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Repurposing Vacancies: How New York City Can Transform Vacant Hotels To House the City's Homeless Population

By Matthew Degenhardt

I. Introduction

With the onset of COVID-19, the homeless population of New York City found themselves in a precarious position: along with the normal risks inherent with being homeless in a city such as New York, the homeless population had to contend with a global pandemic that spread easily and had effectively shut down the city. Recognizing this, the City of New York, under the leadership of Mayor Bill de Blasio, initiated a program to move the City's homeless population into various hotels throughout the City.¹ Although sheltering homeless individuals in hotels had been done before in New York City (due to shelter overflow), it had never been done on a large scale.² The initiative, one of many emergency responses, had the dual purposes of ensuring the health and safety of the City's most vulnerable residents and ensuring the economic survival of the hotels themselves, as occupancy at the City's hotels dropped dramatically due to the pandemic.³ Although, since the beginning of the homeless hotel program, Mayor de Blasio stressed that the measure was only temporary, indicating that the program would end once the City had recovered from the pandemic.⁴ To that end, as COVID-19 cases fell in New York City in the summer of 2021, the City sought to end the program and began to move the homeless population from the hotels back into the City's crowded shelters.⁵ Citing crime, neighbor complaints, and costs, the City argued that the temporary measure of housing its homeless population in hotels

¹ See Kevin T. Dugan, *The Homeless-to-Hotels Program is Ending. Neither Residents nor Hoteliers are Ready*, CURBED (June 15, 2021), <https://www.curbed.com/2021/06/homeless-hotels-program-ending-nyc-crisis.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Andy Newman, *New York Moves Homeless People From Hotels to Shelters as Virus Cases Rise*, N.Y. Times (Jul. 26, 2021), <https://www.nytimes.com/2021/07/26/nyregion/homeless-hotel-shelter-ny.html>.

should conclude as a necessary step for New York City to recover from the pandemic and return to pre-COVID normalcy.⁶

This Comment will discuss the impact of COVID-19 on the homeless population of New York City, as well as the ways that the problem of homelessness during the pandemic was addressed. Although this Comment is focused on the homeless population in New York City, it will discuss and compare pandemic responses to homelessness by other areas of the country.. Specifically, this Comment will analyze and advocate for the implementation and expansion of programs that focus on repurposing vacant hotels and office buildings to be used as permanent housing for the homeless. Such repurposing will allow New York City to provide housing for those who need it the most. This will also assist the hoteliers and owners of the office buildings by providing payments to them for their buildings, rather than allowing them to potentially lose ownership due to a lack of business caused by COVID-19.

Part II provides important background information regarding the state of homelessness in New York City both before and during the COVID-19 pandemic. This part also focuses on the ways in which New York City has grappled with the issue of homelessness during the global pandemic, highlighting the Homeless Hotel Program, as well as any relevant legislation that was put forward during this time. This section concludes with an overview of programs enacted in parts of the country other than New York City to address the homelessness issue during COVID-19. Part III analyzes the ways in which the various programs enacted to provide housing for the homeless during COVID-19 both succeeded and fell short, while also discussing how New York City can implement similar programs that would enable success. Part IV proposes a solution that would be the best option for the City of New York, the Hoteliers of the City, and most importantly,

⁶ *Id.*

the homeless population. This solution is for the City of New York to allocate funds for the purchase and conversion of struggling hotels and office buildings into permanent housing for the homeless population of New York City. In conjunction with this, New York City should also adjust its current zoning laws, enabling hotels in areas where housing is restricted, to be purchased and converted, thus providing more housing for those who need it.

II. Background/Overview

A. Homelessness in New York City

Homelessness is not a new problem in New York City and, in fact, the homeless population of all five boroughs continues to rise.⁷ Currently, the homeless population of New York City is at its highest level since the Great Depression.⁸ Although it is known that the number of homeless individuals in the City continues to increase, it is impossible to get a completely accurate account the homeless population.⁹ The number of those who sleep in the Department of Homeless Services (DHS) shelter system can be accurately counted, however, that is not the issue.¹⁰ Currently, it is impossible to get an accurate account of the number of homeless individuals who forgo the shelter system and sleep on the street each night.¹¹ It is estimated that thousands of homeless individuals sleep on the streets of New York City on any given night.¹² It is also likely that the City's surveys of unsheltered homeless individuals unintentionally underestimates the number.¹³ This likely

⁷ COAL. FOR THE HOMELESS, *Basic Facts About Homelessness: N.Y.C.* (Updated Oct. 2021), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ COAL. FOR THE HOMELESS, *Basic Facts About Homelessness: N.Y.C.* (Updated Oct. 2021), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city>.

underestimation leads many to believe that the number of homeless individuals in New York City at any given time is greater than that estimated by the DHS.¹⁴

While there is much that is not known, the knowledge gained from the City's shelter system provides some context. In August 2021, 47,979 homeless people slept in a New York City homeless shelter.¹⁵ Over the course of 2020, the year that COVID-19 caused New York City to shut down, 122,926 individuals slept in one of New York City's many homeless shelters.¹⁶ That number is composed of both adults and children, as 14,946 children called a shelter home.¹⁷ According to the Coalition for the Homeless, "[t]he number of homeless New Yorkers sleeping each night in municipal shelters is now eighteen percent higher than it was ten years ago. The number of homeless single adults is ninety-seven percent higher than it was ten years ago."¹⁸

Currently, the principal cause of homelessness in New York City is a lack of affordable housing.¹⁹ This is particularly true among homeless families who struggle to make ends meet.²⁰ Over the years, the median cost of rent in the City has continued to rise at a faster rate than the median income.²¹ This rise in median rent pricing has led to over thirty-percent of the population of the City having to spend more than fifty-percent of their income on housing.²² Other contributing factors consist of: "eviction; doubled-up or severely overcrowded housing; domestic violence; job loss; and hazardous housing conditions."²³ Mental illness also plays a major role in

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ COAL. FOR THE HOMELESS, *Basic Facts About Homelessness: N.Y.C.* (Updated Oct. 2021), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city>.

²⁰ *Id.*

²¹ The New School: Center for New York City Affairs, *Housing & Homelessness*, <http://www.centrernyc.org/housingandhomelessness>.

²² *Id.*

²³ COAL. FOR THE HOMELESS, *Basic Facts About Homelessness: N.Y.C.* (Updated Oct. 2021), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city>.

the homelessness crisis, as a sizeable majority of those living on the street of New York City deal with various mental illnesses.²⁴ Particularly among the homeless single adult population of New York City, there are high rates of mental illness, severe physical illness, and addiction disorders.²⁵

The New York State Constitution imposes an obligation on the State to provide for its needy.²⁶ In relevant part, the Constitution reads “[T]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such a manner and by such means, as the legislature may from time to time determine.”²⁷ This section of New York’s Constitution has been interpreted by New York courts and legislature to provide for a right to housing for the homeless population of New York City, referred to by many as a right to shelter.²⁸

In 1981, *Callahan v. Carey* was settled in the New York Supreme Court by a constant decree, known as the Callahan Constant Decree.²⁹ There, several homeless men brought suit, challenging the quality of shelters in New York City—specifically for homeless men.³⁰ In this decree, New York State and New York City agreed to provide shelter for homeless men.³¹ The decree also agreed that the shelters would meet certain standards, such as guarantees for personal beds and lockable storage units.³²

²⁴ *Id.*

²⁵ *Id.*

²⁶ N.Y. Const. art. XVII, §1. *See also* *Tucker v. Toia* 43 N.Y.2d 1, 8 (N.Y. 1977) (discussed Art. XVII, stating it “imposes upon the State an affirmative duty to aid the needy.”)

²⁷ *Id.*

²⁸ *See* E. Michelle Andrews Et Al., Int’l Human Rights Comm. of the N.Y.C. Bar Ass’n, *Advancing The Right To Hous. In The U.S.: Using Int’l Law as a Found.* 14–15 (discussing the various court cases that have established the right to housing for the homeless population of New York City).

²⁹ *See* The Callahan Consent Decree, Index. No. 45282/79 (N.Y. Sup. Ct.) http://www.esccrnet.org/sites/default/files/callahanconsentdecree_0.pdf.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

In 1983, the Appellate Division of the Supreme Court of New York took the consent decree a step further, ruling in *Eldredge v. Koch* that the decree not only applied to homeless men, but also to homeless women.³³ Following *Eldredge*—in 1987—the Appellate Division of the Supreme Court of New York again further expanded the right to shelter for the homeless population of New York in *McCain v. Koch*.³⁴ There, the Court ruled that the judiciary has the power to issue injunctions requiring New York City to “provide housing which satisfies minimum standards of sanitation, safety, and decency.”³⁵ These standards remain today, and imposes on New York the duty to ensure that the shelter system is a safe environment for those who use it.

B. COVID-19 and New York’s Homeless Population

As the rates of homelessness rose, New York City also found itself in the grasps of the COVID-19 pandemic. The pandemic effectively shut the City down, as bars, stores, restaurants, and tourist attractions all closed in an attempt to mitigate the spread of the virus. COVID-19 worsened the homelessness crisis, as many jobs were lost due to the pandemic.³⁶ The increase in the homeless population of New York City proved dangerous, as homeless individuals faced increased risks above those experienced by the average person, both in the shelter system and on the streets.³⁷ In the shelter system, the risks to the homeless are: inability to isolate at home and social distance from others; inadequate health screenings of those who enter the shelters; inability to wash hands as needed; lack of sanitation due to large numbers of individuals in the shelter; and lack of staff to ensure that the shelter is clean and sanitized.³⁸ The risks to the unsheltered are:

³³ *Eldredge v. Koch*, 98 A.D.2d 675, 676 (N.Y. App. Div. 1983).

³⁴ *McCain v. Koch*, 70 N.Y.2d 109, 113–114 (N.Y. 1987).

³⁵ *Id.*

³⁶ *Why*, Campaign 4 NY/NY Housing, <http://www.nynycampaign.org/why>.

³⁷ COAL. FOR THE HOMELESS, *Housing is Health Care: Responding to COVID-19 in a Comprehensive and Systematic Way* (updated May 18, 2021), <https://www.coalitionforthehomeless.org/housing-is-healthcare-responding-to-covid-19>.

³⁸ *Id.*

lack of access to basic sanitation supplies; inability to access public safety net programs; increased exposure to COVID-19 due to increased time spent in public spaces; and high stress levels that may aggravate physical symptoms.³⁹

Along with these enumerated risks, the homeless population have a higher mortality rate than the rest of New York City.⁴⁰ Specifically, the sheltered homeless population of New York City have a higher mortality rate due to COVID-19 than the rest of the City: “Through the end of February 2021, the mortality rate for New York City was 292 deaths per 100,000, while for shelter individuals during the same period it was 436 per 100,000.”⁴¹ At the end of February 2021, the New York City Department of Homelessness Services reported that 113 homeless individuals died from COVID-19.⁴² These numbers are further broken down to 101 sheltered homeless individuals and 12 unsheltered individuals.⁴³ As a whole, there are more known positive cases of COVID-19 in the sheltered population than the unsheltered, with 3,607 sheltered and 297 unsheltered homeless individuals testing positive in New York City between March 1, 2020 and June 24, 2021.⁴⁴ Although, much like the exact numbers of unsheltered individuals, it is nearly impossible to know the precise amount of unsheltered homeless individuals who have contracted COVID-19, as many may be asymptomatic and others may not have gotten tested. Even with this in mind, the discrepancy in positive cases between those sheltered and those unsheltered is alarming and highlights the ease of transmission within New York City’s shelter system.

C. How New York is Handling the Homeless Population – The Homeless Hotel Program

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ COAL. FOR THE HOMELESS, *Age-Adjusted Mortality Rate for Sheltered Homeless New Yorkers*, <https://www.coalitionforthehomeless.org/age-adjusted-mortality-rate-for-sheltered-homeless-new-yorkers>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ N.Y. STATE OFF. OF TEMP. AND DISABILITY ASSISTANCE, *COVID-19 Homeless Population Pandemic Report*, <https://otda.ny.gov/covid-19/homeless-population-report.asp>.

New York City decided to face the issues presented by COVID-19 head on. In April 2020, the de Blasio administration came to an agreement with the floundering hotel industry of New York City, paying \$300 million to procure rooms for 9,500 needy individuals.⁴⁵ This deal was struck to help both the homeless population of the City and the hotel industry.⁴⁶ The hotel industry found itself in a poor position due to COVID-19, as the pandemic effectively shut down the City's tourism industry that the hotels are dependent on.⁴⁷ This deal paid money directly to the owners of the hotels where the homeless were housed, and by April 2021 about one-in-four of the City's homeless were living in a hotel.⁴⁸ The hotel rooms given to the thousands of homeless individuals to live in provided a number of benefits that the shelter system could not.⁴⁹ Namely, the hotel rooms provided a way to quarantine and decrease the risk of contracting COVID-19.⁵⁰ The rooms also provided a sense of privacy that one is unable to experience while sleeping in a shelter or on the streets.⁵¹

Although this program provided numerous benefits for both the homeless and the hotel owners, it was classified as a temporary measure from its inception.⁵² Since the onset of the pandemic, Mayor de Blasio stated that the program would not be a permanent solution to the housing crisis, but only a temporary measure enacted until the City was able to go back to pre-pandemic normalcy.⁵³ Many homeless individuals took this classification negatively, as they did not wish to lose their new found privacy, or be at increased risk of COVID-19 in the shelter

⁴⁵ Dugan, *supra* note 1.

⁴⁶ Dugan, *supra* note 1.

⁴⁷ Dugan, *supra* note 1.

⁴⁸ Dugan, *supra* note 1.

⁴⁹ Dugan, *supra* note 1.

⁵⁰ Dugan, *supra* note 1.

⁵¹ Dugan, *supra* note 1.

⁵² Dugan, *supra* note 1.

⁵³ Dugan, *supra* note 1.

system.⁵⁴ Many homeless residents of the hotels cited their fears of the Delta variant of COVID-19, while others felt levels of anger and anxiety, as their newfound sense of privacy had come with a time limit.⁵⁵

Conversely, many New York City residents in the areas around the hotels welcomed the temporary nature of the program, with many calling for it to end as quickly as possible.⁵⁶ These residents complained about the program, arguing that the presence of the homeless population in their neighborhoods would lead to an increase in crime.⁵⁷ Citing increased theft, public drug use, and two cases of hate crimes, the residents of the hotel's neighborhoods believed that the homeless individuals housed in their areas would be better off elsewhere.⁵⁸ Examples of an increase in crime after the arrival of a large influx of homeless individuals can be seen by studying two hotels, the L Hotel and the Glo Hotel.⁵⁹ At the L, there were seventy-eight emergency services calls in the first four months of 2021.⁶⁰ By contrast, in the entirety of 2020, there were ten calls to this location.⁶¹ Similarly, at the Glo Hotel, the first four months of 2021 brought one-hundred and eight calls, as opposed to the forty-four the year prior.⁶²

Although defensible, the concerns of the hotel's neighbors may alternatively be viewed as exhibiting "Not in My Backyard" (NIMBY) ideology that has become quite common.⁶³ This

⁵⁴ Andy Newman, *New York Moves Homeless People From Hotels to Shelters as Virus Cases Rise*, N.Y. Times (Jul. 26, 2021), <https://www.nytimes.com/2021/07/26/nyregion/homeless-hotel-shelter-ny.html>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Billy Richling, *Residents Ask City for Help Addressing Quality of Life Issues After Hotel Shelters Pop Up in Sunset Park*, Bklyner (Apr. 26, 2021), <https://bklyner.com/residents-ask-city-for-help-addressing-quality-of-life-issues-after-hotel-shelters-pop-up-in-sunset-park/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See, Symposium, *Promises Still to Keep: The Fair Housing Act Fifty Years Later*, 40 CARDOZO L. REV. 1207, 1229 (2019).

ideology can be described as a fear of the “other,” with many people objecting to the housing of the poor in their neighborhood as they feel that, by housing the homeless in their neighborhood, they will bring crime and drugs.⁶⁴ Although these fears are rooted in statistics, as highlighted above, many simply do not wish to ensure that extra steps be taken to ensure safety, while allowing for the homeless population to be housed. As an example of the additional steps that can be taken, some residents requested that greater security be put in place, to negate the possible rise in crime.⁶⁵ As a perfect example of the ideology, many residents openly demanded that the homeless population be moved to hotels in other parts of the City.⁶⁶ These demands show that for many residents, the issue is not with the program in general, but specifically with the housing of homeless individuals in their neighborhoods.⁶⁷

Despite the pleas of the homeless residents and their advocates, the de Blasio administration began the process of moving the homeless population out of the hotels and back into the City’s various shelters.⁶⁸ Citing the rise of vaccination rates in New York and the dramatic decrease of COVID-19 cases in early 2021, the de Blasio administration believed the summer of 2021 to be the best time to end the program and transition the City back to a state of normalcy.⁶⁹ This plan received major pushback from homeless advocacy groups such as the Safety Net Program of the Urban Justice Center.⁷⁰ These groups pointed to the low rates of vaccination amongst the homeless population and the rise of the Delta variant throughout the City.⁷¹

⁶⁴ *Id.*

⁶⁵ Richling, *supra* note 59.

⁶⁶ Richling, *supra* note 59.

⁶⁷ Andy Newman, *N.Y.C.’s Plan to Move Homeless People From Hotels Is Blocked by a Judge*, N.Y. Times (Jul.13, 2021), <https://www.nytimes.com/2021/07/13/nyregion/homeless-hotels-protests.html?searchResultPosition=1>.

⁶⁸ Newman, *supra* note 54.

⁶⁹ Newman, *supra* note 54.

⁷⁰ Newman, *supra* note 54.

⁷¹ Newman, *supra* note 54.

Regarding the vaccination rates of the homeless, New York City has stated that it is unsure exactly how many homeless have been vaccinated.⁷² The Department of Homeless Services is unable to gauge the levels of vaccinations among the homeless individuals not in the shelter system; however, 7,300 out of 20,000 of those in the shelter system have been vaccinated.⁷³

On July 13, 2021, a federal judge in the Southern District of New York halted the transfer of the homeless population out of the hotels and back into the City's shelters.⁷⁴ This was done because the Southern District of New York found that the City did not consider those who may qualify for reasonable accommodations in their plans and, therefore, were required to do so moving forward.⁷⁵ The Court ordered the City to give seven days' notice of eviction to the residents of the hotels.⁷⁶ Moreover, the Court ruled that the City had to meet with the residents at least five days before eviction to determine whether they qualified for reasonable accommodations.⁷⁷ The reasonable accommodations that the City was required to take into account vary by individual, but stem from a settlement in 2017.⁷⁸ In this settlement, the Department of Homeless Services agreed to "survey its shelters, track requests for accommodations, train staff members and take measures to monitor progress."⁷⁹ Some examples of the reasonable accommodations taken into account are: providing a refrigerator for medicine to be stored; moving families into spacious living spaces;

⁷² Newman, *supra* note 54.

⁷³ Newman, *supra* note 54.

⁷⁴ Andy Newman, *New York Moves Homeless People From Hotels to Shelters as Virus Cases Rise*, N.Y. Times (Jul. 26, 2021), <https://www.nytimes.com/2021/07/26/nyregion/homeless-hotel-shelter-ny.html>. See also *Butler v. City of New York*, No. 15-CV-3783, 2021 LEXIS 183716, at 1 (S.D.N.Y. Aug. 16, 2021).

⁷⁵ Newman, *supra* note 54.

⁷⁶ Newman, *supra* note 54.

⁷⁷ Newman, *supra* note 54.

⁷⁸ Nikita Stewart, *Under Settlement, City Shelters Will Do More for the Disabled*, N.Y. Times (May 18, 2017), <https://www.nytimes.com/2017/05/18/nyregion/homeless-shelters-disabled-people-settlement.html>.

⁷⁹ *Id.*

moving sick individuals closer to their doctors; taking stairs into account when sheltering disabled individuals; and providing facilities with individual bathrooms for those with disabilities.⁸⁰

On July 27th, 2021, the two-week stay was lifted and the City resumed moving the homeless population out of hotels and back into its crowded shelters.⁸¹ The City stated that this was done to allow for a return to how the City was before the start of the pandemic, but many argue the move puts the City's homeless population at an increased risk of infection.⁸² As an example of this risk, those who argue against this move by the City point to the rising numbers of infections within the shelter system, notably due to the Delta variant of COVID-19.⁸³ In response, the Department of Homeless Services made a push to vaccinate as many homeless individuals as they can.⁸⁴ Due to the City's right to shelter laws, New York City cannot "require that residents of homeless shelters be vaccinated."⁸⁵

In addition with the concerns for the homeless population, many of the City's hoteliers have expressed their desire for the program to end in phases, rather than all at once.⁸⁶ Many hoteliers have expressed fear that the pre-pandemic tourism rates that allowed them to stay in business will not return until 2022.⁸⁷ Due to the lack of tourism, many hotel owners rely on the public funds received from housing homeless individuals and risk losing their business if the funding were to cease abruptly.⁸⁸ Nevertheless, the de Blasio administration had reiterated the

⁸⁰ *Id.*

⁸¹ Newman, *supra* note 54.

⁸² Newman, *supra* note 54.

⁸³ Newman, *supra* note 54.

⁸⁴ Newman, *supra* note 54.

⁸⁵ Newman, *supra* note 54.

⁸⁶ Dugan, *supra* note 1.

⁸⁷ Dugan, *supra* note 1.

⁸⁸ Dugan, *supra* note 1.

desire to have New York City return to a state of normalcy as quickly as possible, and believed that moving the homeless population back to the shelters is an important step in that process.⁸⁹

D. Legislation to Address the Homelessness Crisis

Both New York City and New York State have enacted numerous pieces of legislation with the dual purposes of assisting the homeless and preventing others from becoming homeless.⁹⁰ For the already homeless, much of the legislation is focused on providing housing vouchers.⁹¹ To prevent homelessness, much of the legislation focuses on rent stabilization and rent control.⁹² An example of one such law is the Tenant Protection Laws, passed in New York City.⁹³ These laws effectuate the following: limit security deposits to one month's rent; set standards for notification regarding rent increase; prevent unlawful eviction; and provides for the reversal of evictions.⁹⁴

Housing vouchers are an exceedingly popular means for the government to assist homeless individuals with finding permanent housing.⁹⁵ Dating back to the Housing and Community Development Act of 1978, the Housing Choice Voucher program, also known as Section 8, provides a way for needy individuals to obtain safe, affordable housing.⁹⁶ The program acts as a “rental subsidy that allows families to pay a reasonable amount of their income towards rent.”⁹⁷ On average, families pay forty-percent of their income towards their rent, while New York City Housing Authority (NYCHA) pays the remainder.⁹⁸ Under the NYCHA, New York City's

⁸⁹ Dugan, *supra* note 1.

⁹⁰ New York State Div. of Housing & Community Renewal, Office of Rent Administration, *Fact Sheet #1: Rent Stabilization and Rent Control* (2008).

⁹¹ NYC Mayor's Off. to Protect Tenants, *New Protections for All Tenants*, <https://www1.nyc.gov/content/tenantprotection/pages/new-protections-for-all-tenants>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ N.Y.C. Housing Auth., *About Section 8*, <https://www1.nyc.gov/site/nycha/section-8/about-section-8.page>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

program is the largest housing voucher program in the country.⁹⁹ Currently, 85,000 vouchers and 25,000 owners participate in the program.¹⁰⁰ The City’s use of the housing vouchers allows for homeless individuals to move out of the shelter system and into permanent housing.¹⁰¹

On May 27, 2021, the New York City Council passed Int. 146-C, which increased the voucher amounts to align with Section 8 standards.¹⁰² Before this bill, vouchers known as CityFHEPS were capped at \$1,265 a month for single adults and \$1,580 for a family of three or four.¹⁰³ By aligning with Section 8 standards, 146-C raised the caps to \$1,945 for a one-bedroom apartment and \$2,217 for a two-bedroom.¹⁰⁴ Int. 146-C also removed the five-year cap previously placed on the vouchers, allowing anyone who “continues to qualify for the program to be eligible.”¹⁰⁵ This action helps keep those who have found housing from cycling back into homelessness. Aligning the program with Section 8 through Int. 146-C also opened more apartments for the housing voucher program, as research from April 2021 found that at that time in New York City, only 564 apartments met CityFHEPS standards, while 71,934 apartments met the standards set forth by Section 8.¹⁰⁶

New York State has also passed legislation for a statewide eviction moratorium due to the COVID-19 pandemic.¹⁰⁷ After extending the moratorium past the original date, the end date set a

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Victoria Agosta, *City Council Passes Legis. in Increase Value of Rental Assistance Vouchers*, City Land: New York City Land Use News and Legal Rsch. (June 30, 2021), <https://www.citylandnyc.org/city-council-passes-legislation-in-increase-value-of-rental-assistance-vouchers/>.

¹⁰² *Id.*

¹⁰³ N.Y.C. Council, *Legislation to Get New Yorkers Out of Shelter and into Permanent Housing Up for a Vote This Week*, (May 25, 2021), <https://council.nyc.gov/press/2021/05/25/2092/>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Mihir Zaveri & Luis Ferre-Sadurni, *New York Passes Bill Extending Eviction Moratorium to January*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/nyregion/eviction-moratorium-new-york.html>.

new date of January 15, 2022, which has since passed.¹⁰⁸ The extension also came with changes in the law, which provided more rights to landlords, such as the ability to challenge a claim of hardship, which enables renters to avoid paying rent.¹⁰⁹ This action by the State is an attempt to both satisfy landlords and protect state renters, 700,000 of whom found themselves behind on rent as of September 2021.¹¹⁰ Both landlords and renters view this action as merely temporary relief, as it doesn't completely appease either party, and due to New York City having yet to payout ninety-three percent of the \$2.7 Billion in rent relief funds that it had set aside.¹¹¹

Notably, New York State also passed Senate Bill S52575C, known as the Housing Our Neighbors with Dignity Act (the "Bill").¹¹² This Bill allows for New York State to purchase distressed hotels and office buildings through nonprofit organizations, and have the buildings repurposed into affordable housing for the homeless and the poor.¹¹³ This program is not restricted to New York City only, but instead spreads the money dedicated to this program throughout the state as a whole.

III. Analysis

A. Comparing Hotel to Housing Programs

1. Housing Our Neighbors with Dignity Act

The Bill allows the State of New York, through non-profit organizations, to purchase hotels and office buildings in distress.¹¹⁴ The Bill serves as a perfect reaction to the effects of COVID-19 on housing and real estate. The Bill allows for the State to repurpose buildings that would

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² S.B. 5257, 244th State S., Reg. Sess. (N.Y. 2021).

¹¹³ *Id.*

¹¹⁴ *Id.*

otherwise be empty due to the pandemic.¹¹⁵ The Bill also serves the dual purpose of helping both the homeless, and those who are on the verge of homelessness, as it ensures fifty percent of the new homes go to the homeless, and the other half to those at risk of homelessness.¹¹⁶

The Bill is purely at the state level and does not make individual mention of the role that New York City, or any other city in the State, will play in the process.¹¹⁷ Despite the fact that the Bill does not focus on New York City, it proves to be a step in the right direction overall. Nevertheless, the New York State budget for 2022 does not include an equivalent amount of money that was initially proposed in the Bill.¹¹⁸ Currently, the money approved for the financing of this program to create affordable housing for the needy throughout the State of New York is \$100 Million, which is less than initially proposed in the Bill.¹¹⁹

Although this program is a fantastic start to providing homes for those in need and properly recognizes the ways in which COVID-19 has made an impact on the housing market, it, alone, is not enough. The Bill is a progression, but it does not ensure that enough will be done all of those who need a home, especially in such a large city as New York City.¹²⁰

2. Project Roomkey/ Project Homekey

In this section, the focus will shift from New York to California, specifically to the dual programs, Project Roomkey and Project Homekey. Project Roomkey was a program established in March 2020 by Governor Gavin Newsom of California as a means of “providing non-congregate

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ State of New York, *FY 2022 Enacted Budget Financial Plan*, <https://www.budget.ny.gov/pubs/archive/fy22/en/fy22en-fp.pdf>.

¹¹⁹ S.B. 5257, 244th State S., Reg. Sess. (N.Y. 2021).

¹²⁰ Fola Akinnibi, *Eric Adams Pitches 25,000 Hotel Rooms as Affordable Housing Solution*, Bloomberg (Sept. 20, 2021), <https://www.bloomberg.com/news/articles/2021-09-20/eric-adams-wants-to-turn-25-000-hotel-rooms-to-housing>.

shelter options for people experiencing homelessness during the COVID-19 pandemic.”¹²¹ Project Roomkey allowed for “those who are homeless and have been exposed to COVID-19 or are recovering from COVID-19 to have a place to isolate recuperate outside of a hospital, and away from a shelter.”¹²² Project Roomkey also provided safe places for isolation for those experiencing homelessness who are deemed high risk for medical complications due to possible COVID-19 infection.¹²³

Project Roomkey used money from the Federal Emergency Agency (FEMA), the State of California, and funds from various cities and counties.¹²⁴ Much like what had taken place in New York City during the pandemic, Project Roomkey secured motel and hotel rooms for the homeless, assisting both the homeless population and the struggling hoteliers.¹²⁵ Also like the program in New York City, Project Roomkey was meant to only provide temporary relief during the COVID-19 pandemic, with no intentions of becoming a permanent solution to the housing crisis faced by California.¹²⁶ Despite this, due to the success of the program, Governor Newsom decided to expand the program into a permanent housing solution called Project Homekey.¹²⁷

Project Homekey is a housing plan which uses its funds to establish permanent housing for the homeless population of California.¹²⁸ California achieves this by using state funds to purchase hotels from their private owners, and then turn the hotel rooms into permanent housing units.¹²⁹ On June 24, 2020, Governor Newsom signed the state budget that provided \$600 million for this

¹²¹ California Department of Social Services, *Project Roomkey/Housing and Homelessness COVID Response*, <https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/project-roomkey>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Michael Novasky & Tina Rosales, *Mental Health and Homelessness in the Wake of COVID-19: The Path to Supportive and Affordable Housing*, 68 UCLA L. Rev. Disc. 130, 137 (2020).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

program and beginning the first phase of Project Homekey.¹³⁰ This money directly came from money given to California through the federal Coronavirus Relief Fund created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹³¹

California deemed the first phase of Project Homekey as a success on par with that of Project Roomkey.¹³² Because of that, Project Homekey was renewed for a second phase, entitled Project Homekey Phase 2.¹³³ This second phase was renewed with more than double the funding of the first phase, \$1.4 billion.¹³⁴ The immense capital is to be administered by the California Department of Housing and Community Development (HCD) to the cities, counties, and other entities of the State.¹³⁵ These entities will then, in turn, use the funding to purchase local hotels and motels, many of which had been negatively affected by the COVID-19 pandemic, and convert them into permanent housing for the state's large homeless population.

3. Comparing Project Homekey and the Housing Our Neighbors with Dignity Act

Project Homekey and the Bill each seek to address the issue of homelessness at the state level by providing funds to purchase hotels and motels to be converted into permanent living spaces. Rather than focusing on a particular city or area, both programs disperse their money throughout their states to solve the statewide homelessness crisis. It is by looking to address the homelessness issue throughout the state as a whole that both of these programs fall short in their goal: they lose sight of individual cities—such as New York City—and instead spread the money too thin. By not focusing on cities, where the largest populations of homeless individuals reside,

¹³⁰ Novasky, *supra* note 124.

¹³¹ Novasky, *supra* note 124.

¹³² California Department of Housing and Community Development, *Homekey: Bringing California Home*, <https://homekey.hcd.ca.gov/content/background>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

the programs merely bandage the issue, rather than address it fully. Although it is needed for homeless populations through each state be assisted, it is undeniable that cities such as New York City and Los Angeles need the most assistance. Though both Project Homekey and the Bill provide assistance for the homeless populations in the biggest cities of their respective states, it is not nearly enough, nor is it focused enough, to make a difference in those areas. Because of these issues, Project Homekey and the Bill prove to be more of a step forward, rather than the solutions that will effectively end the homelessness crisis.

If New York City decides to create its own hotel-to-permanent-housing solution, it can use Project Homekey and the Bill as guides for effectively implementing their own solution. New York City can look to the ways in which both programs utilize the funds available to them, and the ways in which both programs purchase and convert properties. Specifically, New York City can look to the actions of its own state, as some of the money being spent by the Bill will be spent in New York City. New York City will be able to analyze the ways in which New York State addresses any obstacles that may be in the way of successful implementation, such as the costs associated with both the purchase of the property and its conversion into a permanent living space. New York City can also look to the Bill, and Project Homekey, for examples of the standards that should be implemented when converting hotel rooms to apartments, and if the programs provide any additional services for the homeless people that they house (such as mental health experts, child services, providing of healthcare, and assistance with obtaining adequate provisions).

B. Challenges With Implementing Hotel-To-Housing Programs

Not all hotels are created equal, with some being better suited for repurposing into permanent housing than others.¹³⁶ Challenges posed by repurposing are compounded by the fact

¹³⁶ Noah Kazis et al., *Challenges and Opportunities for Hotel-To-Housing Conversions in NYC*, NYU Furman Center. 1, 1 (Aug. 2021).

that all permanent living spaces in New York are required to meet the minimum standard of habitability, such as: access to heat; access to hot water; access to electricity; lack of insect or rodent infestation; no mold; smoke detectors; no lead paint; and working pipes, among other factors.¹³⁷ An example of the minimum standards can be found when looking at the Housing Our Neighbors With Dignity Act, where the rooms repurposed must meet the minimum standard of habitability, safety, and quality, as well as the following requirements: “a living/sleeping space, private bathroom with bath or shower, and either a full kitchen or kitchenette with at least a 24-inch refrigerator, sink, cooktop, microwave oven and outlets for countertop appliances.”¹³⁸

Despite the requirement of adhering to standards of habitability in place at both the City and State level, the most pressing issue faced by New York City in implementing a hotel-to-housing program has to do with its own zoning regulations.¹³⁹ Zoning regulations limit when and if a hotel can be converted into a permanent living space, as a specific hotel may stand in an area that does not allow for permanent housing.¹⁴⁰ New York currently has three categories for zoning: residential; commercial; and manufacturing.¹⁴¹ Through the current zoning scheme, hotels are not allowed in residential areas, while residential housing is not allowed in manufacturing areas.¹⁴² These zoning laws create an issue, as they limit the hotels that can be converted into permanent housing to only those that commercial zones, while excluding all those in manufacturing zones.¹⁴³ It is important to note that recently there has been a major uptick in hotels being opened in

¹³⁷ See New York City Civil Court, *Landlord/Tenant Answer In Person Fact Sheet (CIV-LT-91): Warranty of Habitability*, <https://nycourts.gov/courts/nyc/housing/pdfs/warrantyofhabitability.pdf>. See also, See S.B. 5257, 244th State S., Reg. Sess. (N.Y. 2021).

¹³⁸ S.B. 5257, 244th State S., Reg. Sess. (N.Y. 2021).

¹³⁹ Noah Kazis et al., *Challenges and Opportunities for Hotel-To-Housing Conversions in NYC*, NYU Furman Center. 1, 9 (Aug. 2021).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

manufacturing zones in New York City, which, as it stands, would exclude them from any housing solution.¹⁴⁴

New York zoning laws also regulate the density of a building, with these zoning laws coming in two versions: (1) caps on total numbers of apartments; and (2) minimum square foot space per unit.¹⁴⁵ These zoning laws have the potential to negatively affect a plan to convert hotel rooms into housing as hotel rooms are often too small, or there are too many in one building.¹⁴⁶ If a hotel building were to have rooms that were too small for the minimum square foot, or too many rooms in one building, they would not be in compliance with the zoning laws for residential areas if converted into permanent housing as is.¹⁴⁷ Because of this, a number of hotels that violate these zoning restrictions would either have to be converted to meet the requirements at a great cost, or they would not be able to be used for the project if the needed conversions are unable to be made.¹⁴⁸

Another challenge that a hotel-to-housing program could face in New York City has to do with accessibility requirements.¹⁴⁹ Newly converted living spaces may come into conflict with accessibility requirements, as the minimum requirements of hotels is less than that of residential housing under city, state, and federal law.¹⁵⁰ An example of these additional accessibility standards are those set by the Americans with Disabilities Act (ADA).¹⁵¹ Currently, hotels must meet certain accessibility standards under the ADA, such as the amount of rooms that must be handicap accessible, but those standards are enhanced when discussing housing.¹⁵² Under the

¹⁴⁴ *Id.*

¹⁴⁵ Noah Kazis et al., *Challenges and Opportunities for Hotel-To-Housing Conversions in NYC*, NYU Furman Center. 1, 10 (Aug. 2021).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ 28 C.F.R § 36.406(c); 2010 ADA Standards for Accessible Design, § 224, 806, https://www.ada.gov/2010ADASTandards_index.htm.

¹⁵² Kazis, *supra* note 145.

ADA, newer buildings must ensure that “a portion of rooms in each hotel are handicap accessible.”¹⁵³ Conversely, older hotels do not need to meet this same standard and, therefore, may not meet the accessibility standard needed for housing.¹⁵⁴ Because of this, some newer hotels are automatically better suited to be converted into permanent housing than others, especially when taking into account that many potential residents may need handicap accessibility.¹⁵⁵

Finally, the residents of the various neighborhoods where hotels would be converted into housing pose a problem for the success of any program implemented by New York City. As seen during the temporary program to house homeless individuals during the height of the COVID-19 pandemic, many residents and community leaders have already voiced their opposition to the housing of the homeless in local hotels.¹⁵⁶ Many of these individuals cite public safety as their main concern, as they believe that an influx of homeless individuals in their neighborhood will bring an increase of crime and drug use.¹⁵⁷ Often, the residents that voice their concerns are able to point to statistics, as there are a number of previously mentioned examples of crime increasing in or around the hotels where homeless have been housed.¹⁵⁸

This issue of the community opposition causes a serious issue for the successful implementation of any program that would house the homeless in local hotels. Community pushback can cause major headaches for the local political leaders attempting to implement the program and can lead to other politicians outright opposing any plans on behalf of their

¹⁵³ Kazis, *supra* note 145.

¹⁵⁴ Kazis, *supra* note 145.

¹⁵⁵ Kazis, *supra* note 145.

¹⁵⁶ Andy Newman, *N.Y.C.’s Plan to Move Homeless People From Hotels Is Blocked by a Judge*, N.Y. Times (Jul. 13, 2021), <https://www.nytimes.com/2021/07/13/nyregion/homeless-hotels-protests.html>.

¹⁵⁷ *Id.*

¹⁵⁸ Richling, *supra* note 59.

constituents.¹⁵⁹ New York City can potentially address this issue by spreading the converted hotels throughout the five boroughs rather than focusing them in Manhattan or another part of the City. By spreading the hotels that house the homeless population rather than concentrating them in one area, the City can help ensure that one neighborhood does not bear the “burden” of a large portion of the homeless, while also allowing housing location options for the homeless

C. Moving Forward

There are several options that New York City can take to implement a hotel-to-housing program of their own. One option is for New York City to pass legislation similar to the Housing Our Neighbors with Dignity Act.¹⁶⁰ This new legislation can work in conjunction with the program run by New York State and can create even more housing for the needy.¹⁶¹ The situation would have the benefit of not being fully dependent on the state run program. Instead, this will allow for both programs to independently provide housing within New York City, which in turn would mean that more homeless individuals would have access to permanent housing than if New York City strictly depended on funding from New York State through the Bill.

Another option that New York City has is the option to do more, rather than simply relying on legislation like the Bill. Using the Bill as a guide for what the City can do with its funding, it can go a step further and make changes to its zoning law.¹⁶² By changing its zoning laws, New York City will ensure that more unused offices and hotels will be eligible for conversion into

¹⁵⁹ See Andy Newman, *N.Y.C.’s Plan to Move Homeless People From Hotels Is Blocked by a Judge*, N.Y. Times (Jul. 13, 2021), <https://www.nytimes.com/2021/07/13/nyregion/homeless-hotels-protests.html> (Briefly discusses how certain politicians pushed back on the de Blasio administration’s decision to house the homeless in hotels due to their constituents concern for public safety after a number of random attacks by homeless people around New York).

¹⁶⁰ See S.B. 5257, 244th State S., Reg. Sess. (N.Y. 2021).

¹⁶¹ *Id.*

¹⁶² See Eric Adams, 100 Step Plan (2021) https://ericadams2021.com/wp-content/uploads/2021/06/EricAdams2021_100Step_Plan.pdf.

permanent housing.¹⁶³ Rather than excluding a number of hotels and office buildings because they were built in areas designated for manufacturing, New York City can change the law to allow for permanent housing in manufacturing areas.¹⁶⁴ In doing this, New York City will be able to create more homes than they would if they enacted a program under the current zoning restrictions.¹⁶⁵ This kind of action would also ensure that hotels and offices that are at risk of closing due to COVID-19 will not go empty just because of their location.

The idea that New York City should make changes to their zoning laws in conjunction with a hotel-to-housing program has recently been endorsed by Mayor-Elect Eric Adams.¹⁶⁶ Mayor-Elect Adams believes that the Bill will not provide enough for New York City to reach its goal of 25,000 new units.¹⁶⁷ Adams cites the high average price of purchasing a hotel in New York City, \$275,000 per unit.¹⁶⁸ Adams does, however, believe that purchasing hotel rooms and converting them to permanent housing is cheaper than new construction by two-thirds.¹⁶⁹ Although detractors point to the pricey nature of purchasing hotel rooms and converting them into housing, Adams points to the fact that it can cost as much as \$500,000 to build a new unit, while an old unit can be purchased and converted for two-thirds less, and in one-third the time.¹⁷⁰

Detractors have also pointed to the fact that they believe the creation of housing out of hotels and offices will destroy jobs in those industries.¹⁷¹ Examples of these jobs are chefs and maintenance workers, many of whom work for the hotels that would be purchased and turned into

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Fola Akinnibi, *Eric Adams Pitches 25,000 Hotel Rooms as Affordable Housing Solution*, Bloomberg (Sept. 20, 2021), <https://www.bloomberg.com/news/articles/2021-09-20/eric-adams-wants-to-turn-25-000-hotel-rooms-to-housing>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Akinnibi, *supra* note 120.

housing complexes. Nevertheless, many of those who work these jobs believe that a program such as this would be a long-term positive for them, rather than a negative.¹⁷² Specifically, the New York Hotel Trades Council, a New York union which represents 40,000 hotel employees, endorsed the stance taken by Eric Adams—purchase hotels for conversion into housing.¹⁷³ The president of the union said, “Eric Adams’ support for converting failed hotel properties into affordable housing supply is exactly the kind of common sense approach we need to better protect the safety of our communities and economic resurgence of the hotel industry.”¹⁷⁴

The fact that Mayor-Elect Adams wishes to implement a plan to convert hotels into housing provides hope that New York City will be able to carve out a plan to provide housing for the needy. It must be said, however, that there are real obstacles that Adams will have to overcome for his plan, or any plan that will enable the conversion of hotels to housing. The zoning laws remain an issue, even though Adams has expressed the desire to change the them to allow for a larger availability of hotels to be converted.¹⁷⁵ But, even though New York City may change their zoning laws with the intention of converting hotels, any changes will not overrule the laws in place at the state level.¹⁷⁶ Changes will need to be made in both New York City and Albany to the zoning laws to allow for the largest number of hotels to be acquired.¹⁷⁷ If Mayor-Elect Adams is to move forward with his plan exactly as is, he will have numerous obstacles to overcome, but if he is successful, he will provide housing for a large portion of the homeless population in New York City.

¹⁷² Akinnibi, *supra* note 120.

¹⁷³ Akinnibi, *supra* note 120.

¹⁷⁴ Akinnibi, *supra* note 120.

¹⁷⁵ David Cruz, *Eric Adams’ Plan to Create 25,000 Supportive Housing Units is Doable, But Hurdles Lie Ahead, Say Experts*, Gothamist (Sept. 25, 2021), <https://gothamist.com/news/eric-adams-plan-create-25000-supportive-housing-units-doable-hurdles-lie-ahead-say-experts>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

The best course for New York City, soon to be under the leadership of Mayor-Elect Adams, is to look to both the Bill put into place by New York and California's Project Homekey. New York City can analyze both programs, looking to see the average cost of purchase for hotels, the cost of conversion, the crime rate of the area after conversion, and the ways in which the communities respond. After doing that, New York City can work closely with New York State to ensure that the program that they will enact will work seamlessly with the Bill rather than in competition with it, ensuring for the most funding available to enter New York City. New York City should also focus on adjusting their zoning laws, which will not restrict any program to a small number of hotels, or certain areas of the City. By making meaningful changes to the zoning law, such as allowing for hotels in manufacturing zones to be converted to housing, New York City will thus ensure that the largest number of homeless individuals possible will be provided homes. By taking the best parts of the California and New York State programs, such as their funding and examples of how rooms are converted, paired with legislative action to update the zoning laws, New York City can provide meaningful change and prove to be an example for other cities when it comes to providing housing for those in need.

IV. Conclusion

This Comment argues that New York City should enact legislation similar to New York's Housing Our Neighbors with Dignity Act and California's Project Homekey. This comment discussed both programs, the legislation that created them, and analyzed their pros and cons. By taking the best parts from each program, and adding additional factors, such as the adjustment of current zoning laws, New York City can implement a program that will allow for the permanent housing of the City's most vulnerable population, while also putting empty hotels and office buildings to use. This kind of legislation would not only assist the homeless population of the

City in having permanent housing and staying safe from COVID-19 but would also allow the City return to pre-pandemic normalcy.