

Testimony of
Coalition for the Homeless
and
The Legal Aid Society

on

**The City of New York's Use of Apartments as Temporary Shelter through the
Scatter-Site/Cluster-Site Shelter Program**

Presented before

The New York City Council
Committee on General Welfare

Patrick Markee
Senior Policy Analyst
Coalition for the Homeless

Judith Goldiner
Attorney in Charge, Civil Law Reform
The Legal Aid Society

October 10, 2013

Coalition for the Homeless and The Legal Aid Society welcome this opportunity to testify before the New York City Council about the City of New York's misguided and expanding use of apartments and apartment buildings as costly temporary shelter through the scatter-site/cluster-site shelter program.

About the Coalition and The Legal Aid Society

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which now continues past its third decade. The Coalition also protects the rights of homeless people through litigation around the right to emergency shelter, the right to vote, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates twelve direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers, and demonstrate effective, long-term solutions. These programs include supportive housing for families and individuals living with AIDS, job-training for homeless and formerly-homeless women, rental assistance which provides rent subsidies and support services to help working homeless individuals rent private-market apartments, and permanent housing for formerly-homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen distributes 900 nutritious meals each night to street homeless and hungry New Yorkers. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with eviction prevention assistance, client advocacy, referrals for shelter and emergency food programs, and assistance with public benefits.

The Coalition also represents homeless men and women as plaintiffs in Callahan v. Carey and Eldredge v. Koch. In 1981 the City and State entered into a consent decree in Callahan in which it was agreed that, "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The Eldredge case extended this legal requirement to homeless single women. The Callahan consent decree and the Eldredge case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 1,100 of the brightest legal minds. These 1,100 Legal Aid Society lawyers work with some 700 social workers, investigators, paralegals and support and administrative staff. Through a

network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some two million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the Callahan and Eldredge cases. The Legal Aid Society is also counsel in the McCain/Boston litigation in which a final judgment requires the provision of lawful shelter to homeless families.

The City's Misguided and Expanding Use of Apartment Buildings as Costly Temporary Shelter

The City of New York's use of apartment buildings as costly temporary shelter is deeply misguided and, fundamentally, illustrates the disastrous failure of the current administration's approach to the problem of homelessness. Simply put, under the failed scatter-site/cluster-site shelter model, the City favors costly temporary shelter over cheaper permanent housing, ultimately contributing to rising and all-time record homelessness in New York City.

Fortunately, the next New York City mayor can abandon this failed approach; resume the use of targeted permanent housing resources to help homeless children and families leave the shelter system; address the problems of hazardous conditions in many scatter-site/cluster-site units; and ultimately end the use of apartments as temporary shelter.

Background: New York City's Historic Homelessness Crisis

As this committee knows, New York City is in the midst of an historic homelessness crisis. As the attached charts show, there are currently well over 51,000 homeless New Yorkers bedding down each night in the municipal homeless shelter system, including more than 12,000 families and 21,000 children. These are the highest numbers since the City began keeping records three decades ago, and the largest number of New Yorkers experiencing homelessness each night since the Great Depression of the 1930s.

Since 2002, the homeless shelter population has increased by 65 percent, and the number of homeless families has risen by a remarkable 76 percent. Homeless families now

comprise nearly four-fifths of the NYC homeless shelter population, compared to two-thirds in the 1980s. Thus, homeless families are the fastest growing segment of the homeless population.

There are two major causes of the current homelessness crisis. First, New York City's housing affordability gap has widened significantly in recent years, in part due to the lingering economic downturn and high unemployment and in part due to soaring rental housing costs. A recent report by New York University Law School's Furman Center for Real Estate and Urban Policy, based on U.S. Census Bureau data, found that:

Between 2007 and 2011, a period when house prices citywide fell by 20 percent, the median monthly gross rent citywide increased by 8.5 percent.... During that same period, median household income decreased 6.8 percent....

New York City renters continued to face severe affordability challenges in 2012, with stagnant incomes and rising rents. From 2007 to 2011, median rent citywide increased by 8.5 percent. This same period saw real household income drop sharply. As a result, between 2007 and 2011, median rent burden increased; by 2011, 24 percent of New Yorkers were moderately rent burdened and 31 percent of New Yorkers were severely rent burdened.

Rental housing has become increasingly expensive in the city, and increasingly unaffordable to many tenants. The median contract rent (i.e., the amount agreed to in the lease, which may or may not include utilities) paid by New York City's tenants rose steadily over the past decade and has continued to rise in recent years. Between 2007 and 2011, a period when house prices citywide fell by 20 percent, the median monthly rent citywide increased in real terms (in constant 2012 dollars) by 8.5 percent, from \$999 to \$1,084.

Furthermore, the rents paid by households in occupied units may mask the higher asking rents in vacant units. Even for market-rate units, landlords often raise rents more substantially when a unit turns over. ...[H]ouseholds who have recently moved pay higher rents than those who have lived in their current units longer. In addition, the median gross rent paid by recent movers has increased more than the median rent paid by renters as a whole.

Between 2008 and 2011, however, median gross rent continued to rise, but real household income dropped sharply. As a result, median gross rent increased 10 percent between 2005 and 2011, while median household income actually decreased. As a result of the divergent trends in income and rent since the beginning of the recession, New Yorkers' median rent burden increased from 29.9 percent in 2007 to 32.5 percent in 2011.

The overall rent burden masks the tremendous rent burdens faced by low-income households. ...In New York City, 78 percent of low-income renter households were rent burdened....[Emphasis added.]

The second major cause of all-time record NYC homelessness is the failed policies of the current administration. The most disastrous of these policies was the administration's move

in 2005 to eliminate priority use of Federal housing programs (public housing and Section 8 vouchers) for homeless children and families; the replacement of those proven and successful Federal programs with deeply-flawed temporary rent subsidy programs; and ultimately the termination of all housing assistance programs for homeless families in 2011.

Simply put, against the backdrop of worsening affordability problems and rising unemployment in New York City, the current administration's decision to take away permanent housing resources from homeless children and families had the predictable result: longer shelter stays, more and more families making repeated trips through the shelter system, and ultimately a rising and record-high homeless population.

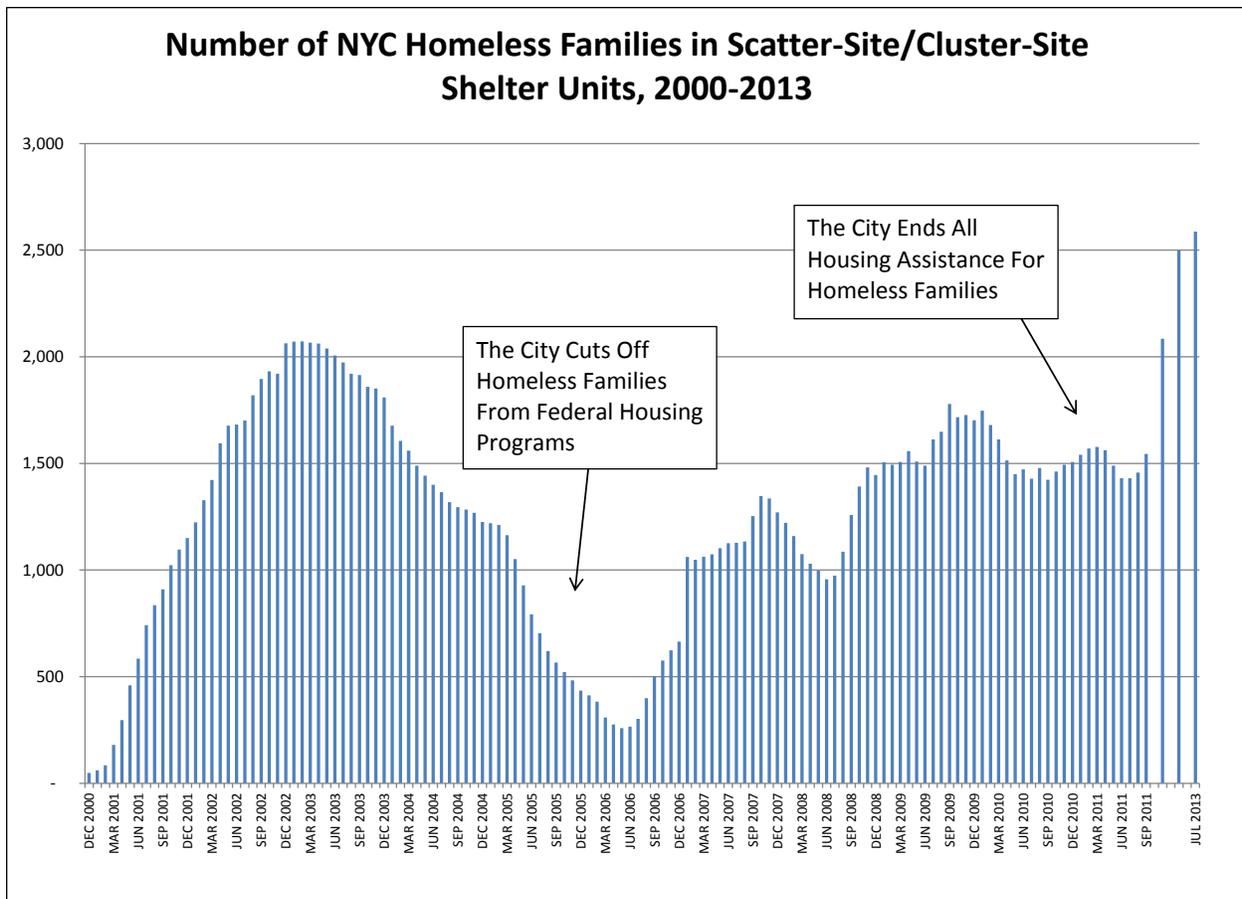
As the number of homeless families in New York City grew dramatically in recent years, the current mayoral administration rejected every entreaty to restore permanent housing resources to help homeless children and families leave the expanding shelter system and secure stable housing. The New York City Council, the Cuomo administration, and the New York State Assembly all advanced proposals to restore permanent housing assistance to homeless families, and the City rejected every proposal.

The administration did this despite the fact that academic researchers, budget analysts, policy experts, and advocates have concluded overwhelmingly that permanent housing assistance both reduces the number of homeless families and saves taxpayer dollars spent on the expensive shelter system. Indeed, as this committee knows, a June 2012 analysis by the NYC Independent Budget Office (IBO) of the City Council proposal from earlier that year concluded:

IBO found that implementing the policy outlined in the City Council proposal would result in a net reduction in the family shelter census, despite a decline in the number of families that would leave shelter on their own without a subsidy and a slight increase in the number of families entering the shelter system....

IBO found that savings would be proportional to the number of placements made. Family shelter costs would be reduced by a total of \$14.7 million with 2,500 placements and \$29.4 million with 5,000 placements. With family shelter funding shared between the federal, state, and city governments, slightly more than a third of the reduction, about \$5.5 million and \$11.0 million, respectively, would reflect savings for the city. [Emphasis added.]

Instead of embracing cost-effective policies to reduce homelessness, the current administration chose to expand the shelter system. And to increase family shelter capacity, the primary mechanism the administration used was a dramatic expansion of the misguided scatter-site/cluster-site shelter model. As the chart here shows, since March 2011, when the administration eliminated all housing assistance for homeless families, the number families sleeping each night in scatter-site/cluster-site shelter units has increased by a remarkable 64 percent from 1,577 to 2,587 families. Thus, the administration's primary response to record and rising family homelessness was to use more and more apartments as costly temporary shelter.



Major Problems with the Scatter-Site/Cluster-Site Shelter Model

The City's controversial use of apartment buildings as temporary shelter began in the last year of the previous mayoral administration, but was dramatically expanded under the current administration. What was initially called the scatter-site shelter program, and now is called the cluster-site shelter program, places homeless families – primarily families with children – into mostly rent-stabilized apartments in residential buildings. The City pays an exorbitant rate for this model of shelter – more than \$3,000/month or \$36,000/year – which is far more than the rent on these apartments for lease-holding tenants. Thus the program provides enormous financial incentives for owners of the apartment buildings to displace lease-holding tenants in order to engage in lucrative deals with the City and its intermediary contractors.

Following are some of the most significant problems involved in the scatter-site/cluster-site shelter model.

1. It favors costly temporary shelter over cheaper permanent housing: As noted above, the fundamental flaw of the scatter-site/cluster-site model is that it pays exorbitant rates – more than \$3,000/month – for apartments that would rent for a fraction of that cost. Put another way, the annual cost of sheltering a homeless family in New York City is around three times the annual cost of a federal Section 8 voucher for the same family.

2. It removes scarce affordable rental housing from New York City's shrinking stock of affordable rental housing: As noted above, New York City's housing affordability problems have worsened significantly in recent years, one of the major causes of all-time record homelessness. Nonetheless, the current administration has expanded a program that literally removes low- and modest-rent apartments from the already-diminishing stock of available, affordable rental housing. Indeed, currently the City is using some 2,600 low- and moderate-rent apartments as temporary shelter instead of using them as permanent, affordable housing.

3. It creates perverse yet powerful incentives for building owners to displace lease-holding tenants in favor of lucrative shelter deals with the City: As WNYC News reported on August 12th (see attachment), the owners of some apartment buildings used by the City as temporary shelter are systematically displacing and forcing out long-term, lease-holding tenants:

Desperate for shelter space, New York City has been paying landlords in low income communities much more for their apartments than they could get in the private market. The result? Landlords are pushing out paying tenants to make room for the homeless.

Melvina McMillan, a 40-year-old Flatbush woman, is one of those tenants now facing eviction....

"We used to have like a lot of tenants. There's 83 apartments," she said, describing her six-story building. Now roughly a dozen neighbors are hanging on....

[T]he demand for shelter is high - creating the curious phenomenon of the city paying private landlords such high prices for lousy housing that it's in the landlords' interest to push out market-rate tenants like Melvina McMillan. The city rate in its deals with these landlords is typically about \$3,000 a month.

The problems cited in the WNYC news report are hardly new and hardly unique to one building. Since the inception of the scatter-site/cluster-site program more than a decade ago, there have been widespread reports of tenant harassment and displacement, some of it documented in a 2004 report by the Urban Justice Center. In addition, a March 4, 2009, New York Times article (see attachment) documented similar complaints from tenants:

But while rent-paying tenants in the buildings are not subject to the curfew or sign-in requirements, many complain that their landlords have been pushing them out to make way for homeless families because the cluster-site program pays far more...for the units, many of which are rent-stabilized.... Many say they have been intimidated with repeated notices regarding rent or other matters, and that they were never notified of the impending changes in their buildings (the city says it notifies residents only if more than half the building will be used).

4. It uses apartment buildings with hazardous housing conditions and numerous code violations: Also since the program's inception, there have widespread reports of hazardous conditions and multiple housing code violations in many scatter-site/cluster-site buildings. Indeed, the WNYC news report documented many such problems:

The sticky traps in the kitchen of her three-bedroom apartment at 60 Clarkson Avenue are covered in dead roaches. The insects even make their way into her freezer. The whole building is dirty and in need of repair. The elevators smell like urine, and the trash rooms in the hall overflow with garbage. [Melvina] McMillan, who pays \$700 a month from her pocket, is one of the last regular tenants left, and she's determined to stay in her apartment....

The building has 215 housing code violations. The more serious ones are for things like mold, water leaks, broken plaster and roach infestations. Tenants also complain that the building is chaotic and that bloody fights break out frequently. The city said a corrective action plan had been put in place for the building.

Similar reports have been commonplace since even before a 2003 audit by City Comptroller Bill Thompson, which documented many hazardous conditions in scatter-site shelter units. Following are two recent reports from clients of Coalition for the Homeless and the Legal Aid Society:

- A Coalition for the Homeless client, Ms. S. and her family, recently documented significant code violations and hazardous conditions at their "cluster-site" shelter unit located at 1234 Shakespeare Avenue in the Bronx, including major leaks from the ceiling, broken window frames, vermin infestation, and damage to walls and doorways (please see photos attached). The 38-unit building has been cited by City housing inspectors with 59 housing code violations, including 26 "C" class violations (the most serious), including lead paint hazards and missing window guards (see record of housing code violations attached).
- The V. family was given shelter at a scatter-site placement in the Bronx in April of this year. The family includes Mr. V. and his two teenage daughters. On the first night the family slept there, they killed multiple water bugs and heard rats running around in the walls. His daughters were too scared to sleep in their own room, so the entire family slept and continues to sleep in one room (the daughters sleep on mattresses on the floor). Mr. V. does not have a bed, just a futon that hurts his back. When the Legal Aid Society contacted the City to get him a bed, they told us that the futon was a bed and there was nothing they could do. On the second night the family was there, they had no water. The family did not meet with a caseworker until after they had been there for almost a week. At that point, they complained about the conditions but nothing was done. The family reported seeing rat droppings in the unit. There was a plant-like fungus growing in the bathroom. When Mr. V. attempted to knock it down, a black slime oozed out. There was also a leak near the light fixture. The water bug infestation was so bad that they had to shake out their towels every morning before using them. After Legal Aid intervention, the City agreed to exterminate. However, the family still saw rats in the stove and one ran into the bedroom. Mr. V.'s daughters continue to sleep on the mattresses on the floor of the living room because they are too scared of the rats in the bedroom. They continue to have difficulty getting in contact with their caseworker, and they report that there is no security in the building and the conditions remain problematic.

5. Administration officials promised to end the program and have repeatedly broken that promise: At a May 19, 2003, hearing before this committee, Linda Gibbs, then the City's homeless services commissioner, promised to phase out the scatter-site shelter program within three years. (See May 20, 2003, New York Times article attached.) Later that year, in response to the City Comptroller audit noted above, Gibbs again told the New York Times that her goal was to phase out the program (see October 3, 2003, article attached). And the City did begin to reduce the number of scatter-site units, from more than 2,000 units in 2003 to only a few hundred in 2005. However, as noted above, that year the administration also cut off homeless families from access to federal housing programs like public housing, and soon afterward the homeless family shelter population began to rise dramatically – and so did the number of scatter-site units.

Then, in a remarkably cynical move, in 2009 the administration simply re-named the program the “cluster-site” program, making virtually no changes whatsoever to the program. And, as noted above, since 2011 the number of families in “cluster-site” units has increased by a remarkable 64 percent.

Moving Forward: The Next Mayor Must End the Use of Apartments as Temporary Shelter and Target Permanent Housing Resources to Homeless Families

New York City's next mayor, in confronting an historic homelessness crisis, will be able to build on a wealth of research and experience to implement cost-effective policies which can reduce the number of homeless children and families and shrink the size of the costly shelter system, beginning by phasing out and ultimately ending the use of apartments as temporary shelter.

Following are highlights of the steps the next NYC mayor must take to address the problem of record family homelessness:

1. Utilize existing Federal and City housing resources to move homeless families and individuals from the shelter system into permanent housing:
 - Resume priority referrals of at least 2,500 eligible homeless households per year to the New York City Housing Authority (NYCHA) public housing waiting list.
 - Resume referrals of eligible homeless households to Section 8 voucher waiting lists, such that homeless households can obtain at least one of every three available vouchers.
 - Reinstate the NYCHA waiting list priority status previously granted to homeless applicants for both the public housing and Section 8 voucher programs.
 - Target to homeless families and individuals at least one of every five vacancies in existing housing units assisted by the NYC Department of Housing Preservation and Development.
2. Work with the State to create an effective State-City rental assistance program for homeless New Yorkers, modeled on the proven federal Section 8 voucher program, to supplement existing Federal and City housing resources.
3. Ensure that a significant share of new City-subsidized housing is targeted to homeless households and to the poorest New Yorkers.

In the near term, however, the current administration (as well as the next administration) must address and remedy the many hazardous conditions in scatter-site/cluster-site shelter units. The risk to vulnerable children and adults is too great to wait for a new mayor to protect the health and wellbeing of homeless families.

Thank you for the opportunity to share this testimony. And, as always, we look forward to working with the committee and the City Council in the coming months and years on efforts to reduce New York City's homeless population.