

**ABA State and Local Government Section Meeting**  
**34<sup>th</sup> Annual Land Use Institute**  
**Hot Topics - Homelessness<sup>1</sup>**

**Identify the Problem**

To have any hope of success, those engaged in the quest to solve the scourge of homelessness must clearly identify the problems they are trying to solve. Solving for affordable housing – if that is even possible – does not solve the problem of homelessness. Similarly, solving for homeless street / RV people, is an entirely separate question.

**The Problem this Paper Seeks to Solve**

The problem this paper analyzes and suggests solutions for, is the immediate problem of getting people living in homeless encampments, street campers, RV/car dwelling campers into safe and adequate places where they may exist, have access to services and to ultimately create safer communities for everyone.

**Primary Impediment to Solving this Problem**

Land use planning and related programs are a primary obstacle to solving this problem. Code enforcement against churches that actively serve the homeless, are profoundly unhelpful and probably unconstitutional, not to mention contrary to RLUIPA. Code enforcement local government tow and sweep programs are expensive and Sisyphean. Building codes that foreclose people living in “tiny houses” and RV are cause much more harm than good. Land use plans and zones that foreclose nonprofits from converting derelict shopping centers, parking lots and modest amounts of resource land into provide safe and adequate places for the homeless, ensure that we never solve this problem.

**Shared Assumptions**

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 provide the means for others to solve it. We can ease the rules, develop new ones, and provide places where homeless people 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

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<sup>1</sup> Wendie L. Kellington, Kellington Law Group P.C.

human waste including seats wet with urine so 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 5th or 10th 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. After all, as a legal matter, society’s choice is to do so or leave homeless people alone where they are – which is no good for anyone. *Martin v. City of Boise*, 920 F3d 584 (9<sup>th</sup> Cir.), *cert den* 140 S. Ct. 674 (2019).

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 vapor.

## **Key Populations Served**

The populations of people who are homeless are very different and have very different needs. The populations needing homeless service modalities are listed below:

1. Those with severe mental illness.
2. Dedicated addicts.
3. Chronic homeless people attached to dogs and/or other homeless community members and who will only move and stay put if all move into the same situation.
4. Those who refuse to live in or go to shelters or public housing.
5. Those who cannot live in public / apartment style housing and who end up evicted for rule noncompliance (punching holes in walls, taking in dogs (often large breeds like Pitbull’s/Mastiffs) against the rules, stealing other people’s things, other bad behaviors).  
NOTE: these are likely those in categories 1 -3.
6. Young people aging out of foster care / runaways with no social skills.
7. Elderly people who did not save adequately for retirement or who have lost their retirement savings in economic downturns.

8. Veterans who may be in a variety of categories but who do best with veteran specific solution.
9. Victims of domestic abuse.
10. Working poor with children who cannot both afford housing and daycare.
11. People released from prison with no job and no home.

The groups in categories 1 & 3 are not well-suited to traditional housing modalities. The housing required for the group in category 2 require immediate and intensive service that need not be provided in traditional housing modalities. They may initially present as a category 1 or 3 population.

### **Prioritize Service Delivery**

In the Portland Oregon Metro region alone, the estimated cost of creating, via public development, traditional housing for the region's current population of homeless people (which does not include those living in RV, cars or in crammed quarters with many other people and only includes those whom we know about), is somewhere between \$3 billion and \$4.1 billion.

This does not account for the entire homeless population in the region. This does not account for new entrants into the homeless population either. It solves only for those particular homeless people, who are homeless now. In other words, it does not house those who are homeless tomorrow, or the next day or the next. Clearly, \$3-4 billion in the Portland Metro area does not solve that area's problem or anywhere else for that matter. Spending \$3-4 billion on new public housing, does not solve the problem.

We simply lack inexhaustible, infinite sources of money to solve this problem. And we have not solved the problem despite ever larger sums of money through at it.

Disappointingly, no one knows how much we, as a nation, spend on the plague of homelessness –we do not know the aggregate costs of multiple federal, state, regional and local public and private agencies that provide homeless and related services; of unreimbursed medical care provided by hospitals; costs of jails - our de facto mental health hospitals; disease; crime; cleaning transit/rail and other public facilities of human waste; patrolling public parks and other facilities; police, fire and EMS services, the costs of RV tow and destroy programs; costs of homeless encampment sweeps and clean up; whole segments of urban real estate that have lost significant value because businesses and customers alike avoid them, veteran programs, substance abuse programs, etc. Five years ago, a 2015 Time Magazine report claimed “Homelessness costs Los Angeles \$100 Million a year”<sup>2</sup> with “as much as \$87 million going to arrests, skid row patrols and mental health interventions.”<sup>3</sup> One suspects that the costs are astonishing, and we know that the outcomes are unacceptable.

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<sup>2</sup> <http://time.com/3826021/los-angeles-homeless-people-cost-report/>

<sup>3</sup> <http://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>

It makes sense to prioritize spending to achieve particular outcomes. The decisions we must make must be based upon social policy choices and we need to talk about what those choice are and make them.

Consider the below outline of suggested social policy choices:

Homeless Population	Current Option	Suggested Priority Outcome
Those with severe mental illness.	Homeless	Reestablish mental institutions and “involuntary <sup>4</sup> ” commitment.
Dedicated addicts	Homeless	Tiny house/RV/tent encampments with social services / including rehab
Those who refuse to live in or go to shelters or public housing	Homeless	Tiny house/RV/tent encampments with social services
Those who cannot live in public / apartment style housing and who end up evicted for rule noncompliance (punching holes in walls, taking in dogs (often large breeds like Pitbull’s/Mastiffs) against the rules, stealing other people’s things, other bad behaviors).	Homeless	Tiny house/RV/tent encampments with social services
Young people aging out of foster care / runaways with no social skills.	Homeless	Youth Hostel model with intensive in-place services. HS diploma programs; social skills training; college prep; job training.
Elderly people who did not save adequately for retirement or who have lost their retirement savings in economic downturns	Homeless	Youth hostel model with medical connectivity; meals; volunteer opportunities; activities
Veterans who may be in a variety of categories but who do best with veteran specific solution.	Homeless	Sing Room Occupancy facilities (SRO) model with services.
Victims of domestic abuse.	Too few temporary options then homeless	SRO model with services

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<sup>4</sup> By definition, people in severe mental health crises do not have free will to accept or refuse treatment.

Working poor with children who cannot both afford housing and daycare	Too few options for this population. Parents risk losing, and often do lose, their children. Children and parents are angry, and children are often lost in a wholly inadequate foster system. And often join the ranks of homeless teens. And the cycle renews.	Highest cost investment in high quality living situations; in the best school districts; strong IEP services; the best child care; intensive parenting classes and support. Break the cycle.
People released from prison with no job and no home	Homeless	SRO model with job training and transitional services.
People in unlawful encampments or unlawfully living in public spaces in RVs/cars	Sweep away all their things and send them away with nothing; only to see them set up another encampment or find another free RV on Craig's list to live in.	Take their things/tow their RV/car they live in to a designated place with services – a parking lot, campground etc.

It is not acceptable to conscript all of these people to 'nowhere to go' and instead insist that they endure long waits on housing lists that are months if not years' long.

We need to be capable of addressing the needs of this population of fellow human beings immediately.

We are not able to do so now.

### **Adopt Land Use Planning Rules that Allow Solutions**

Land use programs must change to allow immediate transitional facilities for the entire homeless population to go.

- Existing facilities associated with houses of worship and other nonprofits should be allowed to provide homeless services including shelter, as of right.
- Parking lots, decrepit shopping centers should be allowed to be repurposed to provide homeless facilities with associated on-site services.
- RV, tiny house, tent, Quonset hut and other non-traditional living arrangements should be allowed.

The permitting for new places to park, set up tents etc, should be swift, simple and inexpensive.

Every community should be required to have their proportionate share of such facilities. They should never be concentrated in "poor" parts of town.

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>5</sup>; portable hand washing facilities; a communal area with a kitchen, showering facilities, garbage 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 should have a place to tow them that is a suitable place where those RVs may park, and their human occupants live, without fear of harassment.

Instead of tent encampment sweeps where people's belongings are thrown in the trash, government officials should transfer the contents and occupants to suitable tent / RV / tiny house / Quonset hut communities.

Homeless people who do not have their own camping equipment or RV, can be housed inexpensively (and humanely) in state or locally acquired used models, parked in designated encampment areas with shared facilities and services either onsite or readily available. If the person's 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, rather than 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.

While some complain that the RVs and tents that some homeless people live in are not fit for human habitation, this betrays a callous indifference to the needs of the occupant. Especially for homeless women, as between a door that locks and being on the streets, she does not much care that the housed would not choose to live in her RV. 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 officials should be prepared and 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 can be available immediately, whereas a stick-built apartment always has a months' or years' long waiting list.

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. Services should come to them. 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. The point here, is that there is no magic profile of the perfect location for immediate housing types to house homeless people other than what the particular homeless population to be served best needs (and will accept).

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

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<sup>5</sup> Adequately secured so they cannot be tipped over.

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 we are ensuring a legal place to exist and where one does not always worry about an official lurking to rob, move or arrest them. Moreover, the model proposed 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>6</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>7</sup>

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.

### **Community Immediate Housing Options Should be Limited in Size**

Housing options 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>8</sup> It turns out that hunter-gatherer societies, roman legions, effective military groups and effective businesses had about 150 people.<sup>9</sup> According to Professor Dunbar, people

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<sup>6</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>7</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

<sup>8</sup> Robin Dunbar: Grooming, Gossip and the Evolution of Language.

<sup>9</sup> <https://www.technologyreview.com/s/601369/your-brain-limits-you-to-just-five-bffs/>

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 have to have 15, because that’s the limit, at that level of intimacy, that people can work together.”<sup>10</sup>

Housing options should be established to create and maintain 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>11</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>12</sup> It should be evident that a very good reason to avoid big box human housing behemoths result in unhealthy social networks causing the very problems they were built to avoid.<sup>13</sup>

Thus, the two basic principles of solving the homelessness riddle: providing places where the homeless can live in places that are capable of meeting their service needs and also that can foster healthy social relationships. These basic principles further reduce to 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.

### **Other Impediments to Solutions**

Homeless people do not have access to ready sources of electricity, computers and some may not have smart phones. If they have a phone or computer, they have nowhere to charge it and chances are it will be stolen. Homeless people do not have addresses. They likely do not have calendars and, if they do, there may not be a way to set up reliable reminders of appointments. They may not be able to input phone numbers or addresses of agencies. And if they have an appointment book, chances are good that at some point it will be confiscated in a grand sweep by governmental officials. Many likely do not have the wherewithal to understand bus routes and how to use transit to get to service centers.

Police reports by people who are homeless are not taken seriously. If a homeless person is victimized, as a practical matter, they have no recourse or remedy.

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<sup>10</sup><https://www.socialsciencespace.com/2013/11/robin-dunbar-on-dunbar-numbers/>

<sup>11</sup> <https://newsone.com/155245/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>12</sup> <sup>87</sup>*Id.*, <https://www.city-journal.org/html/how-public-housing-harms-cities-12410.html>

<sup>13</sup> <http://www.nbcnews.com/id/26837911/ns/health-behavior/t/anonymity-opens-split-personalityzone/#.WsvfVojwaUk>;

<http://time.com/collection-post/4028444/jonathan-taplin-should-we-let-ourselves-be-anonymous-online/>.

Consequently, being homeless, makes being homeless worse.

Social programs that rely upon homeless people calling or seeking out, finding, making appointments with and meeting with various providers only to be referred to another or to experience long hold times (while their phone likely runs out of battery), are ineffective to provide service. Programs that rely upon homeless people figuring out what services are available, showing up for or making appointments have similar problems. As an experiment, our dear reader, pretend you are homeless and try to access services. It will be a daunting, frustrating and ultimately fruitless endeavor.

Services should be easy to access, and easy access to services should be an essential feature within each community.

### **Elements of Programs in Place Now that are Worthy of Being Reproduced**

Many jurisdictions wrestling with homelessness have established creative useful solutions that can be the scaffolding of a solution along the lines of that proposed in this paper.

Camp Hope – Mesilla Valley New Mexico <http://www.mvcommunityofhope.org/camp-hope-2/>  
Tipis, tents, gardens, shared facilities.

Dignity Village Portland Or <https://dignityvillage.org/> legal camp of formerly homeless people on land donated by city.

Satoshi Forest <http://www.satoshiforest.com/> legal tent community on forest land in Florida.

Oregon Harbor of Hope - <https://oregonharborofhope.org/> Portland Oregon. Mobile Laundry and Shower Trucks (for people and dogs) – each outfitted for about \$300,000, they circulate among homeless encampments and areas. On site, they are run by homeless people.

<https://www.havenforhope.org/about/services/#transformational-campus> San Antonio Texas. “Transformational Campus” including low barrier emergency shelter for safe sleeping, three meals, showers, medical care, mental health outreach etc.

Safe Place to Park <https://www.vox.com/the-highlight/2019/10/11/20897485/california-homeless-safe-parking-lots-cars-rvs> designated places with at least porta potties and security to park and sleep.

Second Wind Cottages – <https://www.secondwindcottages.org/> Each house cost about \$10,000 to build

Veterans Community Project <https://www.veteranscommunityproject.org/> Time house community targeted to veterans.

San Jose Bridge Housing Communities <https://www.sanjoseca.gov/your-government/departments/housing/ending-homelessness/bridge-housing-communities> communities of 40 individual sleeping cabins with shared facilities (shower, kitchen, storage, meeting, etc).

Conestoga Hut communities <https://komonews.com/news/local/huts-for-the-homeless-catching-on-in-the-northwest> and see <https://www.good-sam.com/our-stories/eugene-village-donors-homeless> low cost shelter option that can be quickly assembled.

And while not a homeless project, but rather one that appeals to persons of means, this should be reproduced everywhere on a less fancy scale <https://www.curbed.com/2018/3/29/17163698/tiny-house-las-vegas-zappos-downtown-project>