of homeless people are surely capable of acknowledging their vast unhoused citizenry and planning for their undeniable existence.

The current situation makes no one happy – businesses don’t like panhandling, camping and filth on their doorsteps; consumers don’t like to confront panhandlers, or step over people in doorways to shop; employees don’t like commuting to work on busses and subways sticky with human waste including seats wet with urine so

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they cannot sit; neighborhoods don't like the garbage strewn by homeless encampments on their flanks; and homeless encampments make public parks and greenways unsafe or at least seem that way. Hospitals and medical personnel cringe at releasing homeless patients with tuberculosis or other infectious diseases for the 5<sup>th</sup> or 10<sup>th</sup> time, knowing their pattern of not taking medications as required, means an ER will see them again and that the potential for drug resistance and superbugs increases each time. The homeless – who are not all panhandlers, filthy or dangerous –largely do not like their desperate, unsafe, and inhuman situation either.

Yet, cities throughout the country follow essentially the same template - they criminalize and penalize the homeless; they conduct grand “sweeps” in which police tow the cars and RV homes of otherwise homeless people; in which police march through homeless encampments, throwing away people's tents, coats and other meager possessions. Officials shine lights in homeless people's eyes when they sleep - demanding they go elsewhere, knowing full well that there is no elsewhere for them to lawfully go. It is time to create and design safe, comfortable and legal places for the homeless to be.

Because, in the absence of providing places for the homeless to lawfully be, cities across the country will continue to see tent encampments sprouting like colorful weeds, blooming along freeways, bike and walking corridors, commercial districts and industrial areas; they will continue to see armies of cars and old RVs occupied by people and families desperate for a door to lock dotting side streets, streets along public parks, streets behind shopping centers and parking lots. But like Sisyphus's rock, while bureaucrats unleash an army of tow trucks to dutifully haul someone's everything in an RV or car to an impoundment lot for destruction, other cars and RVs emerge in place of the last and, similarly, shortly after the dust settles from a sweep, another encampment moves in. Homeless people are human beings, not homeless vapor.

The current long term options of building new affordable or low income housing or converting existing units to permanent affordable or subsidized housing (usually apartment or large single room occupancy buildings), are important, but they have not and cannot house the homeless during the year or more they languish on a housing wait list for housing they may or may not qualify for when something opens up. In fact, despite significant efforts, homelessness in the United States is

increasing.<sup>3</sup> And, there are two realities that make it unlikely we will see a reprieve.

First, there are fewer and fewer jobs following decades of a transformative job market which first left behind people living on the margins, then family wage jobs fled to cheap third world labor markets and now robots are replacing, at a dizzying pace, other human workers. Many of the jobs that are left are low wage, temporary, lack benefits and otherwise fail to make it possible for people to have a home, daycare, and work. People without jobs or with inadequately paying jobs, find it difficult to pay rent or mortgages, putting them at significant risk of homelessness. They experience poverty.

In these situations, disillusionment and poverty are the foreseeable successors of hope and prosperity. Statistical invisibility sets in as these people are no longer counted among the unemployed. We only notice the growing and disconnected workless force, when it peers at us from behind a cardboard sign seeking money, or as the panhandling annoyance at a store or library or by the growing size of a homeless community on the edge of a freeway, a favorite bikeway, a park or river. The profound changes in the job market have displaced, and will continue to displace, workers, will create poverty and with that displacement and poverty, homelessness in America will increase.

Second is that a different type of poverty is on the rise. Baby boomers are retiring in record numbers, yet a recent study shows that 39% of workers have saved nothing for retirement and, of those who have saved, 47% report the total value of their savings and investments to be less than \$25,000 and 24% have less than \$1,000 in savings.<sup>4</sup> Most retirees rely on social security for a majority of their retirement income.<sup>5</sup> A retirement that relies on the \$1,405 average monthly social security benefit<sup>6</sup>, faces an inescapable reality that the aggregate cost of medical insurance, uncovered medical expenses and housing - even “affordable” housing - will be at or exceed the average monthly social security benefit. Not surprisingly, somewhere between half<sup>7</sup> to a third of homeless people are over 50 years old.<sup>8</sup> It appears evident the elderly homeless population is growing and is likely to

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<sup>3</sup> The 2017 Annual Homeless Assessment Report to Congress, December 2017.

<sup>4</sup> <https://www.ebri.org/surveys/rcs/2017/>

<sup>5</sup> <https://www.cbpp.org/research/social-security/social-security-benefits-are-modest>

<sup>6</sup> <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf> and see

[https://www.ssa.gov/policy/docs/quickfacts/stat\\_snapshot/](https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/)

<sup>7</sup> <http://www.socialsolutions.com/blog/2016-homelessness-statistics/>

<sup>8</sup> <https://www.vox.com/first-person/2016/9/29/12941348/homeless-over-50-statistic>

continue.<sup>9</sup> It is foreseeable that a good chunk of our retiring elderly will find themselves homeless.

### **Housing the Homeless Requires the Willingness of the Housed to Craft Solutions**

The prevailing American work ethic makes it hard for housed people to spend public dollars on the homeless— *i.e.* we think to ourselves that the homeless are lazy, no good, entitled frauds, drug addicts or criminals, who should simply clean up, pull themselves up by their bootstraps and work like the rest of us. Even if we presume this view, we want and need for the homeless to be somewhere and that means we have to provide places where they can live.

### **Homeless Populations Differ – There is no Possibility that One Housing Type or Option Will Meet the Goal of Housing the Homeless**

The vast majority of the homeless are physically or mentally disabled<sup>10</sup>, the elderly who cannot work or afford to buy or rent a home, young people (runaways, children kicked out of their homes<sup>11</sup>), LGBT children; children who have “aged out” of foster care and have no clue what stable housing means, victims of domestic violence with no place to go<sup>12</sup>; parents who cannot afford to at once work, pay for daycare and a home; and people who have fallen on hard times. Consider the plight of Janine as reported in the publication *Social Work Today*<sup>13</sup>:

“Jeanine, 48, a mother of three, lives on the streets. Her homelessness began the night she and her children fled her husband when he broke both of her arms, her leg, and her jaw. The social worker at the hospital found her temporary housing in a shelter for survivors of domestic violence. When she was once again able to walk and use one of her arms, she sought new employment, as she was too afraid to return to her former job, where her husband could find her. However, she was only able to find low-wage, temporary jobs. When her time in the shelter ran out, she was unable to afford safe, stable housing for her and her children; plagued with chronic pain from her many injuries; and unable to meet the copays for her prescriptions, she turned to street opioids to

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<sup>9</sup> <https://www.nytimes.com/2016/05/31/us/americas-aging-homeless-old-and-on-the-street.html>

<sup>10</sup> Here, drug addicts and alcoholics are included within the scope of the use of the term disabled people.

<sup>11</sup> Klyssa Shay “Solutions to the Problem of Homelessness”: [https://soapboxie.com/social-issues/homelessness\\_solutions](https://soapboxie.com/social-issues/homelessness_solutions), last viewed March 23, 2018.

<sup>12</sup> <http://www.socialworktoday.com/archive/SO17p18.shtml>

<sup>13</sup> <http://www.socialworktoday.com/archive/SO17p18.shtml>

get through the day. The public child welfare agency, citing her substance use, erratic employment, and homelessness, placed her children into three different foster homes and told Jeanine to participate in substance use treatment, parenting skills, training groups, and psychotherapy for her PTSD, depression, and anxiety. Try as she might, she missed visits with her children and other appointments because her permanently injured leg made it impossible for her to stand for long periods of time, take busses, or walk distances. Ultimately, her parental rights were terminated. One winter night, her feet bloody and sore and her leg in chronic spasm from walking all day, she took shelter in an abandoned building. There, she was raped. Another night, an infected spider bite landed her back in the emergency department, where half of the foot on her one "good" leg was amputated.”

Janine’s plight is not particularly unusual.

It is true that some claim homelessness as an alternative to an American culture and way of life that they reject. For example, one man in the latter category describes his life living in “Slab City”<sup>14</sup> California, which is a large plot of desert owned by the state onto which people, otherwise homeless, squat. “Slab City,” was featured in the movie “into the Wild”<sup>15</sup> and reminds a person of Burning Man with far fewer people (150 in the summer to around 2,000 in the winter).<sup>16</sup> It has been an encampment – mostly of campers and RVs -- for decades. The man explains:

“There is no California culture here at all. By that I mean strip malls and apartment buildings, dune buggies and off road racing and crowded freeways, filthy beaches and arrogant politicians. I like to call Slab City a ‘high tech hobo camp.’”<sup>17</sup>

This population ekes out a living on their own terms and would not call themselves homeless. They live in campers and RVs and shanties that they call home. But, the life they eke out, trespasses on public and sometimes private property. This small and unsympathetic segment<sup>18</sup> of the homeless population should not justify

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<sup>14</sup> <https://www.npr.org/2012/01/24/145645412/down-and-out-escape-to-slab-in-california-desert>

<sup>15</sup> [http://www.imdb.com/title/tt0758758/videoplayer/vi59285529?ref\\_=vi\\_next\\_ap](http://www.imdb.com/title/tt0758758/videoplayer/vi59285529?ref_=vi_next_ap)

<sup>16</sup> <http://www.kyma.com/news/living-off-the-grid-trouble-in-squatters-paradise/372075999>

<sup>17</sup> <https://www.youtube.com/watch?v=0vVCSUafFVI>

<sup>18</sup> See Gerald Day: Homeless: Policies, Strategies and Lives on the Streets, p 7-9 discussing views held by the housed and the housed bureaucracy concerning the “undeserving poor”.

ignoring the vast majority who, like Janine, are homeless not by choice and are in desperate need of a place to go.

The agony of homelessness is hard to understand until it befalls someone we know or, worse, someone we love. But it is inescapable that a homeless person could be any of us, or any of our friends or relatives who succumbs to mental illness, addiction or other calamity. In fact, many of us regular, housed people are only a few paychecks away from homelessness ourselves.

There are other entrenched reasons for homelessness in America. The problem is intractable precisely because it involves the complex interdependence of co-conspirators. We've talked about family wage job losses and the retiring elderly relying on social security to survive, which was never intended as a sole support. Other contributors to homelessness include: (1) the shuttering of mental institutions in favor of a system of wholly inadequate and underfunded "community care," which started in earnest in the 1970s and persists to this day at the hands of both Republican and Democratic administrations; (2) the growth of land use policies that restrict land supply and add expensive bureaucratic layers to housing proposals, adding significantly to the cost of housing, and (3) the opioid crises and the rise of other disabling addictions. There are no doubt others.

### **Shuttering Mental Institutions, Freeing the Insane**

A disproportionate number of homeless people – some studies say one third of men and two thirds of homeless women,<sup>19</sup> are mentally ill, many severely so.<sup>20</sup> One commentator Dr. E. Fuller Torrey, observed that approximately 175,000 homeless people are seriously mentally ill.<sup>21</sup> Dr. Torrey writes that among the "hardcore homeless", the "incidence of severe mental illness is much higher; [one] study \* \* \*, for example, found that 'every one of [the hardcore homeless] was mentally ill.'" This hard core homeless population uses garbage cans as their primary food source.<sup>22</sup>

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<sup>19</sup> <http://sites.psu.edu/psy533wheeler/2017/02/08/u01-ronald-reagan-and-the-federal-deinstitutionalization-of-mentally-ill-patients/comment-page-1/>

<sup>20</sup> Torrey: *The Sanity Offense: How America's Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 124; <http://homelesshub.ca/about-homelessness/topics/mental-health>

<sup>21</sup> Torrey: *The Sanity Offense: How America's Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 124; and see Torrey, *Nowhere to Go: The Tragic Odyssey of the Homeless Mentally Ill*.

<sup>22</sup> *Id.*

Many of these homeless are acutely dangerous to themselves and to the rest of us.<sup>23</sup> But our ability to respond to the plight of the seriously mentally ill homeless is hamstrung by laws that require leaving the mentally ill alone, unless they are essentially actively harming themselves or someone else and the reality that police have nowhere to put them other than a medical hospital which has incentives to release them as soon as possible.<sup>24</sup> Dr. Torrey quips that to commit a mentally ill person he “has to be either killing himself in front of the admitting doctor or trying to kill the admitting doctor.”<sup>25</sup>

We know that the rate of violent crime among the homeless mentally ill is higher than mentally ill people in stable housing - the rate of violent crimes is 40 times higher and the rate of nonviolent crimes is 27 times higher.<sup>26</sup> We just can’t do anything about this population until they actually do something that is truly terrible. Dr. Torrey writes:

“An especially sobering example of a crime committed disproportionately by homeless mentally ill persons is pushing strangers onto the tracks of a subway. A study in New York City reported that 41 percent of such perpetrators were homeless and 59 percent were psychotic at the time they committed the crime.”<sup>27</sup>

Homelessness among the mentally ill has exploded since the late 1970s when courts, at the request of civil libertarians with good intentions to protect the civil liberties of mentally ill people, made involuntary commitment subject to standards mental institutions could not meet.<sup>28</sup> As a result, institutions for the mentally ill were effectively shuttered, with no real alternative.<sup>29</sup>

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<sup>23</sup> E. Fuller Torrey: *The Insanity Offense: How America’s Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 124.

<sup>24</sup> <http://www.sacbee.com/news/local/homeless/article193308479.html>;  
<http://portlandoregonian.or.newsmemory.com/publink.php?shareid=22e73e72b>;  
<https://www.healthyplace.com/blogs/recoveringfrommentalillness/2017/05/should-hospitals-be-allowed-to-release-patients-to-the-streets/>

<sup>25</sup> E. Fuller Torrey, *Nowhere to Go: The Tragic Odyssey of the Homeless Mentally Ill*.

<sup>26</sup> E. Fuller Torrey: *The Insanity Offense: How America’s Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 126.

<sup>27</sup> *Id.*

<sup>28</sup> <https://pdfs.semanticscholar.org/d134/f6aeb26473eeb867bf29efbad2886a3f7600.pdf>, and see <http://www.eopath.org/site/AboutUs/timeline.html>

<sup>29</sup> <https://www.nytimes.com/1984/10/30/science/how-release-of-mental-patients-began.html>;  
<http://www.povertyinsights.org/2013/10/14/did-reagans-crazy-mental-health-policies-cause-todays-homelessness/>;  
[psu.edu/psy533wheeler/2017/02/08/u01-ronald-reagan-and-the-federal-deinstitutionalization-of-mentally-ill-patients/comment-page-1/](http://psu.edu/psy533wheeler/2017/02/08/u01-ronald-reagan-and-the-federal-deinstitutionalization-of-mentally-ill-patients/comment-page-1/); David Wagner, *The Poorhouse: America’s Forgotten Institution*, p 135-36.



While the problem is often laid at his door, President Ronald Reagan is by no means solely responsible for the plight of the mentally ill or homelessness today.<sup>30</sup> Rather, policies of this era were driven by the mental patient's rights movement, largely championed by the ACLU and its New York Chapter lawyer Bruce Ennis (credited with starting the mental health bar). Ennis successfully brought cases with the personal goal to "either to abolish involuntary commitment or set up so many procedural roadblocks and hurdles that it will be difficult if not impossible, for the state to commit people against their will."<sup>31</sup> Of course, by definition, the mentally ill are unable to voluntarily do anything and, significantly, they do not often recognize they have a mental illness in the first place, let alone when it is necessary for them to check themselves into a mental institution because of it.

The fallacious premise underlying the ACLU's court victories presumes severely mentally ill people have the reasoning capabilities of healthy people and that they can make voluntary choices to seek medical intervention during psychotic episodes. My father taught me the danger of such syllogistic reasoning with the example: "all fish can swim, Wendie can swim, therefore Wendie is a fish", which here translates to "all people are entitled to make their own choices, the mentally ill are people, and therefore the mentally ill are entitled to make their own choices."

Excellent books explaining the history of the decline of mental institutions have been written.<sup>32</sup> Dr. Torrey M.D., poignantly observes:

“[W]hen we protect the rights of severely mentally ill people so stringently that they cannot be treated, we infringe on the rights of other members of society, sometimes with tragic outcomes.”<sup>33</sup>

Another writes:

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<sup>30</sup> E. Fuller Torrey: *The Insanity Offense: How America's Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*.

<sup>31</sup> Subverting Good Intentions, *Cornell Journal of Law and Policy* p 101-102; E. Fuller Torrey: *The Insanity Offense: How America's Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*.  
<https://books.google.com/books?id=bZsRAAAQBAJ&pg=PA86&lpg=PA86&dq=Bruce+J.+Ennis.+ACLU+%E2%80%9Cshould+be+nothing+less+than+the+abolition+of+involuntary+hospitalization.%E2%80%9D&source=bl&ots=mFMV1R6CRR&sig=YTOtfgwahHR4mM6lmqs4Psfab1A&hl=en&sa=X&ved=0ahUKEwiB8rb8163aAhWdt1kKHZwBA2MQ6AEILjAB#v=onepage&q=Bruce%20J.%20Ennis.%20ACLU%20%E2%80%9Cshould%20be%20nothing%20less%20than%20the%20abolition%20of%20involuntary%20hospitalization.%E2%80%9D&f=false>

<sup>32</sup> Torrey: *American Psychosis: How the Federal Government Destroyed the Mental Illness Treatment System*, and see Torrey: *The Insanity Offense*, p 127.

<sup>33</sup> Torrey: *The Insanity Offense: How America's Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 124;



“The right to treatment is more fundamental than unrestricted liberty. If we do not provide adequate treatment, we offer the patient no freedom at all.”<sup>34</sup>

Laws that followed the judicial decisions of the 1970s that forbade involuntary commitment of the mentally ill except if they were found to be a danger to themselves or others have endured to this day.<sup>35</sup> The “danger to oneself or others” standard has been interpreted so strictly to result in the commitment of almost none of the mad.<sup>36</sup>

One author explains:

“The mentally ill, and society at large, paid dearly for these victories. With civil liberties lawyers pressuring them constantly, judges and psychiatrists have generally required someone to come within a whisker of killing himself or his neighbor before invoking the danger-to-himself or others standards. In the interval, the untreated mad have endured and inflicted a multitude of suffering.

“For instance, a schizophrenic in Wisconsin, mute and refusing food, ate excrement instead. But he was seen eating it *only once*, his public defender protested; could the doctor on the witness stand swear that one time would inevitably harm someone? No? Case for committal dismissed. In Washington D.C., police brought an attractive young woman panhandler, incoherent and hallucinating to the hospital, where the examining psychiatrist judged her no danger to herself and released her. She was raped and murdered in an alley a few days later.”<sup>37</sup>

Instead of being institutionalized, the severely mentally ill have been released to live on the streets, where they can be seen today, incapable of caring for themselves and often representing a danger to themselves or the rest of us, but not enough to justify confinement.

Homeless mentally ill people in crisis have no way to cope. They can’t distinguish a lawyer walking to Starbucks from an alien operative. A homeless mentally ill

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<sup>34</sup> Stephen Rachlin, quoted in Torrey: The Insanity Offense, p 161.

<sup>35</sup> [https://en.wikipedia.org/wiki/Lanterman%E2%80%93Petris%E2%80%93Short\\_Act](https://en.wikipedia.org/wiki/Lanterman%E2%80%93Petris%E2%80%93Short_Act); Torrey: The Insanity Offense: How America’s Failure to Treat the Seriously Mentally Ill Endangers its Citizens, Chapter 8.

<sup>36</sup> Such a determination involves a prediction of future behavior, and as Yogi Berra famously said: “Prediction is very difficult, especially about the future.”

<sup>37</sup> Myron Magnet: The Dream and the Nightmare: The Sixties’ Legacy to the Underclass p 117-118.

person on the streets may have family who wants to help, but who are prevented from doing so due to very real concerns about personal safety.<sup>38</sup> Dr. Torrey reinforces that the relatives of the severely mentally ill, have reason for concern, explaining:

“severely mentally ill individuals who become violent do not select their victims at random. Multiple studies have confirmed that ‘between 50 and 60 percent of the victims are family members.’”<sup>39</sup>

Mothers are particularly at risk, Dr. Torrey writes:

“mothers represented the largest single group to be targets for violence. In two studies of mothers who were killed by their children, more than three quarters of the offenders were severely mentally ill, leading one researcher to conclude that ‘matricide is the schizophrenic crime.’”<sup>40</sup>

While these are sobering statistics for families of the homeless severely mentally ill, it is also sobering for the rest of us. These statistics mean that 40-50% of the victims of violent crimes at the hands of the severely mentally ill homeless, are strangers. Concerns for our own safety mean it is essential that we re-commit to appropriate situations, the mentally ill homeless.

### **The Role of Land Use Planning Programs**

One of the reasons some people become homeless is because they can't find affordable living quarters. This is a problem of poverty driven by the job changes and retiring elderly with inadequate funds that we have already discussed, but it is also a problem made much worse by restrictive land use programs. The cost of housing is driven by many factors, but a leading one is a constrained land supply and the restrictive regulations that are the hallmarks of a comprehensive land use program. A 2016 study by the National Association of Homebuilders “shows that on average governmental regulations account for 24.3% of the final price of a new single family home.”<sup>41</sup> Professor Steven Eagle cites two leading land-use economists who have concluded that America's housing problem is worse in communities with significant land use restrictions. Those economists explain that:

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<sup>38</sup> *Id.*, p. 147

<sup>39</sup> *Id.*, p. 149.

<sup>40</sup> *Id.*, p 149.

<sup>41</sup> <http://nahbnow.com/2016/05/regulations-add-a-whopping-84671-to-new-home-prices/>

“In the places where housing is quite expensive, building restrictions appear to have created these high prices.”<sup>42</sup>

Today, jurisdictions committed to land use planning have the least affordable housing in the country, and find themselves among the communities with the worst homeless problem, because land use regulations (a) limit supplies of buildable land, and (b) make housing even more expensive.<sup>43</sup> The jurisdictions with the greatest number of homeless people are:

1. New York City
2. Los Angeles and Los Angeles County
3. Seattle/King County
4. San Diego City and County
5. The District of Columbia
6. San Jose/Santa Clara City and County
7. San Francisco
8. Las Vegas/Clark County
9. Boston
10. Philadelphia

By contrast, per Zillow<sup>44</sup>, for 2018, the least affordable markets for homebuyers are:

1. San Jose Metro
2. Los Angeles Metro
3. San Francisco
4. San Diego
5. New York New York
6. Sacramento
7. Riverside CA
8. Seattle
9. Portland Oregon
10. Boston Mass.

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<sup>42</sup> Steven J. Eagle, “Affordable Housing” as Metaphor, *Fordham Urb L. J.* Vol XLIV, p 57 (2017)

<sup>43</sup> Housing and Urban Development Department, *Not in My Backyard: Removing Barriers to Affordable Housing* (1991), a Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing.

<sup>44</sup> <https://www.zillow.com/research/most-affordable-markets-homes-18906/>

Seven of the ten least affordable markets have the nation's largest populations of homeless people and all seven of those unaffordable communities with the highest homeless populations have strong land use planning systems that limit land supply and add to the cost of housing.<sup>45</sup> It seems beyond dispute that these vigorous land use planning programs play a role in causing homelessness by adding to the cost of housing, causing it to soar beyond the means for many or most. And land use rules forbid other less expensive housing options like RV or tent living.

Early on in the history of land use planning, the dissenting justice of the California Supreme Court in *Agin v. City of Tiburon*<sup>46</sup> predicted:

“Perhaps of greater concern is the consequence that Tiburon -- and many other governmental agencies enacting similar land use plans -- will price properties within their control out of reach of most people. Only the most wealthy will be able to afford purchase and construction of lands in such areas. The environment which Tiburon seeks to preserve will disproportionately benefit that wealthy landowner, whose home will be surrounded by open space, unobstructed view and unpolluted atmosphere.”

Some communities answer by imposing affordable stick built housing requirements on private developers. The problem with this approach is that private developers pass the costs of those affordable housing programs onto the buyers and renters of traditional housing, increasing their cost and making traditional housing less accessible for the next layer of worker not yet homeless, creating a vicious cycle of unaffordability.<sup>47</sup> My proposal which we will explore in a moment, includes relaxing land use requirements and land supply restrictions so that housing costs related to compliance with land use programs, are minimized.

### **The Opioid Crises and Addiction**

A 2008 survey by the National Conference of Mayors reports that most of the 25 cities surveyed – 68% - stated that substance abuse is the main cause of homelessness.<sup>48</sup> Another survey of homeless people in New Haven Connecticut reports that nearly 25% of homeless people say that substance abuse was the cause of their homelessness.<sup>49</sup> One writer, formerly homeless herself, disputes that

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<sup>45</sup> O’Toole, *The Best Laid Plans*; O’Toole: *The Vanishing Automobile*; <http://www.ti.org/vaupdate31.html>;

<sup>46</sup> *Agin v. City of Tiburon*, Clark Dissenting, 24 Cal3rd 266, 283-284, majority decision aff’d 447 US 255 (1980).

<sup>47</sup> Robert Ellickson, *The Irony of Inclusionary Zoning*, 54 S. Cal L. Rev. 1167 (1981).

<sup>48</sup> <https://endhomelessness.org/resource/opioid-abuse-and-homelessness/>

<sup>49</sup> <https://ps.psychiatryonline.org/doi/abs/10.1176/ps.43.2.166>

substance abuse is a main driver of homelessness, but agrees addiction happens to people once they become homeless and then makes it hard to get out:

“The misery of homelessness itself drives many people into addictive behaviors. Ask yourself how many sexual assaults, how many beatings, how many humiliations, or how many nights sleeping cold and in pain - with no hope of escape - would take before you had a drink to get yourself through the night? \* \* \* I didn't become addicted to anything \* \* \*. Others are not always so lucky. They fall into the additional trap of addiction and become chronically homeless.”<sup>50</sup>

Whether chicken or egg, it seems beyond dispute that substance abuse and addiction play a significant role in homelessness – whether as a cause or as an impediment to getting out.<sup>51</sup>

### **Street Homelessness is Increasing**

According to the 2017 so called federal “Point in Time” count, there were an estimated 554,000 homeless people in the United States.<sup>52</sup> The count is taken by “Continuity of Care” or CoC providers every two years, on one night, usually in the last 10 days in January,<sup>53</sup> when officials and volunteers ask willing and apparently homeless people and shelter providers a series of questions, including where the homeless slept on the particular night.<sup>54</sup> The count is an underestimate.<sup>55</sup> One expert – Dennis Culhane, a professor at the University of Pennsylvania who tallies all the Point in Time Data from CoCs around the county - estimates that around 2 million people are homeless annually.<sup>56</sup> On Friday April 13, 2018, the Washington Post wrote that “the CDC issued a statement in December noting that with 19 million Americans facing ‘housing insecurity, and

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<sup>50</sup> Klyssa Shay “Reasons for Homelessness”: [https://soapboxie.com/social-issues/Reasons\\_for\\_Homelessness](https://soapboxie.com/social-issues/Reasons_for_Homelessness), last viewed March 23, 2018.

<sup>51</sup> <https://www.washingtonpost.com/news/national/wp/2018/04/13/feature/surge-in-homeless-deaths-linked-to-opioids-extreme-weather-soaring-housing-cost/>

<sup>52</sup> The 2017 Annual Homeless Assessment Report to Congress, December 2017.

<sup>53</sup> Counts are required to occur during for selected day in the last 10 days in January for each reporting community’s reporting period, unless the Housing and Urban Development Department (HUD) authorizes a different month for the particular community. Moreover, each community may take the count every two years or every year. The physical process of taking the Point in Time count can last over several days, but the evaluators will ask homeless persons where they slept on the particular night.

<sup>54</sup> 24 CFR 578.3.

<sup>55</sup> National Law Center on Homelessness and Poverty: “No Safe Place, The Criminalization of Homelessness in US Cities.” [https://nlchp.org/documents/No\\_Safe\\_Place](https://nlchp.org/documents/No_Safe_Place) last viewed March 24, 2018.

<sup>56</sup> <https://www.theguardian.com/us-news/2017/feb/16/homeless-count-population-america-shelters-people>

28 million without health insurance, the risk of homelessness and poor health is a concern for 1 out of 8 Americans.”<sup>57</sup>

Nevertheless, it is the best what we have and, from the 2017 count, we learned that the overall amount of homelessness increased by about 1%; the number of people experiencing homelessness in unsheltered locations grew by a 9% and there was a 3% decline in the number of people sleeping in homeless shelters.

### **The Decline in the Homeless using Shelters, is not Surprising**

The decline in the number of homeless people sleeping in shelters is not particularly surprising. Many homeless people refuse to sleep in shelters, no matter the weather or their personal circumstances. This phenomenon is well documented and was confirmed by a homeless person whom I interviewed. In 2012, NPR’s “Talk of the Nation” ran a 30 minute piece on “Why Some Homeless Choose the Streets Over Shelters”.<sup>58</sup> A Denver TV news station did a piece they called: “We asked 100 homeless people if they’d rather sleep outside or in a shelter”<sup>59</sup> that confirms this sad truism. Most would rather sleep outside. Homeless advocate Kylyssa Shay, writes<sup>60</sup>:

“Homeless shelters and the areas around them are often hunting grounds for human predators. Some of the craftier ones get jobs at the charities while most others just watch for individuals departing in the morning or arriving in the evening. It's not just rapists, either. Predators in search of ‘excitement’ will track a lone person leaving a facility so they can beat him or harass him for fun.”<sup>61</sup>

Thus, homeless shelters can be unsafe, particularly for women, can be filled with lice and bed bugs, and the close quarters create acute disease concerns, with TB being particularly fearsome.<sup>62</sup> Shelters are often overcrowded. The homeless report having their things stolen in shelters– in particular shoes are targets of theft, which is a serious problem when the shelter kicks you out into the elements in the morning. Some shelters are run by faith organizations where the circumstance of homelessness provides opportunity for unwanted

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<sup>57</sup> <https://www.washingtonpost.com/news/national/wp/2018/04/13/feature/surge-in-homeless-deaths-linked-to-opioids-extreme-weather-soaring-housing-cost/>

<sup>58</sup> <https://www.npr.org/2012/12/06/166666265/why-some-homeless-choose-the-streets-over-shelters>.

<sup>59</sup> <http://www.wusa9.com/article/news/investigations/we-asked-100-homeless-people-if-theyd-rather-sleep-outside-or-in-a-shelter/493638711>.

<sup>60</sup> Kylyssa Shay [https://soapboxie.com/social-issues/why\\_homeless\\_people\\_avoid\\_shelters](https://soapboxie.com/social-issues/why_homeless_people_avoid_shelters).

<sup>61</sup> *Id.*

<sup>62</sup> Myron Magnet: *The Dream and the Nightmare: The Sixties Legacy to the Underclass*, p 118.

proselytizing. Shelters have barriers to entry – rules like “drug free zone” – that disqualify many homeless people. Rules can be harsh, unrealistic and unevenly enforced based on whether a particular occupant is liked or not. Many shelters refuse pets and homeless people with pet companions, as a group, won’t leave their pets behind.

Today’s homeless shelters are often less humane, less comfortable, and less effective, than the poor farms we conscripted people to in the 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>63</sup> Today’s homeless shelters foreclose any sense of community and are divorced from any culture or sense of belonging, even the culture of street life. Homeless shelter patrons must be out in the morning by 6 or 7 am, to go nowhere. Shelters have entry hours that are not conducive to having a family or job or life. Consider a waitress or dishwasher who works evening hours – with most shelters locked down by 8 pm, if you work a late night shift, you are out of luck. And even if you can manage to get in, what do you do when you are kicked out in the morning?

While the homeless shelter in New York City evolved from the good intentions of the “Coalition for the Homeless” that successfully sued the City to establish a “right to shelter” – that right “quickly came to mean not permanent actual housing but a cot in homeless shelters, which became known for crime, overcrowding, and even disease and gang warfare.”<sup>64</sup>

Many shelters across the country continue to hold such reputations.<sup>65</sup> Even with these problems, the demand for shelters outpaces supply for the desperately homeless – for a shelter that opens its doors at 7:00 pm, the homeless need to begin lining up at 4:30, a homeless shelter version of the opening day of Star Wars.

### **Déjà vu All Over Again**

We used to provide places for the homeless to go, with shocking honesty about the reasons for conscripting a person into service there. The “poor farm”<sup>66</sup> or “almshouse” was a public facility where the homeless and poor were required to go and work to be “reformed” into productive workers. These places were largely operated as farms, the food from which produced income for the facility and fed

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<sup>63</sup> David Wagner, *The Poorhouse: America’s Forgotten Institution*, Chapter 8.

<sup>64</sup> *Id.*, p 139.

<sup>65</sup> <https://nextcity.org/daily/entry/dc-rent-housing-affordability-zoning-homelessness-washington>; Klyyssa Shay [https://soapboxie.com/social-issues/why\\_homeless\\_people\\_avoid\\_sheltersdog](https://soapboxie.com/social-issues/why_homeless_people_avoid_sheltersdog)

<sup>66</sup> Also called a “poorhouse” – we use the term “poor farm” here.



residents and staff.<sup>67</sup> Many were no place anyone wanted to live, while others became relatively comfortable communities.<sup>68</sup> Involuntary incarceration of people to poor farms was based on the unilateral decisions of government officials often called “Overseers”, which incarceration could be based on the petitions of citizens. For example, the petition of ten (10) citizens to the “Overseers of the Poor of the Town of Haverville” Massachusetts, asked that a Mr. Kelly be “removed” from his home “or “otherwise dealt with or put in a farm for the poor” because he was “a poor man with a large family from bad habits and incapacity” and that he “does not and cannot make proper provision for his family who are in consequence in a very destitute and miserable condition” and that “his idle habits and his family are a great encumbrance on the neighborhood.”<sup>69</sup>

Along similar lines, is the confinement to a poor farm of Ms. Adeline Nott. Her warrant was drawn up by two “Overseers” and read:

“Adeline G. Nott, now a resident of Portland, is a person able of body to work, has not estate or otherwise to maintain Herself, and neglects and refuses to do so, lives in a desolate, vagrant life and exercises no ordinary calling or lawful business sufficient to an honest livelihood, and in our opinion is liable to become chargeable to the City.”<sup>70</sup>

Ms. Nott’s lawyer argued that her involuntary confinement was unconstitutional and that “no citizen could be committed to a ‘dungeon or work-house \* \* \* without trial or hearing\* \* \* by persons with no judicial power.’”<sup>71</sup>

The Maine Supreme Judicial Court,<sup>72</sup> unimpressed by these arguments, upheld the warrant. The court noted that “the indigent have no claim to be supported in their idleness \* \* \* their poverty generally grows out of an unwillingness to labor, or is occasioned by reckless and improvident habits” and that the Overseers had acted within their authority \* \* \* for [Ms. Nott’s] benefit to remove her from temptation to commit crime and to teach her

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<sup>67</sup> David Wagner, *The Poorhouse: America’s Forgotten Institution*, p 2-3.

<sup>68</sup> David Wagner, *The Poorhouse: America’s Forgotten Institution*, p 145

<sup>69</sup> *Id.*, p 22.

<sup>70</sup> *Id.*, p 23.

<sup>71</sup> *Id.*; *Nott’s Case*, 11 Me. 208 (1834).

<sup>72</sup> *Nott’s Case*, 11 Me. 208 (1834).

industrious habits so she could be restored as a useful member of society as soon as possible.”<sup>73</sup>

Regardless of how they got there, many poor farm “inmates” stayed for decades, including individuals and whole families, and did not leave even when they could.<sup>74</sup> Despite their steep drawbacks, many poorhouses developed a sense of community and were considered “home” by the residents.<sup>75</sup>

### **What it is Like on the Mean Streets**

We have gone backwards in the care of the homeless and poor from the days of the unenlightened folks who lived in the 1800s and 1900s, before the Civil Rights Act, before Women’s Suffrage, before words like “inclusive communities” and “livability” were coined. Thousands of homeless people in our communities live in circumstances worse than a dog pound, certainly worse than a zoo animal and way worse than a poor farm.

So, imagine for a moment the plight of a homeless person: no place to get out of the rain, or snow or scorching heat; no place to sleep; no place to store possessions including medicine –especially medicine that must be refrigerated - no place to store food, clothing, photographs, legal papers; no place to cook food, no place to shower; no restrooms, no garbage facilities, no official to take seriously your assault, rape or other victimization even though homeless people are more likely to be victims of violent crime<sup>76</sup> than the housed.<sup>77</sup>

If the parked car or RV you live in happens to look like the residence of a homeless person, and just one person complains to the government – today’s equivalent of the “Overseer” –your car or RV can be towed away on the fiction that it is abandoned, its contents including animal companions, effectively stolen by government officials, without any recourse.

In Portland Oregon, and in likely most other cities, there are no RV or mobile home parks that will take old RVs for short or long stays. The best is option for a poor person with an old RV looking for a space to rent in Portland, is a single RV

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<sup>73</sup>*Id.*, Wagner, *The Poorhouse: America’s Forgotten Institution*, p 23-24.

<sup>74</sup> *Id.*, p 26, 29, 60, 159

<sup>75</sup> *Id.*, p 2-3, 20, 26, 30, 85, 138-145.

<sup>76</sup> E. Fuller Torrey: *The Insanity Offense: How America’s Failure to Treat the Seriously Mentally Ill Endangers Its Citizens*, p 137.

<sup>77</sup> <https://www.motherjones.com/politics/2016/06/homeless-san-francisco-medical-respite-health-care-aging/>

park that allows 1991 vintage RVs and newer; but when I called over several months there was no availability in that park. Poor people can't afford most 1991 and newer RVs anyway. What poor people do instead, is search Craig's list for cheap or free RVs – working or not. Opportunistic owners of old or derelict RVs are happy to sell them or give them away, as opposed to paying some junker to haul them away as trash. There is an entire black market industry populated with mostly other homeless people with cars, periodically towing cheap non-motorized or non-functioning RVs when the otherwise homeless occupants are “green tagged” by city authorities and are desperate to move their world to avoid the City's tow police.

The homeless can't get into a mobile home park because (1) the cost of mobile homes has gone through the roof<sup>78</sup>, and (2) even if a homeless person can manage to afford a mobile home in a park, this population can't pass the beauty contest of eviction history, credit check, income requirements or criminal background check. They also can't get into apartments because of these problems; often even subsidized ones reject such a homeless applicant, as we have seen. And some have dogs, large dogs of varying breeds, which are often prohibited in any of the otherwise available options – including much of the stock of subsidized housing.

Despite what you may have heard, if a homeless person figures out how to call a “211” hot line, or to search the web for resources, they are unlikely to find any help. Moreover, any help requires many phone calls, to many dead ends and voice mails no one will ever return, and eventually the cell phone battery goes dead. Of course, there is no place to plug in the dead cell phone, so the search ends. If a homeless person miraculously connects with someone, they will almost certainly be told that any help won't involve housing and, what help there might be, will be two or more weeks away, often requiring an appointment. The homeless lack the social skills required for effective communication with the usually bored and disinterested person on the other end of the line.

So tents and RVs are illegally everywhere they aren't allowed to be, subject to official tows and sweeps. I have personally witnessed a deeply mentally ill homeless woman cry as the City of Portland towed everything she had away – the RV, the mattress her grandma bought, the blankets, pillows, dog food, the clothes, the head lamp, the ice chest with milk for cereal, the pumpkin pie she splurged as a

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<sup>78</sup> A problem made worse by rent control. See *Guggenheim v. City of Goleta*, 638 F3d 1111 (2010), *rev den* 563 US 988 (2011). The cost of rent control is merely passed onto buyers of mobile homes in parks, raising the cost of mobile homes beyond the reach of many.

sad treat for the holiday. And the tow people came armed with cruel city police (“you better be nowhere near that thing when we tow”) and then the broken homeless shell of a person stood in the rain, crying because she didn’t even have her coat on that cold winter day, because it too was towed away. This is what is happening.

I have one more story before moving on. Here, consider the story of a homeless 66 year old college graduate and former journalist, who after a rear end car accident developed debilitating fibromyalgia. All of her family members are deceased:

“Then the recession arrived. I had been working primarily as a freelance writer, editor, and PR manager, but well-paying gigs rapidly slowed down. I was running out of money fast and needed steady work. Day after day was spent sending out hundreds of résumés and applications, but I rarely heard back and only landed one or two interviews. Unemployment shot up 5 percentage points in 2009, peaking at 10 percent the next year.

“Eventually, I couldn’t scrape together enough money from savings and the occasional gig. I needed money badly, and when I turned 62 I applied for early retirement to activate my Social Security checks. At \$672 a month, it wasn’t enough then, and it’s still not enough now.

“Two years later, and I’m living out of my car in search of a home. Finding a permanent roof over my head is increasingly becoming a dream out of reach. Rent is much too high to be covered by my monthly Social Security checks, and living out of a motel is a luxury I just can’t afford. Even campsites or trailer parks, where I could pitch my tent and make a temporary home for myself, can cost up to \$1,000 a month. And it feels like time is running out — my dog and I need a home as soon as possible.

“The first time the police found me, I had fallen asleep in a school parking lot. I knew it wasn’t the ideal place to park my car for the night, but I had gotten lost driving around town and couldn’t find a better spot before exhaustion set in. I fell asleep and woke up with a flashlight in my eyes and a police officer demanding that I leave. I burst into tears. \* \* \*.”<sup>79</sup>

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<sup>79</sup> <https://www.vox.com/first-person/2016/9/29/12941348/homeless-over-50-statistic>

There are many, many more stories like this.<sup>80</sup> What is clear is that these tragedies are unfolding in cities all over the United States and the problem is getting worse.

### **Solving Homelessness Requires an Understanding and Recognition of what Human Beings Need for Social Stability**

To have any hope of solving homelessness, we have to do two things: provide places for the homeless to live and those places must be capable of fostering healthy social networks.

As to the first, it makes no sense to conscript the homeless to long waiting lists of a year or more for housing, housing a good chunk of the homeless cannot qualify for.<sup>81</sup> Psychologist Abraham Maslow<sup>82</sup> taught us the people must have their basic needs met before they can be motivated to do things like enter drug rehab or job training or seek happiness or otherwise seek their potential. It seems obvious that some part of the homeless population will only join society - the ranks of the sober or employed or otherwise be a contributing member of society - when their basic needs for survival are met. A good start is a place to live, without preconditions, that is free from the dangers of street life including police and RV tow police who can take away everything you care about.

It is this model of human needs that drives current policy to house the unhoused. The so called “Housing First” model first introduced in 1992,<sup>83</sup> provides housing to the homeless without preconditions such as the applicant can prove sobriety, or mental stability.<sup>84</sup> But even though the program has been around some 26 years, it has not solved the problem of homelessness. Rather, a study explains that since 2001, one eighth of America’s low income housing has been permanently lost and

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<sup>80</sup> See for example <https://lasvegassun.com/news/2015/nov/30/portraits-of-homelessness-in-las-vegas-eight-peopl/>

<sup>81</sup> Many publically funded or supported housing projects disqualify or otherwise pass over the homeless based on eviction history, or conduct transgressions that may not even have been their fault but rather a problem with a child or domestic abuser or due to criminal histories. [https://www.hud.gov/sites/documents/DOC\\_11738.PDF](https://www.hud.gov/sites/documents/DOC_11738.PDF); <http://nhlp.org/files/NHLP%20Subsidized%20Housing%20Outline%2011.30.11.pdf>; <https://www.voa.org/homelessness-and-prisoner-reentry>; <https://www.hud.gov/sites/documents/FAQSREENTRYPOLICIES.PDF> <https://www.hrw.org/reports/2004/usa1104/9.htm>; [https://www.hud.gov/sites/documents/DOC\\_11330.PDF](https://www.hud.gov/sites/documents/DOC_11330.PDF)

<sup>82</sup> <https://www.simplypsychology.org/maslow.html>

<sup>83</sup> <https://psmag.com/social-justice/landlords-recreation-essential-housing-first-program-81439>

<sup>84</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4130906/#R11>

that the US needs 7 million more affordable apartments for low income families.<sup>85</sup> Neither government nor the private sector is keeping pace with the need.

Any model that relies solely on stick built traditional housing will fail to meet the goal of providing immediate housing to homeless people. It is simply too expensive and the need is too great. And building bigger or taller apartments for the homeless is no answer either.

Which brings me to the second basic premise for solving homelessness – healthy social networks. “Big box” human poverty warehouses do not build healthy social networks. Instead, they are reminiscent of the failed “projects” of the 1950s and 1960s.<sup>86</sup> No one should reproduce the failed “Projects” model, the stuff of rap songs, well documented to spawn social problems from gangs, to drug dealing and violence; monuments to misery that were eventually blown up by the very governments that built them.<sup>87</sup> It should be evident that a very good reason to avoid big box human housing that these behemoths result in unhealthy social networks causing the very problems they were built to avoid.<sup>88</sup>

Housing for our half a million to 2 million homeless people should be established for a number of occupants that can be accountable to one another and be cohesive. Our neocortex limits the number of social interactions we can effectively maintain. We should pay attention to our biology. British anthropologist Robin Dunbar, matched up the size of animal brains to the size of effective social groups and discovered that the maximum number of people in an effective social network is 150, that intimate associations are composed of 5 people and that the next effective grouping is 15 and then about 50.<sup>89</sup> It turns out that hunter-gatherer societies, roman legions, effective military groups and effective businesses had about 150 people.<sup>90</sup> According to Professor Dunbar, people who need to work together successfully, require smaller numbers: “If you want to have an organizational unit that involves very, very close working together, you cannot do it with a group of 150: you may

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<sup>85</sup> [https://www.huffingtonpost.com/bill-quistenry/ten-facts-about-homelessn\\_b\\_5977946.html](https://www.huffingtonpost.com/bill-quistenry/ten-facts-about-homelessn_b_5977946.html);  
[https://nlchp.org/documents/No\\_Safe\\_Place](https://nlchp.org/documents/No_Safe_Place)

<sup>86</sup> <https://newsone.com/1555245/most-infamous-public-housing-projects/>; Ben Austen, High Risers: Cabrini-Green and the Fate of American Public

Housing.[https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_110314.html](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_110314.html); and see Gideon Kanner, Gideon’s Trumpet, The Public Housing Tragedy, April 16, 2018 at <http://gideonstrumpet.info/>

<sup>87</sup> *Id.*, <https://www.city-journal.org/html/how-public-housing-harms-cities-12410.html>

<sup>88</sup> <http://www.nbcnews.com/id/26837911/ns/health-behavior/t/anonymity-opens-split-personality-zone/#.WsvfVojwaUk>; <http://time.com/collection-post/4028444/jonathan-taplin-should-we-let-ourselves-be-anonymous-online/>

<sup>89</sup> Robin Dunbar: Grooming, Gossip and the Evolution of Language.

<sup>90</sup> <https://www.technologyreview.com/s/601369/your-brain-limits-you-to-just-five-bffs/>

have to have 15, because that's the limit, at that level of intimacy, that people can work together."<sup>91</sup>

Thus, the two basic principles of solving the homelessness riddle: actually providing places where the homeless can live and doing so in places that are capable of fostering healthy social relationships boils down into the following subparts: (1) we provide places for the homeless to go at the moment we discover their homelessness, (2) the unhoused are willing and able to go to the places provided, (3) the places are socially effective, (4) the places can be and are supported with social and medical services, and (5) the homeless are required to go there.

### **Solving Homelessness Requires Meeting the Homeless Where They Are, With What they Need, in Real Time**

What are the policy and regulatory solutions?

First, no one should be turned away from housing because they are an addict, not in recovery; have a dog; a criminal history; a history of eviction; a bad credit history or history of being a "problem." Getting homeless into a place to live should be simple and fast. Land use codes should change to allow places for all homeless people to exist. This includes non-charrette worthy tent camping and RV parking places. Regulatory scaffolding must allow housing options to be established quickly, inexpensively and without a lot of bureaucratic red tape.

I propose placing roughly like groups together to to maximize the chance of social cohesion and the efficient delivery of services from existing providers. Veterans might be placed together, families with young children together, the mentally ill together, addicts not in recovery together, those in recovery together, young adults together and so forth. Priority for scarce traditional housing options should be based on needs, not behavior.

### **Regulatory Changes**

Land use and building codes must be changed to allow long term RV living; long term camping, and tiny house living, as an alternative to traditional stick built housing. These facilities must be allowed to have porta potties<sup>92</sup>; portable hand washing facilities; a communal area with a kitchen, showering facilities, garbage

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<sup>91</sup><https://www.socialsciencespace.com/2013/11/robin-dunbar-on-dunbar-numbers/>

<sup>92</sup> Adequately secured so they can't be tipped over.



receptacles, laundry facilities, electricity for charging cell phones, and lockers. They should be developed for 15-35 residents.

Instead of towing RVs to an impound lot, government would tow them to a suitable place where those RVs may park and stay.

Instead of tent encampment sweeps where people's belongings are thrown in the trash, government officials can transfer the contents and occupants to suitable tent communities.

Homeless people who do not have their own camping equipment or RV, can be housed inexpensively in state or locally acquired models and types. If the RV does not have sanitation or cooking facilities, there is no reason the RV cannot be towed by the government to a government supplied place that has such facilities, instead of to an impound lot for destruction. If an RV is filled with garbage, there is no reason not to provide a homeless person with a garbage receptacle and insist that they use it.

I have heard government officials complain that the RVs the homeless live in are not fit for human habitation. This is the kind of Chardonnay sipping baloney the homeless expect from the housed. Especially for homeless women, as between a door that locks and being on the streets, the homeless don't much care that the housed would not choose to live in their RV or tent for that matter. No one is asking the housed to live in the RVs or tents that an otherwise homeless person is perfectly willing, if not desperate, to occupy.

And, if the RV is so bad, then the official should be required to provide the homeless person another used and inexpensive RV and allow the homeless person to transfer their belongings to such alternate. A used older RV is a lot cheaper than a stick built apartment.

The location for these nontraditional housing types should be dispersed and not concentrated. It is unnecessary that these places be in the central city or even close to services. Different types of urban, suburban and rural locations might be best. Proximity to transit makes sense for some facilities, but is not essential for all. With the dawn of autonomous vehicles the locational options are probably limitless. My point here, is that there is no magic profile of the perfect location for housing types to house the homeless other than the profile of what the homeless community to be served best needs and will accept.

Land use rules should be changed to allow housing operated like youth hostels we enjoyed in our youthful (and perhaps not so youthful) travels. These too should be limited to 15-35 residents.

I propose land use rule adjustments that allow defunct shopping centers and motels to be repurposed for homeless housing, and medical and social services offices. Conversion to these purposes should not be required, but should be an option for owners, including banks, that have no other clear use for such facilities.

Land use rules should be adjusted to allow combinations of these housing types on a single property. Kitschy old motels can be converted to nice and inexpensive single room occupancy living, sometimes with the bonus of a pool and hot tub. A good example is a tiny house/RV/motel community in Las Vegas which can be (and should be) viewed at this link: <https://www.curbed.com/2018/3/29/17163698/tiny-house-las-vegas-zappos-downtown-project>.

While this community is upscale and expensive (the airstream RVs utilized are the top of the line), the relaxed regulatory model is not.

Even rich people may choose to live this way, given the option. Providing the option to live in an RV or tent is certainly not conscripting homeless people to something worse than what they now have and it is a lot better, because they would have a legal place to exist and would not always have to worry about an official lurking to rob, move or arrest them. Moreover, the model I propose would include targeted services to the particular community, ensuring their basic needs are met and that they can begin a journey to recovery, whatever that may mean for them. Successful tent, RV and tiny house communities are certainly possible.<sup>93</sup>

State laws must be changed such that the severely mentally ill homeless who refuse treatment and medication management may be brought “involuntarily” to facilities where they can be stabilized and required to take medication for their illnesses. If and when such people are released from such facilities, they should be released into supportive housing programs designed to maintain their stability.<sup>94</sup>

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<sup>93</sup> Andrew Heben “Tent City Urbanism”. Mr. Heben is an urban planner. He also has started a nonprofit called “SquareOne Villages” dedicated to designing tiny house communities.

<sup>94</sup> See Torrey, *Nowhere to Go: The Tragic Odyssey of the Homeless Mentally Ill*, p 212: “A realistic system is one that would allow for legal representation of patients and their right to appeal. It would counter balance these rights, however, with the rights of society to treat individuals who need treatment, and it would require continuing treatment where indicated as a condition for the patient to live outside the hospital.”

And for a civilized society to work, two new critical laws are necessary (1) no one can be allowed to be homeless. And (2) the homeless must have a place to live where they are required to go. With lawful places for the homeless to go, vagrancy and trespass laws can be enforced.

### **How Government Might Respond to These Changed Land Use and Building Code Opportunities**

Each place to house the homeless should be geared to a similarly situated population to be served, to maximize the efficient and effective delivery of services to that population and to facilitate growth of a sense of community and accountability. In this regard, it is important that housing types be matched to existing service providers to ensure adequate social services are provided to meet basic needs – food, shelter, safety, security – so occupants can address life challenges in the next layer of the Maslow hierarchy. Some will need more social services and some less.

Priority for stick built traditional housing (apartment or otherwise) should be given to families with minor children. We have a serious problem brewing with disenfranchised youth, a problem beyond the scope of this paper, but one we likely all understand.<sup>95</sup> It is a problem that can be helped in large measure by supporting families in poverty. We need to do a much better job supporting our families with young children. These facilities for families with young children would have intensive family services including parental training and support, job training and high quality preschools available, as well as high quality day care including before and after school care. They would be locationally situated so that the minor children enroll and stay in quality public schools and supports should be in place to ensure that the children have suitable educational services to ensure the kids receive appropriate support from their public schools. Such facilities could partner with local experts in child psychology so the children who need it, can participate in on-site or close by relationship, anger management and other social skills courses. Non-profits like Dress for Success could assist and provide job training and retraining for parents. Parents in need for recovery would have such services provided to them. It would be possible to get abusers out of the household and into their own intensive services program. Priority for high quality nutritious meal services would be baked in to this housing type.

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<sup>95</sup> <https://abcnews.go.com/Primetime/story?id=132011&page=1>;  
<https://www.npr.org/2013/09/22/225148325/foster-care-in-america-too-many-kids-not-enough-homes>

Another group to be prioritized for traditional housing options should be our homeless veterans. This is a social judgment and not based on any particular need, but it seems fair that most Americans would agree that this prioritization for the use of public dollars makes sense for someone who has served our country in its military.

Single Room Occupancy housing should be prioritized for disabled people including mentally ill and the physically disabled. SROs for the mentally ill should have intensive services and medication management.

The youth hostel model should be prioritized to serve homeless youth and non-disabled elderly, with intensive services to meet the needs of the particular youth or elder group involved. In particular to the youth housing group, programming to teach homeless youth how to get along in society and basic life skills would be provided – things they probably missed, depending on how long they have been on the street and their history before landing there. Elder group hostels would include things to do like connections to volunteer opportunities (perhaps institutionalize connections between youth and elderly facilities), inexpensive but interesting elder hostel type adventures and in-house recreation.

The stick built housing facilities – traditional and SROs -- should be composed of no more than 150 residents to provide the maximum effective group for an effective and connected social sphere.<sup>96</sup> They should not be concentrated in one area, but dispersed throughout a community.<sup>97</sup>

The severely mentally ill probably need SROs on a smaller model of 15-35 people, with the precise numerical limit being for the skilled professionals to work out. The point being the regulatory architecture to allow the commitment of the mentally ill to such housing options must be in place to allow professional to do their jobs and to provide humane options for this population. Wringing our collective societal hands about the homeless mentally ill, has solved nothing, and has made the problem worse for everyone.

The youth hostel modeled places should be composed of no more than 15-35 residents. This is because one of the clear goals is socialization for residents at both ends of the age spectrum.

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<sup>96</sup> Robin Dunbar: Grooming, Gossip and the Evolution of Language.

<sup>97</sup> The reasons for why not concentrating any form of public housing in one place is important, are well laid out in the book by Ben Austen, High-Risers: Cabrini-Green and the fate of American Public Housing.

Food trucks should come by periodically to all of the housing types, to ensure the homeless are properly fed. Again the goal is to ensure that the basic needs of this population are met, so they can move on to treatment and to join society.

Failing to do this is making regular housed people act crazy.<sup>98</sup> Imagine for a moment, a hot August night in Portland Oregon in 2016, a 46 year old “construction worker and married dad” is fed up with a homeless person’s RV loitering in his neighborhood for many days. So, he did something out of character and base - threw a 4-5 inch PVC pipe packed with explosive powder under the so called “dilapidated” RV that was then occupied by three otherwise homeless people and a dog in the man’s neighborhood.<sup>99</sup> The bomb malfunctioned and no one was hurt. The man somehow managed to get off with probation and a misdemeanor charge even though planting a bomb is a felony. But he (Kidwell) felt so bad he tried to help the homeless woman (Hoekstra) and her companions. The Oregonian newspaper reported:

“Kidwell has taken steps to make amends with Hoekstra, [his attorney] said, adding that her client bought Hoekstra a used RV in much better condition than her old one. He had it cleaned, replaced a battery and paid for the title to be transferred to Hoekstra's name.

Hoekstra is now living in the RV but hasn't been able to get it registered because she doesn't have insurance, \* \* \*. Hoekstra moves the RV around from time to time but doesn't park it near Kidwell's house anymore \* \* \*”

The newspaper reported that the construction worker husband/dad found a shelter for the homeless woman to live in. But she refused “because she couldn't bring her dog.”<sup>100</sup> Presumably she simply moved her RV to some other neighborhood that did not want her.

My proposal ensures there is an RV community that allows dogs where this woman’s RV and her dog can go to live as long as they want.

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<sup>98</sup> Community opposition to the paired issues of people living on the streets and housing for those people nearby where they live or work, means at least initially, homes for the homeless may need to be super sited as the Los Angeles mayor recently concluded. <https://www.nytimes.com/2018/04/16/us/california-today-los-angeles-homeless.html>

<sup>99</sup> [http://www.oregonlive.com/portland/index.ssf/2017/01/resident\\_fed\\_up\\_with\\_homeless.html](http://www.oregonlive.com/portland/index.ssf/2017/01/resident_fed_up_with_homeless.html)

<sup>100</sup> *Id.*

## Funding

How do we fund this? First, we must figure out what financial resources we have. Stuningly, we have no idea how much we spend on homelessness now. We have no idea of the aggregate spending of nonprofits, state and local governments and the federal government on homelessness. It is past time that we determine what we spend on homelessness each year, so we can say how any proposal is to be funded.

We do know that homelessness is expensive. HUD proposes to spend \$2.4 billion to “end homelessness” in its 2019 budget. But that does not include the budget of the U.S. Veteran’s Affairs administration for homeless programs, or the budget of the National Institutes of Health for public health issues associated with homelessness, or the U.S Interagency Council on Homelessness, or the Substance Abuse and Mental Health Services Administration, and so forth. It does not include nonfederal state, local and non-profit spending. According to the United States Interagency Council on Homelessness, each homeless person costs taxpayers \$30,000 to \$50,000 per year.”<sup>101</sup>

Particular metropolitan areas spend their own pots of gold chasing their homeless problem. One 2017 publication opined that “The Seattle area spends more than \$1 billion a year” on homelessness.<sup>102</sup> Another claims the City of San Francisco spent \$275 million on homelessness and supportive housing in the 2016-17 fiscal year.<sup>103</sup> New York City reportedly spend \$1.6 billion in 2016.

A 2015 Time Magazine report claims “Homelessness costs Los Angeles \$100 Million a year”<sup>104</sup> with “as much as \$87 million going to arrests, skid row patrols and mental health interventions.”<sup>105</sup> Whether that includes the hopeless task of cleaning up busses and transit trains of the human urine and feces that soak seats, make transit doorways sticky and makes the transit experience miserable, is unknown.<sup>106</sup>

Some studies claim housing the homeless is cost neutral or even a cost savings.<sup>107</sup> A 2016 article in the San Francisco Chronicle by journalist Kevin Fagan, claims

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<sup>101</sup> [https://www.usich.gov/resources/uploads/asset\\_library/Ending\\_Chronic\\_Homelessness\\_in\\_2017.pdf](https://www.usich.gov/resources/uploads/asset_library/Ending_Chronic_Homelessness_in_2017.pdf)

<sup>102</sup> <https://www.bizjournals.com/seattle/news/2017/11/16/price-of-homelessness-seattle-king-county-costs.html>

<sup>103</sup> <https://www.sfchronicle.com/aboutsfgate/article/Despite-money-and-work-homelessness-in-SF-as-bad-11242946.php>

<sup>104</sup> <http://time.com/3826021/los-angeles-homeless-people-cost-report/>

<sup>105</sup> <http://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>

<sup>106</sup> <http://www.latimes.com/local/lanow/la-me-metro-homeless-20180406-htmlstory.html#nws=mcnewsletter>

<sup>107</sup> <https://www.huduser.gov/portal/publications/hsgfirst.pdf>

that a homeless person costs San Francisco taxpayers \$80,000 per year, but that if the homeless is housed in supportive housing (*i.e.* housing with services) the cost is \$20,000 per year.<sup>108</sup> Homeless policy expert Dennis Culhane of Penn State cautions against over promising that housing the homeless is cheaper than not doing so.<sup>109</sup> But one thing is certain, we really don't know until we make an effort to ascertain what we spend now.

I believe that if we bother to work out what money we now spend on homelessness, that we will discover that money is available to fund RV and tent living; youth hostel modeled programs; commitment of and housing for the mentally ill, and focused prioritization of stick built options (both SROs and apartment types) for families with young children and veterans, that we will go a long way to solving the problem of homelessness.

### **Conclusion**

Here's the thing. The existing homeless problem is untenable and unhealthy. We need only be reminded of the hepatitis outbreak in October 2017 among the homeless in San Diego that killed at least 21 people, threatening all of us. A hotel concierge told me, a visitor for a conference, that if I insisted on running the San Diego esplanade in the afternoon, that I must not use the public restrooms to avoid exposure.

The solution is to house the homeless paying attention to their basic needs and to what is necessary for healthy social networks. Since we cannot supply stick built housing for all of the homeless and since they are willing, and in fact trying, to live in tents, RVs and a variety of other places, we can meet them where they are and provide a lawful living situation with the basic facilities and services they desperately need.

As I have said, I suspect that the cost of my proposal is doable within existing funding programs, achievable once we wrap our arms around what we spend in the first place. If my solution is not a good one, then someone needs to come up with one that is better. But one thing is certain: continuing to do what we do and expecting different results is insanity.

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<sup>108</sup> <http://projects.sfchronicle.com/sf-homeless/supportive-housing/>; [https://www.thebaycitybeacon.com/politics/san-francisco-homelessness-four-times-more-expensive-not-to-solve/article\\_28c8effa-86aa-11e7-a37f-cb1d4ded3b6f.html](https://www.thebaycitybeacon.com/politics/san-francisco-homelessness-four-times-more-expensive-not-to-solve/article_28c8effa-86aa-11e7-a37f-cb1d4ded3b6f.html)

<sup>109</sup> [https://repository.upenn.edu/cgi/viewcontent.cgi?article=1156&context=spp\\_papers](https://repository.upenn.edu/cgi/viewcontent.cgi?article=1156&context=spp_papers)