
Volume 17 | Issue 1

Winter 2013

Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis

Brian J. Sullivan
MFY Legal Services, Inc.

Jonathan Burke
Community Legal Aid

Follow this and additional works at: <https://academicworks.cuny.edu/clr>



Part of the [Housing Law Commons](#)

Recommended Citation

Brian J. Sullivan & Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. Rev. 113 (2013).
Available at: 10.31641/clr170104

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis

Acknowledgements

Brian J. Sullivan thanks Jon Burke, his co-author; to his colleagues at MFY Legal Services, in particular Chris Schwartz, Elise Brown, and Jeanette Zelhof for their editorial input; and to his wife Erica Chutuape. Jon Burke thanks Brian Sullivan, his co-author; Christopher Schwartz, Supervising Attorney at the SRO Law Project; and Lindsay Manning, his wife.

SINGLE-ROOM OCCUPANCY HOUSING IN NEW YORK CITY: THE ORIGINS AND DIMENSIONS OF A CRISIS

Brian J. Sullivan[†]
Jonathan Burke^{††}

CONTENTS

INTRODUCTION	113
I. THE BASICS OF SRO HOUSING	115
II. THE NEED FOR SRO HOUSING	117
III. THE DESTRUCTION OF SRO HOUSING	119
A. <i>Rent Regulation</i>	125
B. <i>Certificate of No Harassment (CONH)</i>	128
C. <i>Homelessness Policy</i>	129
IV. NEW YORK CITY'S PERMANENT HOUSING CRISIS	132
V. SROs AND THE CRISIS	136
VI. BRINGING SROs BACK	138
A. <i>Lift the Ban on the Construction of New SRO Units</i> . .	139
B. <i>Preserve Existing Units</i>	140
CONCLUSION	143

INTRODUCTION

Single-room occupancy (SRO) housing once dominated the New York City housing market. As recently as the mid-twentieth century, there were hundreds of thousands of SROs spread throughout the City. Today, following a half-century of concerted attacks by City government, SROs constitute a fraction of a single percent of New York's rental housing stock.¹

[†] Senior Staff Attorney, MFY Legal Services, Inc., SRO Law Project. J.D., Georgetown University Law Center. Thank you to Jon Burke, my co-author; to my colleagues at MFY Legal Services, in particular Chris Schwartz, Elise Brown, and Jeanette Zehlf for their editorial input; and to my wife Erica Chutuape.

^{††} Staff Attorney, Community Legal Aid. J.D., New York University School of Law. Thanks to Brian Sullivan, my co-author; Christopher Schwartz, Supervising Attorney at the SRO Law Project; and Lindsay Manning, my wife.

¹ In the mid-twentieth century there were approximately 200,000 SRO units in New York City. See Malcolm Gladwell, *N.Y. Hopes to Help Homeless by Reviving Single Room Occupancy Hotels*, L.A. TIMES (Apr. 25, 1993), http://articles.latimes.com/1993-04-25/news/mn-27098_1_single-room-occupancy-hotels. By 1993 there were approximately 46,744 SRO units. ANTHONY J. BLACKBURN, SINGLE ROOM LIVING IN NEW YORK CITY 15 (1996). By 2002 this number had dropped to 35,227. See U.S. CENSUS BUREAU, SER. IA, TBL. 15, NEW YORK CITY HOUSING AND VACANCY SURVEY (2002), <http://www>.

The City's decimation of SRO housing has amplified the ongoing housing crisis, constricting the low-income housing market and contributing to the ballooning homelessness problem. The overall effect on poor and working-class residents has been tragic.

The current dearth of SRO units is not the inevitable result of impersonal or unalterable market forces. City policy, acting dynamically with market forces, is responsible for the crisis, and a change in policy can undo the damage. If City and State are serious about confronting New York City's housing crisis, existing SRO policies need to be changed and their legacy confronted. City and State must take steps to permit and encourage the expansion of the SRO housing stock. This effort will require stemming the conversion of existing SROs to other (higher profit) uses and creating legal avenues for the construction or reconversion of additional units.

This Article will analyze the role of SROs in the City's housing market. We will discuss the importance of SRO housing and the history of SRO policy. We will briefly describe the nature of the City's housing crisis and the role SROs play in that crisis. Finally, we will make several suggestions as to how SRO policies should be changed to alleviate the impact of the housing crisis on low-income City residents.

census.gov/housing/nychvs/data/2002/s1at15.html. See also Corey Kilgannon, *Be It Ever So Humble. O.K., It's Shabby*, N.Y. TIMES (Aug. 25, 2005), <http://www.nytimes.com/2005/08/25/nyregion/25hotel.html>. The best available census data suggests that between 2000 and 2010 the number of SROs ranged between approximately 25,000 and 35,000 units. See U.S. CENSUS BUREAU, SER. IA, TBL. 15, 2005 NEW YORK CITY HOUSING AND VACANCY SURVEY (2005), <http://www.census.gov/housing/nychvs/data/2005/s1at15.html>; U.S. CENSUS BUREAU, SER. IA, TBL. 15, 2008 NEW YORK CITY HOUSING AND VACANCY SURVEY (2008), <http://www.census.gov/housing/nychvs/data/2008/ser1a.html> (follow link at "New York City Structure Class"); U.S. CENSUS BUREAU, SER. IA, TBL. 15, 2011 NEW YORK CITY HOUSING AND VACANCY SURVEY (2011), <http://www.census.gov/housing/nychvs/data/2011/ser1a.html> (follow link at "New York City Structure Class"). Current estimates used by advocates and government agencies range from approximately 15,000 to 35,000 units. See, e.g., GODDARD RIVERSIDE WEST SIDE SRO PROJECT, Testimony by Tenant Organizer Yarrow Willman-Cole and Former Supervisor of Organizing Terry Poe (May 2, 2008) (on file with co-authors). The variance is at least in part attributable to the fact that estimates of the number of SROs frequently measure different things, such as the number of occupied or habitable units versus the number of units registered with the State pursuant to the rent regulation laws. Overall, there are more than 2.1 million rental units (not owner occupied) in New York City. FURMAN CTR. FOR REAL ESTATE & URBAN POL'Y, RENT STABILIZATION IN NEW YORK CITY 3 (2012) [hereinafter N.Y.C. RENT STABILIZATION], available at http://furmancenter.org/files/HVS_Rent_Stabilization_fact_sheet_FINAL_4.pdf.

I. THE BASICS OF SRO HOUSING

*“I have principally, over my lunch break, gone to the books in order to learn how you become a tenant in a stabilized hotel [SRO]. And the law in the hotel context is very, very different from the law in the apartment context.”*²

SROs are perhaps the most basic form of housing available in New York City.³ Generally, an SRO is a “unit with one or two rooms . . . lacking complete bathroom and/or kitchen facilities for the exclusive use of the tenant.”⁴ Most SRO tenants live in single rooms and share bathroom facilities located in the common areas of the building; lack of access to kitchen facilities of any sort is common.

Beyond these basic similarities, SROs vary significantly.⁵ They exist in hotels, rooming houses, apartment buildings, lodging houses, and so forth.⁶ Some SROs, such as Bowery flophouses, are simply beds in a cubicle with a wire mesh ceiling, while others more closely resemble traditional hotel rooms with linen and other services (though this form of SRO is very rare). Some appear as small studios without private bathrooms. City and State laws do a poor job of coherently dealing with this heterogeneity.⁷

SRO units are subject to rent stabilization if they meet certain

² 1234 Broadway v. Kruttack, No. L&T 94541/06, slip. op. at 3 (N.Y. Civ. Ct. Hous. Part Jan. 25, 2008) (Schneider, J.).

³ Even the most rudimentary SRO room—four plywood walls and a chicken wire ceiling—constitute dwelling units that must be maintained by property owners in a habitable condition. See N.Y.C. ADMIN. CODE §§ 27-2004(3), 27-2005 (2013).

⁴ BLACKBURN, *supra* note 1, at 13.

⁵ *The New York Times* has disparagingly characterized SRO heterogeneity as follows: “They range from the squalid, degrading and dangerous at the bottom to the spare, poor but reasonably clean and safe at the top.” Richard Bernstein, *At S.R.O.’s, Quality Varies Yet Squalor Is Common*, N.Y. TIMES (June 12, 1994), <http://www.nytimes.com/1994/06/12/nyregion/at-sro-s-quality-varies-yet-squalor-is-common.html>.

⁶ SROs may exist in both Class A (permanent occupancy) and Class B (temporary occupancy) multiple dwellings. See N.Y. MULT. DWELL. LAW § 4(7)–(9) (McKinney 2013).

⁷ There is no common definition of *SRO* in the basic housing laws. In the Multiple Dwelling Law (MDL) and Housing Maintenance Code (HMC), “Single Room Occupancy” is a form of occupancy, not a type of unit:

[T]he occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment.

N.Y. MULT. DWELL. LAW § 4(16). See also N.Y.C. ADMIN. CODE § 27-2004(17) (2013). Subject to several exceptions, the HMC and MDL use *rooming unit* in place of *SRO*. The Rent Stabilization Code (RSC) uses an entirely different set of terms, which are inconsistent with the MDL and HMC, to refer to SROs. See, e.g., N.Y. COMP. CODES R. & REGS. tit. 9, § 2521.3(c) (2013) (suggesting that “single room occupancy facilities” may be defined as “hotels”).

criteria.⁸ SRO units located within hotels⁹ are regulated if the rent was less than \$350 per month, or \$88 per week, on May 31, 1968; if the hotel was built before July 1, 1969; and if the hotel contains six or more units.¹⁰ All other SRO units are subject to regulation if located in a building containing six or more units that was constructed prior to January 1, 1974.¹¹ The New York State Division of Housing and Community Renewal (DHCR) together with New York State Courts, have the authority to determine, upon application, whether an SRO unit is subject to rent stabilization.¹²

In recognition of the unique nature of SRO housing, the rules governing SRO tenancies are “very different” from those governing

⁸ N.Y. UNCONSOL. LAW § 26-506(a) (McKinney 2013); N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.11. The rent regulatory status of SROs was, for some time, contested. The issue was not settled with any degree of certainty until the late 1990s. City and State enacted various rent regulation laws between 1946 and 1974. In 1981, the Court of Appeals held that (most) SROs were not covered by these laws and thus they were not regulated. *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 76–80 (1981) (applying holding to Class B multiple dwellings). The New York State legislature almost immediately passed a law intended to reverse the decision. *See Tegreh Realty Corp. v. Joyce*, 451 N.Y.S.2d 99, 100 (1st Dep’t 1982). Then, in 1997, the Court of Appeals ruled that even the most basic SROs were regulated. *See Gracecor Realty Co. v. Hargrove*, 90 N.Y.2d 350, 354 (1997) (holding that a “partitioned space” in a lodging house was subject to rent stabilization).

⁹ *Hotel* is not defined in the Rent Stabilization Law (RSL) except in the following passing statement:

[A]ny Class A multiple dwelling . . . commonly regarded as a hotel, transient hotel or residential hotel, and which customarily provides hotel service such as maid service, furnishings and laundering of linen, telephone and bell boy service, secretarial or desk service and use and upkeep of furniture and fixtures[.]

N.Y. UNCONSOL. LAW § 26-504(a)(1)(e). Note that all Class B units are exempt from this definition. The RSC expands *hotel* to include “[a]ny class A or Class B [unit] which provides all of the services included in the rent as set forth in section 2521.3 of this Title.” *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.6(b). The services enumerated in section 2521.3 are “maid service . . . linen service, furniture and furnishings . . . and [a] lobby staffed 24 hours a day, seven days a week.” N.Y. COMP. CODES R. & REGS. tit. 9, § 2521.3(a). Subsection (c) further complicates matters by providing that SRO facilities “such as single-room occupancy hotels or rooming houses . . . shall be included in the definition of hotel as set forth in section 2520.6(b) . . . except that the four minimum services enumerated in such section shall not be required to be provided . . .” N.Y. COMP. CODES R. & REGS. tit. 9, § 2521.3(c).

¹⁰ N.Y. UNCONSOL. LAW § 26-506(a); N.Y. RENT STAB. § 2520.11(g) (McKinney 2013).

¹¹ N.Y. UNCONSOL. LAW § 8625(a)(4)–(a)(5) (McKinney 2013); *see also* N.Y. UNCONSOL. LAW § 26-504(b).

¹² *See* N.Y. UNCONSOL. LAW § 26-506(b); *see generally* *Gracecor*, 90 N.Y.2d 350. *See also* Marti Weithman & Gerald Lebovits, *Single Room Occupancy Law in New York City*, 36 N.Y. REAL PROP. L.J. 21 (2008) (discussing SRO law).

apartments.¹³ An individual residing in an SRO may become a stabilized tenant—referred to as a *permanent tenant*—by requesting a six month lease or continuously residing in the building as her permanent residence for six months.¹⁴ All SRO residents who are not permanent tenants are classified as “hotel occupant[s]” and have a protected right to become a permanent tenant.¹⁵ The New York City Housing Court has gone so far as to hold that an individual need not be a legal occupant of an SRO unit in order to become a permanent tenant.¹⁶

II. THE NEED FOR SRO HOUSING

*“Inside New York City’s remaining . . . units of single-room-occupancy housing—often criticized for their squalor—are some of the city’s most vulnerable people. The poor and the elderly mix with the crippled and the alcoholic, the drug-addicted and the mentally ill, each holding on to a fragile independence. . . . Until a decade ago the hotels were hardly considered a valuable resource. . . . But their vital role as shelters for the poor [has become] evident[.]”*¹⁷

SROs are housing of last resort—the safety net at the bottom of the market providing shelter for the poor and near-poor. Rents for SRO units are lower than those for any other form of unsubsidized housing. The median rent for an SRO unit is between \$450 and \$705 per month.¹⁸ By comparison, the median

¹³ 1234 Broadway v. Kruttack, No. L&T 94541/06, slip. op. at 3 (N.Y. Civ. Ct. Hous. Part Jan. 25, 2008) (Schneider, J.).

¹⁴ N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.6(j), (m); *see also id.* § 2522.5(a)(2) (stipulating that a hotel occupant renting a room who has never had a lease may request a lease and then become a permanent tenant for a term of at least six months, but the lease need not be renewed).

¹⁵ *Id.* § 2520.6(m).

¹⁶ *See Kruttack*, slip. op. at 6; *but see* 1234 Broadway LLC v. Pou Long Chen, 938 N.Y.S.2d 228 (Table), 2011 WL 4026908 (App. Term 1st Dep’t Sept. 9, 2011) (holding that someone who came into possession of an SRO unit through an illicit arrangement with a long-absent prime tenant and who had in no way communicated with, made herself known to, or received permission from the landlord was not entitled to possession of the SRO unit).

¹⁷ Suzanne Daley, *Court Ruling Brings Fear to S.R.O. Hotel Rooms*, N.Y. TIMES (July 10, 1989), <http://www.nytimes.com/1989/07/10/nyregion/court-ruling-brings-fear-to-sro-hotel-rooms.html>.

¹⁸ *See* Memorandum from N.Y.C. Rent Guidelines Board for All Board Members 4 (June 12, 2012) (on file with co-authors). These figures are based on testimony offered to the Rent Guidelines Board by Goddard-Riverside’s West-Side SRO Law Project in 2008 and data they derived from the 2002 Housing and Vacancy Survey. We cite a range rather than a single figure here for two reasons. First, there is a high degree of variance in SRO units and an accordingly high variance in rent charged. Second, unlike other units, SROs are rarely singled out or disaggregated from census rent data, and therefore precise information on rental rates is more difficult to find.

rent for a rent-controlled unit is \$895 per month; for a rent-stabilized unit is \$1,160; and for an unregulated unit is \$1,510.¹⁹

SROs are frequently the *only* form of housing affordable to poor households. Rent is affordable for a poor New York City household at the (maximum) rate of \$600.60 per month.²⁰ The median rent-controlled unit (the next cheapest form of housing after SROs) is therefore almost \$300 per month too expensive for a poor household.²¹ For New Yorkers who live on Social Security or public assistance, there are few affordable rental units in the City. As of January 2014, the SSI benefit rate for a one-person household is \$808 per month.²² New York City's Human Resources Administration (HRA or Public Assistance) pays a shelter allowance of \$215 per month for a single individual.²³

There is an uncontested relationship between the availability of SRO housing and homelessness.²⁴ The loss of SRO units over recent decades has opened a gaping hole at the affordable end of the housing market, with predictable effects: the loss of low-rent SRO units simultaneously pushed poorer households into the streets and (temporarily) into higher-rent units, which put pressure on the middle of the market. Now, the City is suffering

In the past, the Rent Guidelines Board has refused to base estimates of SRO rents on registered rents on the ground they are unreliable. N.Y.C. RENT GUIDELINES Bd., EXPLANATORY STATEMENT—HOTEL ORDER #37, at 8 n.4 (June 27, 2007), *available at* <http://www.nycrgb.org/downloads/guidelines/orders/hotelES37.pdf>.

¹⁹ MOON WHA LEE, N.Y.C. DEP'T OF HOUS. PRES. & DEV., SELECTED INITIAL FINDINGS OF THE 2011 NEW YORK CITY HOUSING AND VACANCY SURVEY 6 (2012), *available at* <http://www.nyc.gov/html/hpd/downloads/pdf/HPD-2011-HVS-Selected-Findings-Tables.pdf>. We use gross rather than contract rent as the vast majority of SRO rents includes utilities.

²⁰ *See id.* at 4. The annual median income for all households in 2010 was \$48,040. A poor or low-income household is one with annual income of 50% or less of Area Median Income (AMI). Fifty percent of AMI is \$24,020 annually, or approximately \$2,002 per month. Thirty percent of \$2,002 is \$600.60. This calculation uses the AMI reported in the 2011 Housing and Vacancy Survey. Except where otherwise noted, when AMI is used in this paper it will refer to the 2011 Housing and Vacancy Survey. Regarding the rate at which rent is affordable, *see infra*, note 104.

²¹ *See* LEE, *supra* note 19, at 5–6.

²² SOC. SEC. ADMIN., SUPPLEMENTAL SECURITY INCOME (SSI) IN NEW YORK 2 (2014), *available at* <http://www.ssa.gov/pubs/EN-05-11146.pdf>.

²³ CMTY. SERV. SOC'Y, PUBLIC BENEFITS FOR LOW-INCOME INDIVIDUALS AND FAMILIES: APPLYING FOR AND USING PUBLIC BENEFIT PROGRAMS: CASH ASSISTANCE 3 (2013), *available at* <http://benefitsplus.cssny.org/system/files/benefit-tools/attachments/Cash%20Assistance.pdf>.

²⁴ In 1980, a survey of the City shelter population indicated that approximately 50% of homeless men had previously resided in an SRO. *See* Gladwell, *supra* note 1. *See also* Daley, *supra* note 17 (recounting that large numbers of the City's homeless once lived in rooming houses); BLACKBURN, *supra* note 1, at 8.

through “all-time record high”²⁵ levels of homelessness.²⁶ More than 50,000 New Yorkers sleep in homeless shelters each night.²⁷ Contrary to former Mayor Michael Bloomberg’s diagnosis, this crisis is not due to “pleasurable” conditions in City shelters.²⁸ Rather, it is, in part, a result of the City’s short-sighted SRO and affordable housing policies.

III. THE DESTRUCTION OF SRO HOUSING

*“What happened in New York was a great irony. We had literally hundreds of thousands of SRO units that provided housing to large segments of the population. Then the city decided that it was inadequate and unsuitable and developed zoning provisions and incentives to put them out of business. The result is the enormous homeless mess we have now.”*²⁹

SRO housing is as old as New York City itself. For a significant period of the City’s history, a majority of the housing stock consisted of shared-living units that would today be considered SROs.³⁰ Until the twentieth century, SROs housed a broad,

²⁵ According to Coalition for the Homeless, in 2012 “New York City’s homeless shelter population soared to its highest levels ever, with more than 43,000 homeless New Yorkers—including a record 17,000 children—bedding down each night in municipal shelters.” PATRICK MARKEE, COAL. FOR THE HOMELESS, STATE OF HOMELESSNESS 2012, at 2 (2012), <http://www.coalitionforthehomeless.org/pages/state-of-the-homeless-2012>.

²⁶ Gladwell, *supra* note 1 (quoting a housing advocate attributing the “homelessness mess” to the loss of SRO units).

²⁷ COAL. FOR THE HOMELESS, NEW YORK CITY HOMELESSNESS: THE BASIC FACTS 1 (last updated March 2014), *available at* http://coalhome.3cdn.net/82168330ff3993c0c8_2nm6bn760.pdf. This figure marks the high point thus far in a disturbing upward climb in the homeless population over the past two decades. *See also* N.Y.C. RENT GUIDELINES Bd., 2012 INCOME & AFFORDABILITY STUDY 13 (2012), *available at* http://www.nycrgb.org/downloads/research/pdf_reports/ia12.pdf (indicating that each night, an average of 37,765 persons stayed in City shelters during 2011, up 1,589 persons from a year earlier, and up considerably from the average of 20,000 to 25,000 found in the 1990s).

²⁸ Edgar Sandoval & Erin Durkin, *Rats Are Coming Through the Walls and Worms Infest the Bathrooms at City’s Homeless Shelters. But Mayor Bloomberg Says They’re So Pleasurable that No One Wants to Leave*, N.Y. DAILY NEWS (Aug. 23, 2012), <http://www.nydailynews.com/new-york/rats-coming-walls-worms-infest-bathrooms-city-homeless-shelters-mayor-bloomberg-pleasurable-leave-article-1.1143270>.

²⁹ Direct quote of Dan Margolis, director of the Community Housing Improvement Program, as reported by Gladwell, *supra* note 1.

³⁰ In an interview with *The New York Times*, Dr. Anthony Blackburn, *see supra* note 1, said:

If you go back 150 years, most housing involved some form of shared living. . . .

 There were tenements where people shared water taps and water closets . . . boarding houses, where residents received dining-room service; rooming houses, which were typically converted brownstones with one

socioeconomically diverse population.³¹ From the early 1900s SROs increasingly became housing for single, working-class, and poor men (and, to a lesser extent, women).³²

Inchoate hostility toward “congregate living” has been a feature of City politics since at least the mid-nineteenth century.³³ However, City housing policy only turned comprehensively against SROs in the mid-1950s. Beginning around 1955, and continuing for nearly three decades thereafter, the City attempted to eliminate SRO housing.³⁴

The City’s anti-SRO policy was born out of the explosive growth of low-rent SRO units during the Great Depression and the WWII era. In the 1920s, landlords began (largely illegally) dividing larger units into small SROs to rent to the unemployed and newly poor. Through the 1930s and 1940s, landlords continued to convert units to accommodate workers seeking jobs in the City’s wartime munitions factories, and then returning soldiers, migrants from the South, and immigrants (largely from Puerto Rico).³⁵

The appearance of the new SROs had two important effects. First, the new units greatly increased the visibility of SRO housing. By mid-century, the total number of SRO rooms had risen above 200,000—more than 10% of the City’s rental stock.³⁶ Second, when added to the existing stock of low-rent units in rooming and lodging houses, the new SROs intensified connections between

bath per floor and no cooking facilities. . . . Basically, all these forms would, by today’s definition, be called SROs.

Dennis Hevesi, *Building Homes for the Single Homeless*, N.Y. TIMES (Apr. 25, 1999), <http://www.nytimes.com/1999/04/25/realestate/building-homes-for-the-single-homeless.html>.

³¹ As late as 1926, *The New York Times* could editorialize that “the perfect apartment, at least in New York, is probably in a residential hotel.” PAUL GROTH, *LIVING DOWNTOWN: THE HISTORY OF RESIDENTIAL HOTELS IN THE UNITED STATES* 3 (1999); *see id.* 20–24.

³² BLACKBURN, *supra* note 1, at 6–7; *see also* GROTH, *supra* note 31, at 104–05.

³³ *See* GROTH, *supra* note 31, at 221, 238 (citing examples of hostility to SROs in New York City, particularly among police and judges, dating back to the nineteenth century); *see id.* at 13 (“Although the term ‘SRO’ is relatively new, for at least one hundred years . . . commentators have railed against the real and implied dangers of single room housing.”).

³⁴ BLACKBURN, *supra* note 1, at 7; *see generally* Hevesi, *supra* note 30.

³⁵ *See* Hevesi, *supra* note 30; *see also* BLACKBURN, *supra* note 1, at 6.

³⁶ *See, e.g.*, Gladwell, *supra* note 1 (reporting that “[b]y the post-war 1940s, there were almost 200,000 [SROs]”); *see also* U.S. CENSUS BUREAU, 1950 CENSUS OF HOUSING, VOL. II: NON-FARM HOUSING CHARACTERISTICS, PT. 4, SEC. 3, TBL.G-2, CONTRACT MONTHLY RENT OF RENTER-OCCUPIED DWELLING UNITS, FOR THE CITY OF NEW YORK (indicating that there were approximately 1,885,000 renter-occupied units in New York City).

“SRO housing,” “bad housing,” and the poor.³⁷

SRO growth thus worked to focus the hostility of “good government types” discomfited by the living conditions of the poor—and the poor themselves.³⁸ New York’s anti-SRO activists and officials were the heirs of its Progressive Era reformers.³⁹ While animated by a desire to do good, their actions reflected the Progressive conception of the “housing problem,”⁴⁰ informed by class biases, social prejudices, and varying degrees of xenophobia and racism.⁴¹ The tipping point for these reformers was crossed when poor families—particularly, and not inconsequentially, immigrant families—began moving into the new SROs in large numbers.⁴² By the early 1950s, families with children had replaced

³⁷ See Gladwell, *supra* note 1 (reporting that in the post-WWII era SROs were known as “short term housing for the working poor” and “soon acquired an unsavory reputation”).

³⁸ This characterization is Blackburn’s. See generally BLACKBURN, *supra* note 1.

³⁹ GROTH, *supra* note 31, at 203–33, 238–46 (describing nineteenth and twentieth century origins and details of housing reform movement, and noting central role of reformers and activists based in New York).

⁴⁰ *Id.* at 241.

⁴¹ *Id.* Groth recounts the influence of the Progressive Era view that “the solution of the housing problem . . . is to be found chiefly in legislation preventing the erection of objectionable buildings and securing the adequate maintenance of all buildings.” He also traces the heritage of the anti-SRO movement:

[Early SRO critics] were generally self-appointed and wealthy businessmen—or their wives or minions—who volunteered their time and considerable talents for public good. . . . Given their personal class origins, most progressive reformers did not see low wages, uneven work availability, or industrial leadership as being primarily culpable for the urban chaos. . . . Like other Progressive Era figures, urban activists initially attacked the problems of downtown [or SRO] living as moral and cultural failures. They saw new ethnic, religious, and political subcultures as threatening to hard-won changes in polite family life. . . . The reformers were convinced that stronger, centrally ordained, and better-enforced building rules would bring uplift to the lower class and civic betterment to the city as a whole. . . . Better housing meant not only better environmental health but also better social control. Promotion of material progress became a prime tool of social engineering. . . . Even when they were not acting en masse in some political agitation, hotel people seemed to be forming subcultures that deepened the social schisms of the time and weakened the cultural hegemony of the middle and upper class. Reformers saw these dangers as an assault on the urban polity as a whole Stated most simply, to its critics the continued existence of hotel life worked against the progress of the grand new city. In the biological analogies of the day, the residential hotel buildings themselves served as incubators of old-city pathologies. For the reformers working on the new city, single-room dwellings were not a housing resource but a public nuisance.

Id. at 202–31.

⁴² Gladwell, *supra* note 1 (“In a few celebrated cases, chaotic conditions resulted

single adults as the predominant occupants of the new SROs.⁴³

The City quickly moved to put SROs “out of business.”⁴⁴ Beginning in 1955, and continuing through the 1970s, the City enacted a series of measures that drastically shrank the SRO housing stock and irreversibly altered patterns of SRO occupancy. The City banned the construction of new SRO units,⁴⁵ restricted SRO occupancy to exclude families,⁴⁶ mandated the reconversion of many of the new SRO units,⁴⁷ altered building and zoning codes to discourage SRO occupancy,⁴⁸ and, from the mid-1970s until the 1980s, provided tax incentives to encourage the conversion of all SRO units to (higher rent) apartments.⁴⁹

The 1970s were particularly disastrous for SROs. By the end of the decade, the City was granting tax breaks to landlords to convert more than 40 SRO buildings a year.⁵⁰ According to one study by the State Assembly, between 1976 and 1981 the City’s tax program caused the elimination of nearly two-thirds of all remaining SRO units.⁵¹

The City’s tax program amplified the impact of market forces pushing landlords away from SRO housing. Throughout the 1960s, landlords were tempted to convert SROs into high rent apartments as demand for luxury housing increased in previously marginal neighborhoods. The interplay between market forces and government policy was dynamic: landlords, responding to market and government signals, quickly emptied and converted the most desirable buildings. The remaining SROs (increasingly occupied by regulated tenants) came to be seen as a poor investment and were left to rot.⁵² As the condition of these SROs deteriorated, tenants who could afford to leave moved out. The buildings were increasingly occupied by “the poorest people.”⁵³ The City’s tax policies gave owners an extra push to remove these tenants and

when owners on the Upper West Side of Manhattan rented SROs to families with children, largely Latino immigrants.”).

⁴³ BLACKBURN, *supra* note 1, at 7.

⁴⁴ See Gladwell, *supra* note 1.

⁴⁵ N.Y.C. ADMIN. CODE §§ 27-2077, 27-2078 (2013).

⁴⁶ BLACKBURN, *supra* note 1, at 7.

⁴⁷ *Id.* at 7 (citing N.Y.C. LOCAL LAW 56 of 1967).

⁴⁸ See Gladwell, *supra* note 1.

⁴⁹ BLACKBURN, *supra* note 1, at 8.

⁵⁰ *Id.*

⁵¹ Mark Malone, *Homelessness in a Modern Urban Setting*, 10 FORDHAM URB. L.J. 749, 762 n.59 (1981).

⁵² *Id.* By the mid-1970s, more than one-fourth of all remaining SRO units (approximately 13,000) were vacant because they were uninhabitable.

⁵³ See Hevesi, *supra* note 30.

convert the remaining buildings. As summarized by Anthony J. Blackburn:

There were terribly deteriorated buildings . . . which could be incredibly valuable if they were rented to young professionals [Landlords forced SRO tenants out] by creating unimaginably dreadful conditions in the building. They turned the heat off, they let units to prostitutes [and] drug dealers. Some hired thugs to simply throw tenants out⁵⁴

Even more seriously, as the City admitted, the tax program encouraged a large number of owners to simply burn down their SROs as a method of removing tenants.⁵⁵

By the 1980s, the consequences of the anti-SRO crusade were painfully evident: harassment, homelessness, and misery. As the City later acknowledged, it had abjectly failed to plan for a post-SRO New York. The ideological baggage of the anti-SRO movement had effectively blinded it to the foreseeable consequences of its policies.⁵⁶ In 1965, an aide to then-Mayor Robert F. Wagner told a reporter that the campaign to eliminate SRO housing was necessary because “[n]o community should equate [SRO] housing with the acceptable living standards of the 1960s [modern society].”⁵⁷ Nearly three decades later, housing activist George McDonald acerbically observed: “In the city of New York there were laws passed to push the private sector out of the SRO business [and eliminate SROs] on the theory that SROs were inhumane. Consequently, people sleep on grates outside.”⁵⁸

The scale of the disaster was staggering. By 1985, the City government had engineered the elimination of more than 100,000 units of affordable housing⁵⁹—and replaced them with nothing.⁶⁰

⁵⁴ Hevesi, *supra* note 30 (direct quote of Dr. Anthony Blackburn). See also Debra S. Vorsanger, *New York City’s J-51 Program, Controversy and Revision*, 12 FORDHAM URB. L.J. 103, 143 (1983) (discussing the official reaction to a study that found a correlation between J-51 eligibility in occupied SROs and arson).

⁵⁵ Sydney H. Schanberg, *New York; Arson and J-51*, N.Y. TIMES (July 20, 1982), <http://www.nytimes.com/1982/07/20/opinion/new-york-arson-and-j-51.html> (discussing New York City Arson Task Force preliminary report confirming link between J-51 benefits and arson in SROs).

⁵⁶ Gladwell, *supra* note 1. In the article, Gladwell quotes Anne Teicher, the deputy director of SRO housing for the Mayor’s Office on Homelessness, as saying, “In the context of the time, it [the 1955 SRO construction ban] may have made sense. They were looking to upgrade certain neighborhoods that had a high concentration of this kind of housing. But I don’t think people thought through that policy at the time and realized what impact it would have.” *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ There is little dispute that SROs were overwhelmingly—even exclusively—converted into high rent apartments. See, e.g., Lynette Holloway, *With New Purpose and*

Between 1955 and 1985, wages had stagnated, poverty and unemployment had increased, and the State had “dumped” more than 125,000 low-income patients from mental-health hospitals into the City.⁶¹ Consequently, the homeless population spiked to by far the worst levels in the country. Study after study found that large numbers of the homeless, including “about half” of homeless men entering shelters in 1980, had lived in SROs before being pushed out onto the street.⁶²

Responding to the crisis, the City attempted to reverse course. Over the course of several years, it cancelled the mandate to convert new SRO units, stopped providing tax credits to convert SRO buildings, passed a new tenant anti-harassment law, and funded legal services offices dedicated to providing representation to SRO tenants.⁶³ Then, in 1985, the City Council passed an ambitious law that temporarily banned the “conversion, alteration, or demolition” of SRO buildings.⁶⁴ The ban was subsequently made permanent and an anti-warehousing provision, which required landlords to rent vacant units, was added.⁶⁵

Unfortunately, the City’s actions were too little, too late. The SRO housing stock was already critically depleted. Market forces were pushing landlords harder than ever toward apartment conversions. The anti-harassment law was ineffective as landlords violated, and the City failed to effectively enforce, its provisions.⁶⁶ Finally, in 1989 the conversion ban and anti-warehousing provisions were struck down by the New York Court of Appeals.⁶⁷

Since the Court of Appeals decision, the City’s SRO policy has

Look, SROs Make a Comeback, N.Y. TIMES (Nov. 10, 1996), <http://www.nytimes.com/1996/11/10/nyregion/with-new-purpose-and-look-sro-s-make-a-comeback.html> (discussing “wholesale conversion” of SROs into luxury apartments); BLACKBURN, *supra* note 1, at 8 (“A 1980 audit of the J-51 program indicated that 41 SRO conversions received J-51 abatements in FY 1979 alone.”).

⁶⁰ BLACKBURN, *supra* note 1, at 8. *See also* Gladwell, *supra* note 1; Daley, *supra* note 17; MARKEE, *supra* note 25.

⁶¹ Malone, *supra* note 51, at 761–67 (discussing increasing unemployment and an effort to empty mental-health hospitals).

⁶² Gladwell, *supra* note 1 (discussing a 1980 survey of men entering homeless shelters); Daley, *supra* note 17 (reporting that “many studies have shown that large numbers of the city’s homeless once lived in rooming houses”).

⁶³ BLACKBURN, *supra* note 1, at 7–9.

⁶⁴ *Id.* at 1 (citing N.Y.C. LOCAL LAW 59 of 1985).

⁶⁵ *Id.* at 9 (citing N.Y.C. LOCAL LAW 22 of 1986 and N.Y.C. LOCAL LAW 9 of 1987).

⁶⁶ *Id.* at 7–8; *see also* Alan Finder, *S.R.O. Tenants Lose Homes Despite Ban on Conversions*, N.Y. TIMES (Jan. 22, 1987), <http://www.nytimes.com/1987/01/22/nyregion/sro-tenants-lose-homes-despite-ban-on-conversions.html> (“Residents of single-room-occupancy hotels continue to be harassed and forced out . . .”).

⁶⁷ *See* *Seawall Assoc. v. City of New York*, 74 N.Y.2d 92, 117 (1989).

been in disarray. On the one hand, there is now broad recognition that SROs are vitally important. The City regrets the loss of SROs and tends to encourage the development of new units—largely in non-profit, “supportive” SROs—to the limited extent permitted by law.⁶⁸ At the same time, there is a real sense that, with the numbers having fallen so far, the whole situation is a lost cause. SROs also continue to have a negative reputation: former Mayor Michael Bloomberg’s recent proposals to build SRO-type housing—two-room, 275-square-foot units designed for occupancy by single individuals at affordable rents—have studiously avoided the use of the word “SRO.”⁶⁹

The result, as illustrated by the following three examples, is a toxic mix of paralysis and dysfunction.

A. Rent Regulation

The full and effective incorporation of SROs into the rent regulation system remains an unfinished project. The RSL and RSC contain gaps and ambiguities that owners can manipulate to run up rents and deregulate units.⁷⁰ Tenants, who are left with primary

⁶⁸ See, e.g., Alan Finder, *Experts on Homeless Push for an Old Idea: S.R.O.’s in New York*, N.Y. TIMES (Feb. 9, 1990), <http://www.nytimes.com/1990/02/09/nyregion/experts-on-homeless-push-for-an-old-idea-sro-s-in-new-york.html>. See also Esther B. Fein, *Loans to Build S.R.O. Units May Be Ended*, N.Y. TIMES (Mar. 14, 1994), <http://www.nytimes.com/1994/03/14/nyregion/loans-to-build-sro-units-may-be-ended.html>; Shawn G. Kennedy, *New Look for S.R.O.’s: Decent Housing*, N.Y. TIMES (Mar. 28, 1995), <http://www.nytimes.com/1995/03/28/nyregion/new-look-for-sro-s-decent-housing.html>; Holloway, *supra* note 59; Hevesi, *supra* note 30; Harriet McDonald, *Micro Units Proposed to Make New York City Living Affordable*, HUFFINGTON POST (Nov. 5, 2012), http://www.huffingtonpost.com/harriet-mcdonald/nyc-affordable-housing_b_2044666.html.

⁶⁹ See Erin Durkin, *Mayor Bloomberg Launches Contest to Stir Development of Tiny 300-square-foot Apartments for Singles*, N.Y. DAILY NEWS (July 9, 2012), <http://www.nydailynews.com/new-york/mike-pushes-smaller-apts-young-singles-article-1.1110965>; see also Oshrat Carmiel, *Manhattan to Get First ‘Micro-Unit’ Apartment Building*, BLOOMBERG NEWS (Jan. 22, 2013), <http://www.bloomberg.com/news/2013-01-22/new-york-city-to-get-first-micro-unit-apartment-building.html>.

⁷⁰ The following two examples give some indication of the nature of the problem: First, owners frequently attempt to take the large “vacancy increases” provided under the Rent Regulation Reform Act of 1997. See N.Y. UNCONSOL. LAW § 26-511(c)(5-a) (McKinney 2013); *id.* § 2252.8(a). The Rent Guidelines Board has attempted to prohibit owners from taking these increases. See N.Y.C. RENT GUIDELINES BD., HOTEL ORDER #27 (June 23, 1997) (“No vacancy allowance is permitted under this order. Therefore, the rents charged for [new] tenancies . . . may not exceed . . . rent[s] . . . permitted under the applicable rent adjustment provided [in this Order].”). Similar language appears in Hotel Orders #27 through #42, which span the period between 1997 and 2012. DHCR contests the RGB’s authority to control vacancy increases but has no coherent policy of its own. The DHCR “Fact Sheet” applicable to SRO tenancies indicates that SRO owners cannot take vacancy increases. See DEP’T OF HOMES & CMTY. RENEWAL, FACT SHEET #42: HOTELS, SROs, AND ROOMING HOUSES (rev. July

2011), available at <http://www.nyshcr.org/Rent/FactSheets/orafac42.htm> (“As a permanent tenant, an owner may not charge you more than the most recent rent charged the prior permanent tenant . . . plus any lawful [RGB] guideline increases. . . .”). In rent overcharge cases, however, DHCR has frequently permitted vacancy increases without comment. More commonly, it has attempted to limit the increases using a mechanical application of the statute that makes little sense. An owner’s right to take a vacancy increase is triggered only when a tenant signs a vacancy lease. See N.Y. COMP. CODES R. & REGS. tit. 9, § 2522.8(a) (2013) (“The legal regulated rent for any vacancy lease [shall be] . . .”). The amount of the increase is set by a formula that turns upon (a) the length of the lease (one or two years); and (b) certain provisions of the RGB’s Apartment Orders. The formula can be straightforwardly applied to all apartment tenancies. It cannot be applied to the vast majority of SRO tenancies. All apartment owners are required to offer incoming tenants vacancy leases (one or two years); apartment tenants are required to sign the leases; and both are subject to the RGB’s Apartment Orders. In contrast, SRO owners are not required to offer incoming tenants leases and the term that must be offered in response to a lease request is six months. SRO tenants are never required to sign a lease. Finally, it is far from clear that the terms of RGB Apartment Orders can be applied to SRO tenancies. For these reasons, the courts have become increasingly critical of DHCR and any attempt to apply vacancy increases to SRO tenants. See, e.g., *Hous. Dev. Ass’n, LLC v. Gilpatrick*, 910 N.Y.S.2d 762 (Table), 2010 WL 1691595, at *1 (App. Term 1st Dep’t Apr. 28, 2010) (affirming lower court decision holding vacancy increases do not apply to SROs). In *Gilpatrick*, the court noted:

Even were we to assume, in the petitioner owner’s favor, that . . . vacancy increases . . . are available to owners of stabilized hotel units as well as stabilized apartment units, the vacancy increase formulas set forth in the cited provisions and DHCR’s own interpretation of . . . section 2522.8(a) confirm that no vacancy increase may be recovered unless a hotel owner offers an incoming tenant the option of a vacancy lease for a one- or two-year term.

Id. Second, owners take advantage of the special nature of SRO tenancies to surreptitiously deregulate units. The RSC states that the legal rent for a unit becomes the rent “agreed to by the owner and the . . . tenant” if the unit was “vacant or temporarily exempt” on the “base date.” N.Y. COMP. CODES R. & REGS. tit. 9, § 2526.1(a)(3)(iii). The “base date” is the date exactly four years prior to the date a tenant challenges a particular unit’s rental amount. *Id.* § 2520.6(f). The RSC also provides that units are deregulated once the rent goes above \$2,500. *Id.* § 2520.11(r). Owners claim that these provisions permit the deregulation of any unit that has been registered as vacant or exempt for four years: section 2526.1(a)(3)(iii) in combination with section 2520.6(f) permit the owner to unilaterally increase the legal (vacancy) rent for the unit above \$2,500; and section 2520.11(r) then mandates deregulation. Apartment owners are rarely able to take advantage of this combination of provisions, as the circumstances under which an apartment is “temporarily exempt” are limited. See, e.g., *id.* § 2520.11(f), (j), (m). Generally, the provisions come into play only where an apartment has been held vacant for years or has been rented to a superintendent. See, e.g., *McCarthy v. N.Y. State Div. of Hous. & Cmty. Renewal*, 736 N.Y.S.2d 353, 354 (App. Div. 1st Dep’t 2002) (stating that the “legal regulated rent was the rent listed in the initial lease” where apartment was vacant on base date). The situation is very different, and much more easily manipulated, in SROs. SRO units are “temporarily exempt” whenever they are not occupied by a permanent tenant—meaning whenever they are occupied by a person who has not requested a lease or lived in the unit for six months. N.Y. COMP. CODES R. & REGS. tit. 9, §§ 2520.11(g)(1), 2520.6(j), 2520.6(m); cf. *id.* § 2522.5(a)(2). It is, therefore, relatively easy for an SRO owner to create the impression that the rent-setting provisions of the regulatory code have

responsibility for enforcing the rent laws, are in a weak position to oppose even the most blatant violations.⁷¹ Large numbers of SRO tenants have no idea that SROs are regulated.⁷² SRO landlords uniformly ignore their obligation to provide occupants with a “Notice of Rights.”⁷³ Many refuse, without effective penalty, to even register their buildings with DHCR, leaving tenants in a difficult limbo.⁷⁴ As a result, even the most basic rent regulation protections frequently are not enforced.⁷⁵

been triggered. *See id.* § 2526.1(a)(3)(iii). Regulated commercial hotels claim that they have rented “exclusively to tourists,” while other owners simply register rooms as “temporarily exempt due to transient occupancy” no matter who is living there. DHCR reports indicate that typically only one-half to two-thirds of all registered SROs are registered as occupied and non-exempt. N.Y.C. RENT GUIDELINES BD., EXPLANATORY STATEMENT—HOTEL ORDER #39, at 8 (June 24, 2009) (indicating that 10,577 of a total 22,827 units were registered as “non-exempt rent stabilized units”); N.Y.C. RENT GUIDELINES BD., EXPLANATORY STATEMENT—HOTEL ORDER #42, at 8 (June 22, 2012) (stating that 12,148 of a total of 17,663 units were registered as “rent stabilized”). Though DHCR has been shockingly solicitous of this scheme, the courts have been much more critical. *See, e.g.,* Gordon v. 305 Riverside Corp., 941 N.Y.S.2d 93, 95–96 (App. Div. 1st Dep’t 2012) (rejecting the deregulation argument in the apartment context). As one lower court observed, owners cannot “create a loophole that undermines the goals of rent regulation” by manipulating the provisions of the Code to convert “temporary exemptions” into “permanent[] deregulat[ion.]” 656 Realty, LLC v. Cabrera, 911 N.Y.S.2d 696 (Table), 2009 WL 6489910, at *2 (N.Y. City Civ. Ct. Mar. 3, 2009). The authors note that section 2526.1(a)(3)(iii) of the regulatory code, at least as interpreted and used by owners, contradicts several provisions of the RSL and may be invalid.

⁷¹ The primary means of enforcement is for a tenant to file a complaint with DHCR. *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 2527.1. DHCR has the authority to bring proceedings on its own initiative but rarely does so.

⁷² SRO tenants’ ignorance of their rights was the primary justification for the creation of the Notice discussed in the next footnote and corresponding text. *See* 459 West 43rd St. Corp. v. N.Y. State Div. of Hous. & Cmty. Renewal, 544 N.Y.S.2d 346, 349 (App. Div. 1st Dep’t 1989) (holding that the Notice “furthers [the] goal of insuring that the rights of hotel occupants [are] not . . . frustrated due to the occupant’s ignorance of the law”).

⁷³ The authors have collectively worked with thousands of SRO tenants. Not a single one has reported receiving the Notice. *See also* Weithman & Lebovits, *supra* note 12.

⁷⁴ Tenants in unregistered buildings/rooms do not receive registration statements. *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 2528.3. The statements are frequently the prompt that causes tenants to contact legal services organizations about their rent or to pursue rent overcharges on their own. Unregistered tenants that inquire about their rent with DHCR are informed that the agency has “no record” of the unit—which is commonly (though incorrectly) interpreted to mean that the unit is not regulated. Tenants that continue to pursue the matter cannot file an RA-89 rent overcharge complaint. They must file a Request for an Administrative Determination. *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 2521. This is a more complicated proceeding—and one which occasionally results in DHCR setting the “regulated” rent at whatever the landlord happens to be charging the tenant at the time.

⁷⁵ For example, DHCR data indicates that owners are increasing registered rents at a rate that greatly exceeds that permitted under the Rent Guidelines Board Hotel

B. *Certificate of No Harassment (CONH)*

The CONH program⁷⁶ was enacted after the City's reverse-course on SRO housing in the early 1980's.⁷⁷ Under the program, an owner cannot make certain changes to an SRO⁷⁸ (*i.e.*, demolish or convert SRO units or change the number of bathrooms or kitchens) without acquiring certification that there has been "[no] harassment of the lawful occupants of the property during [the preceding three years]."⁷⁹ Thus acquisition of a CONH is a necessary step in any legal conversion of an SRO to a higher-rent use. The program is primarily administered by the New York City Department of Housing Preservation and Development (DHPD), which investigates owners' applications.⁸⁰

The CONH program, in theory, presents a partial solution to the City's inability to simply bar all SRO conversions. It is meant to balance the public need for affordable housing with landlords' interests and constitutional rights. In practice, and putting to one side DHPD's inability, or occasional unwillingness, to prevent owners from simply ignoring the CONH requirement,⁸¹ the program has been a disappointment. The most recent available data indicates DHPD grants upwards of 99% of all applications.⁸²

Orders. Between 2009 and 2012, median registered rents increased by approximately four times the legal maximum. *Compare* N.Y.C. RENT GUIDELINES BD., EXPLANATORY STATEMENT—HOTEL ORDER #39, at 9 (June 24, 2009) (estimating median registered legal rent at \$977.00) *and* N.Y.C. RENT GUIDELINES BD., EXPLANATORY STATEMENT—HOTEL ORDER #42 9 (June 22, 2012) (providing median registered legal rent of \$1,094.00), *with* N.Y.C. RENT GUIDELINES BD., HOTEL ORDER #1, at 42 (showing that the RGB approved a single 3% increase between 2009 and 2012). As discussed above, DHCR registered rents do not equate to actual rents. *See supra* note 18 and accompanying text. However, the fact that owners feel safe registering rents that are (at least in the aggregate) flatly illegal should give some indication of the state of enforcement.

⁷⁶ N.Y.C. ADMIN. CODE § 27-2093 (2013).

⁷⁷ The program was enacted through Local Law 19 (1983) (codified at N.Y.C. ADMIN. CODE § 27-2093).

⁷⁸ The specific changes are set forth in DHPD rules regarding CONH. *See* N.Y.C. DEP'T HOUS. PRESERV. & DEV, RULES PERTAINING TO CERTIFICATIONS OF NO HARASSMENT § 10-02 (2013), *available at* <http://www.nyc.gov/html/hpd/downloads/pdf/certification-of-no-harassment-rules.pdf>.

⁷⁹ N.Y.C. ADMIN. CODE § 27-2093(a), (c).

⁸⁰ *Id.*

⁸¹ In the authors' professional experience, some owners have gone beyond simple non-compliance and have begun attempting to use the CONH program as a means to harass tenants. An owner will demolish part of the building (frequently the bathrooms) and then refuse to rebuild, (falsely) citing an inability to get permits because of the CONH requirement. Owners' attorneys occasionally use a variation on this argument in lawsuits brought by tenants to force compliance with housing standards laws.

⁸² Documents provided to MFY Legal Services, Inc. by DHPD show that the agency denied 23 of the 1480 applications it processed between 1998 and 2008.

The flaws in the CONH program are immense. DHPD is obligated to prove harassment occurred in order to block an owner's application. The Agency's ability to do this depends primarily upon current tenants coming forward to provide information to its staff.⁸³ Harassment, by definition, involves conduct designed to force tenants to forfeit their rights—and generally (at least in the conversion context) to move out. A contradiction is, therefore, built into the very base of the program. If a landlord is successful in harassing its tenants, those tenants will probably no longer live at the building and will be difficult for DHPD to reach; the Agency will not be able to secure the information or testimony of tenants who a landlord has successfully harassed into leaving. Therefore, successful landlord harassment will be the most difficult to identify and punish. In many cases, DHPD can prove harassment occurred only where it was unsuccessful. Other factors add to the problem. Owners routinely pull units off the market, holding them vacant for long periods of time, until the entire building is “naturally” emptied. The process can be sped up—and problematic information suppressed—by paying off tenants. With an empty building (or cooperating tenants), DHPD has no way to contradict an owner's assertion of no harassment.⁸⁴ The value of a CONH—which can be the difference between owning a low-rent, regulated SRO and a boutique hotel⁸⁵—more than offsets the cost of the lost rent and bribes.

C. Homelessness Policy

The City's response to the homelessness crisis threatens the remaining stock of regulated SRO housing. The Department of Homeless Services (DHS) and other City agencies are increasingly contracting with SRO owners to temporarily house homeless peo-

⁸³ Documents provided to MFY Legal Services by DHPD indicate that the vast majority of information contained in investigation files comes from current tenants. It appears that investigators do make an effort to reach out to prior tenants, but receive few substantive responses.

⁸⁴ These statements are based upon the authors' discussions with DHPD officials and their experience investigating CONH applications.

⁸⁵ For example, between 2008 and 2009 the owners of the Riverview Hotel (113 Jane Street) received a CONH that cleared the way for its conversion into a boutique hotel. At “The Jane,” which now includes a popular bar, rooms that used to rent for as little as \$215.00 per month cost \$99.00 a night. Christopher Gray, *Popeye Slept Here and Now Olive Oyl Can, Too*, N.Y. TIMES (July 14, 2009), <http://www.nytimes.com/2013/02/09/nyregion/for-some-landlords-real-money-in-the-homeless.html>; see also Dan Berry, *On Bowery, Cultures Clash as the Shabby Meet the Shabby Chic*, N.Y. TIMES (Oct. 12, 2011), <http://www.nytimes.com/2011/10/13/us/at-bowery-house-hotel-flophouse-aesthetic-of-old.html> (discussing the conversion of the Prince Hotel).

ple.⁸⁶ Individuals placed through these programs have no permanent rights to their rooms—they cannot become stabilized tenants.⁸⁷ The City thus helps create the problem it claims it is trying to solve: it removes affordable, regulated units from the market—increasing homelessness—and converts them into unregulated, temporary homeless “warehouses.”⁸⁸

The incentives the City provides to induce participation in what has become a private shelter system are both staggering and puzzling. The City guarantees SRO owners a profit and pays rents that exponentially exceed the stabilized rates for rooms—as much as \$3,000 per month as far back as the 1980s.⁸⁹ This willingness to spend contrasts sharply with City policy toward more cost-effective nonprofit shelters and rent subsidy programs. City funding for nonprofits is relatively modest and “constantly at risk.”⁹⁰ In 2011, the City, pleading poverty, terminated rent subsidies for previously homeless families that had found permanent housing.⁹¹ The City

⁸⁶ The Coalition for the Homeless has released multiple pamphlets on this issue. *See generally* LINDSEY DAVIS, COAL. FOR THE HOMELESS, WAREHOUSING THE HOMELESS: THE RISING USE OF ILLEGAL BOARDING HOUSES TO SHELTER HOMELESS NEW YORKERS (2008), available at <http://www.coalitionforthehomeless.org/pages/warehousing-the-homeless>.

⁸⁷ Subsections (b) and (f) of section 2520.11 provide that housing accommodations owned, operated, or leased by the United States or New York State government or pursuant to governmental funding in certain circumstances are exempted from rent stabilization. N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.11(b), (f) (2013). Recently the Appellate Division overturned an Appellate Term decision that denied an SRO occupant rent-stabilized status when the tenant was placed in the unit by the City as part of its homelessness prevention plan. *See Branich Int'l Realty Corp. v. Pitt*, 963 N.Y.S.2d 210, 213–15 (App. Div. 1st Dep't 2013). At the time of publishing, the Appellate Division's decision in this matter is on appeal before the New York Court of Appeals. While this is a positive decision and hopefully marks a turn in New York courts' willingness to waive the clear protections of the RSC, the City and the State will likely continue to whittle away the SRO housing stock with programs that can apply subsections (b) and (f).

⁸⁸ The characterization is from Coalition for the Homeless. *See* DAVIS, *supra* note 86.

⁸⁹ *See, e.g.*, Anna Quindlen, 'Give Us a Shot at Something,' N.Y. TIMES (Jan. 31, 1988), <http://www.nytimes.com/1988/01/31/books/give-us-a-shot-at-something.html> (“The city of New York spends as much as \$3,000 a month for a family to live in a welfare hotel . . .”); Joseph Berger, *For Some Landlords, Real Money in the Homeless*, N.Y. TIMES (Feb. 8, 2013), <http://www.nytimes.com/2013/02/09/nyregion/for-some-landlords-real-money-in-the-homeless.html> (“The city's Department of Homeless Services pays many times the amount the rooms would usually rent for – spending \$3,000 a month for each threadbare room without a bathroom or kitchen . . .”).

⁹⁰ Bobby Watts, *Letter to the Editor: Housing the Homeless*, N.Y. TIMES (Feb. 24, 2013), <http://www.nytimes.com/2013/02/25/opinion/housing-the-homeless.html>.

⁹¹ *See* Michael Howard Saul, *End of Rent Subsidies Has Critics Pouncing*, WALL ST. J. (Feb. 4, 2012), <http://online.wsj.com/article/SB10001424052970203889904577201593329240970.html>.

still has the money, however, to pay a premium to displace “long-term [SRO] residents.”⁹² As a policy analyst for Coalition for the Homeless observed:

The crisis that’s causing the city to open so many new [SRO] shelters is mostly of the mayor’s own making. . . . Instead of moving families out of shelters and into permanent housing, as previous mayors did, the city is now paying millions to landlords with a checkered past of harassing low-income tenants and failing to address hazardous conditions.⁹³

This problem shows no signs of abating. In conversation with the authors, SRO operators and their attorneys have suggested that capitalizing on City homelessness prevention subsidies is the most profitable operating strategy for many SROs, and thus the strategy that they plan to pursue. One SRO operator’s attorney lamented the protections offered by rent stabilization because they made it more difficult to take advantage of these subsidies. History has shown that when City policy incentivizes the conversion of SRO units, owners will jump at the opportunity; current homeless policy is thus repeating past mistakes.

The problem does not stop there. Over the last several years, DHS and other City agencies have cooperated with an even more predatory scheme. In increasing numbers, SRO buildings have been (unlawfully) taken over by so-called Three-Quarter Houses.⁹⁴ These operations falsely hold themselves out as supportive housing to draw tenants from prisons, homeless shelters, and so forth.⁹⁵ Three-Quarter Houses uniformly deny residents rent stabilization, and even basic tenancy rights. Three-Quarter House tenants report that harassment and other abuses are common.⁹⁶ Nonetheless, until recently, the City looked to Three-Quarter Houses as a means to reduce the shelter population.

To make matters worse, anecdotal evidence suggests that

⁹² Berger, *supra* note 89.

⁹³ *Id.*

⁹⁴ Patrick Arden, *Lawsuits Target Three-Quarter Operators*, CITY LIMITS (Mar. 6, 2012), <http://www.bkbureau.org/2012/03/07/lawsuits-target-three-quarter-operators/>.

⁹⁵ Patrick Arden, *Deep Concerns about ‘Three-Quarter’ Housing*, CITY LIMITS (Mar. 9, 2012), <http://www.bkbureau.org/2012/03/07/deep-concerns-about-three-quarter-housing/>.

⁹⁶ Cindy Rodriguez, *Drug Rehab for Housing: Alleged Scheme Targets City’s Most Vulnerable*, WNYC (Dec. 15, 2010), www.wnyc.org/story/104149-jerome-david/. See also PRISONER REENTRY INST., JOHN JAY COLL. OF CRIM. JUSTICE, *THREE QUARTER HOUSES: THE VIEW FROM THE INSIDE* 19–24 (2013), <http://johnjayresearch.org/pri/files/2013/10/PRI-TQH-Report.pdf> (reporting, based on multiple interviews with Three-Quarter House tenants, severe and persistent abuses such as illegal evictions, verbal and physical harassment, and coerced participation in certain treatment programs).

Medicaid fraud may be rampant in Three-Quarter House operations. Many operators require Three-Quarter House residents to participate in substance abuse or other so-called rehabilitative programs in order to maintain residency in a facility. The choice of which program to attend is not left to the resident. Rather, the operator forces the resident to attend a program that it either runs or with which it has a relationship. Each time that the resident visits the program, Medicaid makes a payment on her behalf. If a resident refuses to attend the program, she risks being evicted.

IV. NEW YORK CITY'S PERMANENT HOUSING CRISIS

*“The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York . . . [and] that such emergency [has] necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents. . . .”*⁹⁷

The City’s devastating SRO policies must be viewed in the context of—and as a cause of—its ongoing housing crisis. More than sixty years after the federal government first intervened in the City’s housing market and froze rents, a “serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York”⁹⁸

New York City’s low vacancy rate provides some measure of the severity of the housing crisis. Vacancy rates are frequently used as a general measure of the health and viability of a city’s rental market.⁹⁹ As approximately 68% of New York City residents live in rental housing—more than double the national average—the importance of the City’s rental market to overall housing conditions cannot be overstated.¹⁰⁰ Nationally, the average vacancy rate has ranged between approximately 9% and 11% in recent years.¹⁰¹ The average vacancy rate for large cities is frequently

⁹⁷ Rent Stabilization Law of 1969 (codified at N.Y.C. ADMIN. CODE LAW § 26-501 (2013)).

⁹⁸ *Id.*

⁹⁹ The RSL, for example, uses the vacancy rate as a measure of the severity of the housing crisis.

¹⁰⁰ N.Y.C. COMPTROLLER’S OFFICE, RENTS THROUGH THE ROOF: A STATISTICAL ANALYSIS OF UNAFFORDABLE RENTS IN NEW YORK CITY (2012), available at <http://comptroller.nyc.gov/wp-content/uploads/documents/Rents-through-the-Roof.pdf>. New York City homeowners are much wealthier than most City residents. Compare LEE, *supra* note 19, at 5, with *id.* at 4.

¹⁰¹ U.S. CENSUS BUREAU, HOUSING VACANCIES AND HOMEOWNERSHIP 2012, <http://www.census.gov/housing/hvs/data/ann12ind.html> (follow “Rental and Homeowner Vacancy Rates by Area” hyperlink to the right of “Table 1” under “Detailed Tables”).

above 10%.¹⁰² In New York City, the vacancy rate is just above 3%.¹⁰³

The shortage of rental units is inextricably tied to a crisis of affordability. Housing is considered affordable if it costs less than 30% of household income.¹⁰⁴ The median household in New York City pays 33.8% of its income for rent.¹⁰⁵ Fully one-third of renter households pay 50% or more of their income for rent.¹⁰⁶

Although these citywide figures are grim, the reality is that New York City's housing crisis does not affect all residents equally. The City's housing market is heavily skewed in favor of high-income households. Crisis conditions are concentrated toward the bottom of the market where a severe shortage of affordable units leads to very low vacancy rates and very high rent burdens. Well under half of the City's rental units are affordable to the median renter household.¹⁰⁷ For poor households, defined as those living at or below 50% of the Area Media Income (AMI),¹⁰⁸ there is a shortfall of affordable housing on the magnitude of several hundred thousand units.¹⁰⁹

¹⁰² FURMAN CTR. FOR REAL ESTATE & URBAN POL'Y, KEY FINDINGS ON THE AFFORDABILITY OF RENTAL HOUSING FROM NEW YORK CITY'S HOUSING AND VACANCY SURVEY 2008, at 2 (2009) [hereinafter RENTAL HOUSING AFFORDABILITY], available at http://furmancenter.org/files/publications/Key_Findings.pdf.

¹⁰³ LEE, *supra* note 19, at 3.

¹⁰⁴ See, e.g., *Affordable Housing*, U.S. DEPT. OF HOUS. & URBAN DEV. (2013), <http://www.hud.gov/offices/cpd/affordablehousing/> (last visited Jan. 24, 2014) ("Families who pay more than 30 percent of their income for housing are considered cost burdened . . .").

¹⁰⁵ LEE, *supra* note 19, at 7. The figure is calculated as gross, not contract, rent. Based on House and Vacancy Survey (HVS) data from 2011, the Furman Center concludes that 55.7% and 58% of market rate and rent-stabilized tenants pay over 30% of their household income to rent. See N.Y.C. RENT STABILIZATION, *supra* note 1.

¹⁰⁶ LEE, *supra* note 19, at 7.

¹⁰⁷ *Id.* at 4. According to the 2011 HVS, the median annual income for renter households was \$38,500. An affordable monthly rent for these households is thus \$962.50. There were 14,383 vacant units renting for \$999 (contract rent) or less per month and 807,719 occupied units renting for \$999 (contract rent) or less per month. There were a total of 2,172,634 rental units (occupied and vacant) in 2011. This means that approximately 37.8% of rental units are affordable to the median renter household.

¹⁰⁸ Except where otherwise indicated, AMI in this paper refers to AMI as determined by the U.S. Census Bureau's 2011 New York City Housing and Vacancy Survey, see *supra* note 1, and used in the 2009 study by the Furman Center for Real Estate and Urban Policy. See generally N.Y.C. RENTAL HOUSING AFFORDABILITY, *supra* note 102. This measure of the AMI may be different than that set by the U.S. Department of Housing and Urban Development (HUD). See *cf.* *HUD Program Income Limits*, U.S. DEP'T OF HOUS. & URBAN DEV., <http://www.huduser.org/portal/datasets/il.html> (last visited Jan. 24, 2014).

¹⁰⁹ Data compiled in the U.S. Census Bureau's 2005–2007 American Community Survey indicates that there were well in excess of 880,000 households with incomes at

There is no housing crisis for those who can afford high rents. At no point during the last decade has the vacancy rate for high-rent units (currently greater than \$2,500 per month¹¹⁰) fallen below the crisis-threshold of 5%;¹¹¹ it has often matched or exceeded the combined urban and non-urban rate for the entire Northeast region of the United States (7.3% in 2012).¹¹² Meanwhile, the vacancy rate for units affordable to those living at the AMI is below 4%,¹¹³ the rate for units affordable to households living at or below 50% of the AMI is approximately 1%,¹¹⁴ and the rate for units affordable to households living at or below the poverty line is less than 1%.¹¹⁵

The degree of rent burden experienced by households predictably tracks the availability of affordable units. As of 2005, the median rent burden for the wealthiest, middle, and poorest thirds of renter households was 16%, 27%, and 44%, respectively.¹¹⁶ In 2008, approximately 50% of low-income New Yorkers paid more than 50% of their income for rent.¹¹⁷ Jumping forward to 2011, the median rent burden for poor renters in private, unsubsidized housing was 68%.¹¹⁸

This places additional stress on low-income families. After paying rent, “poor renters . . . [are] left with an average of just \$4.40 per household member per day to pay for food, transport[ation], medical and education costs, and all other

or below \$25,000 per year, which is roughly equivalent to 50% of the AMI (\$24,020). But the Furman Center reports that, as of 2008, there were only 364,961 units affordable to families living at or below 50% of the AMI. See RENTAL HOUSING AFFORDABILITY, *supra* note 102, at 4. It is worth nothing that, as early as 2002, Coalition for the Homeless was already reporting a shortfall of more than 400,000 “low-cost rental housing units.” PATRICK MARKEE, COALITION FOR THE HOMELESS, HOUSING A GROWING CITY: NEW YORK’S BUST IN BOOM TIMES 57–58 (2002), available at http://coalhome.3cdn.net/9cde22b5c4c86f39af_0cm6ynl8u.pdf.

¹¹⁰ See N.Y.C. ADMIN. CODE LAW § 26-504.2 (2013), available at http://72.0.151.116/nyc/adcode/Title26C4_26-504_2.asp.

¹¹¹ New York State law defines a “crisis” as a vacancy rate of less than 5%. N.Y. UNCONSOL. LAW § 8623(a) (McKinney 2013).

¹¹² U.S. CENSUS BUREAU, *supra* note 101.

¹¹³ LEE, *supra* note 19, at 4 (vacancy rate of 3.61%).

¹¹⁴ *Id.* (vacancy rate for less than \$800 per month is 1.1%).

¹¹⁵ *Id.*

¹¹⁶ VICTOR BACH & THOMAS J. WATERS, CMTY. SERV. SOC’Y, MAKING THE RENT: WHO’S AT RISK 3 (2008), available at http://b.3cdn.net/nycss/2ad98a52b2cf4d9889_j0m6i6jhgq.pdf.

¹¹⁷ RENTAL HOUSING AFFORDABILITY, *supra* note 102, at Table F (noting that in 2008 almost 80% of low-income renters in the private rental market were paying more than 30% of their income on rent, and nearly half were paying more than 50% of their income on rent).

¹¹⁸ See LEE, *supra* note 19 at 4, 22 (¶ C1 and Table 12).

necessities.”¹¹⁹ Because of this situation, even very small increases in rent can be devastating.

The crisis is only getting worse for low-income households. Between 2002 and 2008, the only segment of the City’s housing stock that grew was that affordable to the relatively affluent (150% of the AMI and up).¹²⁰ The number of units affordable to the median renter household decreased by more than 15%.¹²¹ Due to these losses, the bottom third of the population can now afford approximately 17.3% of the (rental) housing stock.¹²²

At least part of this crisis is attributable to the nature of the City’s “affordable housing” programs. Frequently these programs target the construction of units that are not only unaffordable to poor New Yorkers, but are actually unaffordable to the median renter household. An important goal of former Mayor Michael Bloomberg’s affordable housing plan (the New Housing Marketplace Plan) was the construction of housing for “low-income households.”¹²³ However, the Plan defined a “low-income household” as one earning less than 80% of the Area Median Income determined by the U.S. Department of Housing and

¹¹⁹ VICTOR BACH & THOMAS J. WATERS, *CMTY. SERV. SOC’Y, MAKING THE RENT: BEFORE AND AFTER THE RECESSION* 3 (2013), available at http://b3cdn.net/nycss/2b541395152c0a6d1e_vpm6b5w43.pdf. The situation for poor renters has devolved since 2005, when a poor household had just under \$5 to spend on necessities after paying the rent. BACH & WATERS, *supra* note 116, at 9.

¹²⁰ RENTAL HOUSING AFFORDABILITY, *supra* note 102, at 4.

¹²¹ *Id.*

¹²² Data from the Fiscal Policy Institute (in 2005 dollars) indicates that the upper income boundary for the bottom third of households was between \$14,115 and \$26,430. TRUDI RENWICK, *FISCAL POL’Y INST., PULLING APART IN NEW YORK: AN ANALYSIS OF INCOME TRENDS IN NEW YORK STATE* 13 (2008), available at http://www.fiscalpolicy.org/FPI_PullingApartInNewYork.pdf. In 2005 approximately 18% of the housing stock was affordable to households with an income of \$20,000 or below (50% AMI) and in 2008 approximately 17.3% of the housing stock was affordable to households with an income of \$22,500 or below (50% AMI). See RENTAL HOUSING AFFORDABILITY, *supra* note 102, at 4.

¹²³ N.Y.C. DEP’T OF HOUS. PRESERV. & DEV., *A GUIDE TO THE PROGRAMS AND SERVICES OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT* 5 (2004), available at <https://partner.hpdnyc.org/whalecom81b846a8d7ea6a1bb1b6bf/whalecom0/download/311/HPD/HPD%20Guide%20to%20Programs%20and%20Services.pdf> (estimating that “46% of the new and preserved units” under the New Housing Marketplace Plan will be affordable to low-income households). See also N.Y.C. DEP’T OF HOUS. PRESERV. & DEV., *THE NEW HOUSING MARKETPLACE: CREATING HOUSING FOR THE NEXT GENERATION* (2002), available at <http://www.nyc.gov/html/hpd/downloads/pdf/10yearHMplan.pdf>; N.Y.C. DEP’T OF HOUS. PRESERV. & DEV., *MAYOR BLOOMBERG’S AFFORDABLE HOUSING PLAN 2* (2009), available at <http://www.nyc.gov/html/hpd/downloads/pdf/New-Housing-Market-Place-Plan.pdf> (“Nearly three quarters of the units created under the Mayor’s plan will serve low-income families . . .”).

Urban Development—a measure different than the AMI used in the U.S. Census Bureau’s Housing and Vacancy Studies and referenced above.¹²⁴ In 2008, 80% of the HUD-AMI for a single-person household was \$43,000 and for a family of four was \$61,450.¹²⁵ According to the Census Bureau’s 2008 Housing Vacancy Survey, the median renter household in New York City had an income of \$36,300.¹²⁶ Therefore, the City can simultaneously construct “low-income housing” while still doing nothing to address the real housing crisis. In fact, between 2004 and 2013, less than one-third of the “affordable housing” built or preserved in New York City was affordable to the median renter household.¹²⁷

V. SROs AND THE CRISIS

“The people you see sleeping under bridges used to be valued members of the housing market. They aren’t anymore.”¹²⁸

The City’s turn against SRO housing shaped the nature of the current housing crisis. To provide perspective, the approximately 175,000 SRO units the City eliminated from 1955 on were roughly equivalent in number to New York’s entire public housing system.¹²⁹ The number of units affordable to low-income residents is fully one-third lower than it would have been had SRO housing

¹²⁴ Compare A GUIDE TO THE PROGRAMS AND SERVICES OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *supra* note 123 with *supra* text accompanying note 20 and ASS’N FOR NEIGHBORHOOD & HOUS. DEV. INC., REAL AFFORDABILITY: AN EVALUATION OF THE BLOOMBERG HOUSING PROGRAM AND RECOMMENDATIONS TO STRENGTHEN AFFORDABLE HOUSING POLICY 20 (2011), available at <http://www.anhd.org/wp-content/uploads/2011/07/Real-Affordability-Evaluation-of-the-Bloomberg-Housing-Program2.pdf>.

¹²⁵ U.S. DEP’T OF HOUS. & URBAN DEV., 2008 ADJUSTED HOME INCOME LIMITS 2 (2008), available at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2008/ny.pdf>.

¹²⁶ U.S. CENSUS BUREAU, SER. IA, TBL. 9, 2008 NEW YORK CITY HOUSING AND VACANCY SURVEY (2008), <http://www.census.gov/housing/nychvs/data/2008/ser1a.html> (follow link at “2007 Total Household Income”).

¹²⁷ Based on the 2008 income figures cited above, it may be assumed that median renter household income is generally 60% or less of HUD AMI. Only 34.2% of the “affordable housing” claimed by the Bloomberg administration was affordable to households at 60% HUD AMI. See REAL AFFORDABILITY, *supra* note 124, at 20. Similarly, though applying a slightly different focus, approximately two-thirds of the “affordable housing” was “too expensive for the majority of local neighborhoods residents.” *Id.* at 2.

¹²⁸ Direct quote of Mary Brosnahan, executive director of Coalition for the Homeless, as reported by Gladwell, *supra* note 1.

¹²⁹ The New York City Housing Authority estimates that there are 178,914 public housing units as of March 1, 2013. *About NYCHA Fact Sheet*, N.Y.C. HOUS. AUTH., <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml> (last visited Jan. 24, 2014).

been preserved.¹³⁰

SROs remain an integral part of the low-income market. Although rent-regulated SROs are a tiny fraction of the City's total rental stock, they still make up a significant percentage (5 to 15%) of all units affordable to poor New Yorkers.¹³¹ Thus, the ongoing—though slowed—loss of units continues to have a devastating impact upon the availability of truly “affordable” housing.

And then there are the illegal units: the City's destruction of legal, regulated SROs caused an explosion in the number of illegal SROs. Illegally subdivided apartments and other SRO-type units currently house as many as 500,000 poor New Yorkers.¹³² The City ignores their existence, including the danger they present, because it desperately needs these units. City officials rightly contend that illegal SROs present a “serious danger” to tenants and neighborhoods,¹³³ yet the City depends on illegal SROs to ward off a homeless crisis that would “dwarf” anything seen before.¹³⁴ As *The New York Times* reported in 2008:

For decades, Bowery flophouses [one type of SRO]—typically offering as little as a bed in a cubicle with wire-mesh ceilings—were home to some of the city's most down and out. But as rents began to rise, the flophouses were converted to condos. . . .

. . . .

[Now] illegally converted houses [are] being used [to house the poor]

. . . .

[T]he Buildings Department alone has issued more than 226 violations to 47 boarding houses for illegal use as a “homeless shelter,” “single-room occupancy,” or “rooming house[]”

. . . .¹³⁵

¹³⁰ See RENTAL HOUSING AFFORDABILITY, *supra* note 102, at 4. Approximately 17% of the rental housing stock (3,352,041) is affordable to the bottom third. The 175,000 lost SRO units represent approximately 31% of the affordable units in the City.

¹³¹ The authors estimate that SROs constitute between 5% and 10% of all units affordable to households earning less than 50% of the AMI and a significantly higher percentage of all units affordable to households living below the poverty line.

¹³² Manny Fernandez, *Partitioned Apartments Are Risky, But Common in New York*, N.Y. TIMES (Feb. 22, 2009), <http://www.nytimes.com/2009/02/23/nyregion/23partitions.html>; see also Leslie Kaufman & Manny Fernandez, *Illegal Boarding Houses Pit City's Laws Against Lack of Alternatives*, N.Y. TIMES (Jan. 22, 2008), <http://www.nytimes.com/2008/01/22/nyregion/22homeless.html>.

¹³³ Javier C. Hernandez, *City to Crack Down on Illegally Divided Apartments*, N.Y. TIMES CITY ROOM BLOG (June 7, 2011), <http://cityroom.blogs.nytimes.com/2011/06/07/city-to-crack-down-on-illegally-divided-apartments/>.

¹³⁴ Hevesi, *supra* note 30, at 5.

¹³⁵ Kaufman & Fernandez, *supra* note 132. The HVS study also concluded that “[t]he crowding situation in the City was serious in 2011.” LEE, *supra* note 19, at 8.

VI. BRINGING SROs BACK

The solution to the housing crisis is in some sense simple: create more truly affordable housing. There is certainly room, and a need, for more moderately priced, “gentrified” SROs like former Mayor Michael Bloomberg’s “small apartments.” However, to have a real impact on the housing crisis, the City needs to dedicate significant resources to promoting the construction of low-rent units. Over the last several decades the City has spent¹³⁶ hundreds of millions, if not billions, of dollars subsidizing the construction, renovation, and rehabilitation of high-rent and luxury housing.¹³⁷ These dollars would be better spent subsidizing private (low-rent) SRO development or—perhaps preferably—building SROs for public ownership.¹³⁸

Any resolution of the City’s housing crisis will require a sea change in SRO policy. It will take years to rebuild the SRO housing

11.5% of renter households were crowded in 2011, with rates as high as 14.7% in one category of rent-stabilized units. *Id.*

¹³⁶ This spending has primarily taken the form of tax exemptions.

¹³⁷ VICTOR BACH & THOMAS J. WATERS, *CMTY. SERV. SOC’Y, UPGRADING PRIVATE PROPERTY AT PUBLIC EXPENSE: THE RISING COST OF J-51*, at 6 (2012), available at http://b3cdn.net/nycss/b3347d0b9b1c3a863d_ffm6ivtrh.pdf. This policy brief concludes that a significant percentage of J-51 benefits, see *id.* at 1 (explaining J-51 tax breaks), go to condos, co-ops, and “apartments with very high rents.” *Id.* at 6. The program has subsidized the “gentrif[ication of] Upper Manhattan.” *Id.* See also Michael Powell, *Luxe Builders Chase Dreams of Property Tax Exemptions*, N.Y. TIMES (June 24, 2013), <http://www.nytimes.com/2013/06/25/nyregion/luxe-builders-chase-dreams-of-property-tax-exemptions.html>; Elizabeth A. Harris, *As Prices Soar to Buy a Luxury Address, the Tax Bills Don’t*, N.Y. TIMES (Oct. 15, 2012), <http://www.nytimes.com/2012/10/16/nyregion/many-high-end-new-york-apartments-have-modest-tax-rates.html> (discussing State and City laws that subsidize the construction of luxury buildings and mandate their systematic undervaluation for property tax purposes and concluding that “the overall city valuation for condos and co-ops is only about 20 percent of what it would be were the city allowed to” accurately appraise the value of luxury buildings).

¹³⁸ Other than noting that new SRO units would need to be low-rent in order to have a real impact on the housing crisis, a discussion of the ideal regulatory and ownership structure of new units is beyond the scope of this Article. We strongly believe that any new units should be permanently subject to rent regulation or some other rent-setting mechanism. This would require making changes to the housing and rent regulation laws. See N.Y.C. ADMIN. CODE LAW § 26-504 (2013) (excluding most new construction from regulation). Under existing law, new units built with public subsidies would probably be temporarily subject to regulation. See N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.11(c), (o)–(p) (2013); N.Y.C. ADMIN. CODE LAW § 27-2077. Publicly owned units would not be regulated, but would have other distinct benefits. See N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.11(b). Public housing is, in theory at least, subject to greater democratic control; rents for public housing are generally set at an affordable rate by law; public housing residents enjoy tenancy rights that are in many ways superior to those of even regulated tenants; and the conversion or demolition of public housing is, in some ways, more difficult than with private, affordable housing.

stock, and the recommendations that follow are meant as the first step down that path.

While the return of SRO housing may provoke opposition, the facts are clear: New York City needs SROs—and SROs are not going away. SROs are as old as the modern City, and demand for basic, no-frills housing is a constant. The City's half-century-long attempt to eliminate SROs has contributed to unprecedented homelessness, and led to the explosive return of illegal and unsafe units. Opposition to SRO living must be reconsidered in light of the unique benefits SRO hotels provide.

A. *Lift the Ban on the Construction of New SRO Units*

The first step in restoring SRO housing is to lift the ban on the construction of new SRO units. In addition to allowing new units to be built, this change would permit the legalization of the existing yet illegal SRO stock.¹³⁹

Even without the construction of a single new unit, the City would benefit from the legalization of existing SRO-type housing. New York City relies on illegally converted SROs in order to house its citizens. Refusing to acknowledge the necessity of these units only strips residents of rights and exacerbates public safety problems. Legalization would simultaneously help remove a public safety threat and boost the stock of affordable, regulated housing.¹⁴⁰ Currently, residents of illegal SROs have few rights and po-

¹³⁹ The construction ban denies tenants living in illegal SROs remedies available to tenants living in all other types of illegal units. Non-SRO tenants are entitled to come forward and claim stabilization rights. It would then be the landlord's burden to prove that the unit cannot be legalized if she wishes to evict. *See Commercial Hotel, Inc. v. White*, 752 N.Y.S.2d 779, 780–81 (App. Term 2d Dep't 2002); *840 West End Ave. v. Zurkowski*, N.Y.L.J., Feb. 28, 1991, at 24, col. 4 (App. Term 1st Dep't.). The situation is less clear with SROs. Because New York Multiple Dwelling Law § 248 and subsections 22-2077 and 27-2078 of the New York Administrative Code make all new SROs illegal by definition, this route appears foreclosed to SRO tenants. At least one court has ruled (in an unreported decision) that a regulated tenancy can be created in an illegal SRO, though the decision does not specifically address the construction ban. *See Wright v. Lewis*, 873 N.Y.S.2d 516 (Table), 2008 WL 4681929 (Sup. Ct. Kings Cnty. Oct. 23, 2008). However, the right is far from clearly defined and an amendment of the legal framework would significantly advance the goal of rebuilding the SRO housing stock. Especially in the outer boroughs, a building's particular zoning classification can also be a legal hurdle.

¹⁴⁰ In 2008, Chhaya Community Development Corporation, together with the Pratt Center for Community Development and Citizens Housing & Planning Council, released two excellent reports on the legalization of currently illegal dwelling units. The reports primarily discuss the legalization of basement units in the outer boroughs, but provide a compelling argument for such legalization and an essential perspective on illegal dwelling units. *See generally* CHHAYA CMTY. DEV. CORP. & CITIZENS HOUS. & PLAN-

tentially face illegal eviction, or evacuation, if they report building violations. If the new-construction ban were lifted, many previously illegal SRO tenants would automatically qualify for rent-stabilization protection.¹⁴¹ In the event the “legalized” units violated building codes, a landlord would have to prove that curing the violations was either physically or economically impossible before residents could be evicted.¹⁴² Given these protections, it is more likely that tenants would report building violations to the City.

Changing the City’s housing laws to permit the legalization of SRO units would not be without precedent. The current housing crisis closely mirrors the crisis that drove New York City to legalize the “new SROs” in the 1930s and 1940s. This process involved major changes to the City’s Multiple Dwelling Law.¹⁴³

B. Preserve Existing Units

In addition to creating new units, City and State need to stem the loss of existing affordable units. Affordable units are lost in two primary ways: (1) through demolition or conversion, which implicates the CONH program, or (2) through illegal rent increases, which implicates the rent regulation laws.

The CONH program needs to be significantly reformed in order to bring policy into line with real-world conditions. As discussed above, one of the primary deficiencies in the program revolves around DHPD’s inability to effectively investigate harassment in empty, or near empty, buildings. This issue could be dealt

NING COUNCIL, *ILLEGAL DWELLING UNITS: A POTENTIAL SOURCE OF AFFORDABLE HOUSING IN NEW YORK CITY* (2008), available at http://www.chhayacdc.org/pdf/Chhaya_reportHPD.pdf; CHHAYA CMTY. DEV. CORP. & PRATT CTR. FOR CMTY. DEV., *NEW YORK’S HOUSING UNDERGROUND: A REFUGE AND RESOURCE* (2008), available at http://www.prattcenter.net/sites/default/files/housing_underground_0.pdf.

¹⁴¹ This assumes most illegal SROs are in buildings that were constructed before 1974.

¹⁴² See, e.g., *McDonnell v. Sir Prize Contracting Corp.*, 300 N.Y.S.2d 696, 697 (App. Div. 2d Dep’t 1969) (holding that tenant could not be evicted where landlord failed to prove that removing relevant violations would be unduly burdensome or economically impossible); *Seckin v. Davenport*, N.Y.L.J., Mar. 18, 1999 at 31, col. 2 (App. Term 2d Dep’t) (same); *K&G Co. v. Reyes*, 276 N.Y.S.2d 20, 23–24 (N.Y. Civ. Ct. 1966) (interpreting parallel requirement in Rent Control Law to hold the same).

¹⁴³ The Pack Law, which legalized the conversion of apartments into SROs, was driven in major part by the Survey of Vacancies in Class A Multiple Dwellings, conducted by the City’s Tenement House Department in 1933. The survey found high vacancy rates (over 14%) in higher-rent, larger apartments at a time when affordable housing was in short supply, and homelessness was a major problem. N.Y.C. CITIZENS HOUS. PLANNING COUNCIL, *SURVEY OF VACANCIES IN CLASS-A-MULTIPLE DWELLINGS 3* (1933), available at http://www.chpcny.org/wp-content/uploads/2010/01/1933_NYC_Vacancy_Study.pdf.

with by shifting the burden of proof. A presumption of harassment could be imposed on any CONH application where more than 30% of the building is empty, or where more than half of existing tenants moved out during the preceding three years.¹⁴⁴

The program could be further strengthened by tightening the definition of harassment. DHPD has complained that it is forced to prove that an owner “intended” to harass tenants by not keeping the building up to code. In light of the history neglect has played in SRO landlord-tenant relations, the law should be amended to make neglect, whatever the owner’s intent, a form of harassment. Moreover, a presumption of harassment should apply in any case where: (1) a “C” violation (the most serious) has not been timely cured; or (2) a tenant has moved out of the building while there were more than five unresolved building violations per resident. In addition, failure to provide occupants with the Notice of Rights—an attempt to deny those rights if there ever was one—should be explicitly codified as a form of harassment.

Finally, to supplement DHPD’s investigative capacity, and to give tenants a more active voice in the program, current and former tenants¹⁴⁵ should be made parties to CONH applications. Tenants should be allowed to appear at hearings with counsel as named parties rather than solely as witnesses DHPD may call at its own discretion. They should be allowed to submit evidence, examine witnesses, and appeal adverse decisions. Owners should be compelled to pay tenants’ legal fees in any case where an application is denied.

The rent regulation laws also need to be reformed. The RSL and RSC need to be clarified to adequately account for differences between SROs and apartments. Loopholes that allow landlords to improperly increase SRO rents, or deregulate units, need to be closed. To start, the vacancy increase and “transient deregulation” schemes discussed in Part III above (particularly footnote 70), need to be prohibited. Vacancy increases allow SRO owners to take a permanent increase to the regulated rent when a unit becomes vacant. In light of SROs’ unique position in the low-income market, and a long history of owner abuse, this increase needs to be explicitly prohibited. In the case of transient deregulation, owners

¹⁴⁴ The presumption would (a) recognize that a previously occupied building rarely “naturally” empties, and (b) reflect the overwhelming public interest in preserving existing SRO housing.

¹⁴⁵ By “preceding three years,” we mean the three-year period prior to the submission of the CONH application.

claim the RSC allows them to unilaterally raise the “regulated” rent after a room has been registered (accurately or not) as “temporarily exempt due to transient occupancy” for a period of four years. If the owner chooses to set the rent above the high-rent destabilization threshold (currently \$2,500 per month), the unit is effectively deregulated solely as a result of a period of transient occupancy.

As the issue of transient deregulation suggests, the rent registration system for SROs needs to be overhauled. Currently, SRO owners are required to file the same annual registration statements with DHCR as apartment owners. This makes little sense as SRO tenancies are different than apartment tenancies. The existing registration system allows SRO owners to use the dual, transient-permanent nature of SRO tenancies to deny SRO tenants their rights. Owners routinely register units as “temporarily exempt due to transient occupancy” even while they are occupied by permanent tenants.¹⁴⁶ Because DHCR checks the accuracy of registration statements, and because SRO tenants are poorly positioned to police owner conduct, there is relatively little risk to this scheme.¹⁴⁷ However, as discussed above,¹⁴⁸ the rewards are significant: a “temporarily exempt” registration can make it more difficult, or impossible, for a tenant to prove they are stabilized or are being overcharged. A simple change could help prevent this abuse. SRO owners should be required to register a regulated rent for each room, each year. In other words, each annual SRO registration should set forth the last rent paid by a permanent, rent regulated tenant for the room. This “room rent,” rather than the accidental, and frequently false, regulatory status of a former occupant, would determine the outcome of any complaint. The legal regulated rent for a room would simply be the “room rent” plus applicable DHCR increases. To increase owners’ incentives to comply with the rules, if a tenant successfully proved that a unit was improperly registered (or if an owner failed to file a registration), the rent for the unit should be set at the lowest legal rate in the building or \$215, whichever is less, and treble damages applied for any overcharge.¹⁴⁹

¹⁴⁶ For example, between approximately 2000 and 2010, most of the almost 200 rooms at the Greenpoint Hotel in Brooklyn were falsely registered as “temporarily exempt due to transient occupancy.” The Greenpoint’s owners used these false registrations to deny tenants’ regulatory status and dispute rent overcharge complaints both before DHCR and in Housing Court proceedings. (DHCR Registration on file with authors).

¹⁴⁷ See generally *supra* notes 70–75 and accompanying text.

¹⁴⁸ *Id.*

¹⁴⁹ \$215 per month is the shelter allowance for a one-person household provided by New York City Public Assistance. See CMTY. SERV. SOC’Y, PUBLIC BENEFITS FOR LOW-

Finally, in order to inform all of these changes, a large-scale study similar to the invaluable Blackburn report¹⁵⁰ should be commissioned. DHPD's Housing and Vacancy Survey and the RGB's occasional memoranda about SRO units are helpful, but lack depth and scope. The report should not extrapolate from past studies, as Housing and Vacancy Survey reports have done, nor rely solely on rent registration data, as a recent RGB study has.¹⁵¹ In the authors' experience, it is not uncommon for rent registration data to be inaccurate.¹⁵² In order to gauge the actual state of the SRO market, a more finely tuned study is required. Furthermore, it would be helpful to understand the exact scope of the illegal SRO market and the exact number of rent-regulated SRO units that are being used for purposes other than affordable housing.

CONCLUSION

Though often misunderstood, SRO housing has played an integral role in New York City's housing market. A more robust SRO housing stock would provide truly affordable housing to thousands of poor and low-income New Yorkers and could significantly alleviate the City's homelessness crises. Bringing SROs back to New York City is possible, but will require significant changes in City and State policy. A new attitude towards and understanding of SROs is necessary to ensure that such housing can once again serve its vital function.

INCOME INDIVIDUALS AND FAMILIES: APPLYING FOR AND USING PUBLIC BENEFIT PROGRAMS: CASH ASSISTANCE 3 (2013), available at <http://benefitsplus.cssny.org/system/files/benefit-tools/attachments/Cash%20Assistance.pdf>.

¹⁵⁰ See *supra* note 1.

¹⁵¹ See generally N.Y.C. RENT GUIDELINES BD., *supra* note 75.

¹⁵² Indeed, in 2011 Make the Road New York found that 45% of apartments were registered with inflated rents and that 64% of a sample of 200 apartments had registration irregularities, including 33% with gaps in rent registration. MAKE THE ROAD N.Y., RENT FRAUD: ILLEGAL RENT INCREASES AND THE LOSS OF AFFORDABLE HOUSING IN NEW YORK CITY 5 (2011), available at http://www.maketheroad.org/pix_reports/DHCR%20Report.pdf.

