

## University of St. Thomas Journal of Law and Public Policy

---

Volume 11

Issue 2 *NFIB V. SEBELIUS AND THE FUTURE  
OF HEALTHCARE REFORM*

Article 4

---

# Building on the Tiny House Movement: A Viable Solution to Meet Affordable Housing Needs

Emily Keable

Follow this and additional works at: <https://ir.stthomas.edu/ustjlpp>

 Part of the [Housing Law Commons](#), [Law and Economics Commons](#), [Property Law and Real Estate Commons](#), and the [State and Local Government Law Commons](#)

---

### Bluebook Citation

Emily Keable, *Building on the Tiny House Movement: A Viable Solution to Meet Affordable Housing Needs*, 11 U. St. Thomas J.L. & Pub. Pol'y 111 (2017).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Journal of Law and Public Policy. For more information, please contact Editor-in-Chief [Patrick O'Neill](#).

# **BUILDING ON THE TINY HOUSE MOVEMENT: A VIABLE SOLUTION TO MEET AFFORDABLE HOUSING NEEDS**

BY EMILY KEABLE

## INTRODUCTION

“[I]t is hard to argue that housing is not a fundamental human need. Decent, affordable housing should be a basic right for everybody in this country. The reason is simple: without stable shelter, everything else falls apart.”<sup>1</sup>

Since 2000, communities across the United States increasingly face a lack of affordable housing.<sup>2</sup> The supply of affordable housing is unable to match the increased demand.<sup>3</sup> Therefore, the need for affordable housing continues to rise, as the availability of affordable housing decreases.<sup>4</sup>

Not only is housing becoming more expensive, but Americans also have less money to spend on housing than before. Seventy-six percent of Americans are now living paycheck to paycheck.<sup>5</sup> The increasing cost of housing contributes to the financial instability many

---

<sup>1</sup> MATHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 300 (2016).

<sup>2</sup> Josh Leopold et al., *The Housing Affordability Gap for Extremely Low-Income Renters in 2013*, URBAN INSTITUTE, at 14 (2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Angela Johnson, *76% of Americans Are Living Paycheck-to-Paycheck*, CNN MONEY (June 24, 2013), <http://money.cnn.com/2013/06/24/pf/emergency-savings/index.html>.

Americans face.<sup>6</sup> From 2008 to 2014, the number of “severe cost-burdened” households rose from 2.1 million to 11.4 million.<sup>7</sup> A household that faces a severe cost-burden spends more than fifty percent of its income on housing.<sup>8</sup> Furthermore, the number of “cost-burdened” homeowners declined to 18.5 million in 2014.<sup>9</sup> A cost-burdened homeowner pays more than thirty percent of his income on housing.<sup>10</sup> This decline in cost-burdened homeowners resulted from an increased foreclosure rate, forcing people out of homes and into the rental market.<sup>11</sup> Predictably, the number of cost-burdened renting households increased to 21.3 million in 2014.<sup>12</sup>

As the number of people that cannot afford mortgage payments grows, the demand for rental property increases.<sup>13</sup> The limited availability of rental housing, combined with the increased demand, results in an increased cost of rental property.<sup>14</sup> The increased cost of rental property causes problems for renters with lower incomes. In 2014, the wage of the average renter was \$14.64 an hour.<sup>15</sup> In some places, even this wage, above the federal minimum, is still insufficient for an individual to afford rent at fair market value.<sup>16</sup> To put this in perspective, to afford rent on a two-bedroom apartment, a household would have to work a minimum of 104 hours at the federal minimum

---

<sup>6</sup> *The State of the Nation’s Housing*, JOINT CTR. FOR HOUS. STUD. HARV. U. 12 (2016), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs\\_2016\\_state\\_of\\_the\\_nations\\_housing\\_lowres.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_2016_state_of_the_nations_housing_lowres.pdf).

<sup>7</sup> *Id.*, at 4.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *The State of the Nation’s Housing*, *supra* note 6, at 4.

<sup>13</sup> See Leopold, *supra* note 2, at 11–13.

<sup>14</sup> *Id.* at 1–2.

<sup>15</sup> Althea Arnold et al., *Out of Reach: Twenty-Five Years Later, The Affordable Housing Crisis Continues*, NAT’L LOW INCOME HOUS. COAL. 7 (2014), <http://nlihc.org/sites/default/files/oor/2014OOR.pdf>. The average wage of a renter was almost twice that of the federal minimum wage of \$7.25. *Id.*

<sup>16</sup> *Id.*

wage per week.<sup>17</sup> This amounts to more people paying a larger share of their income towards housing needs.<sup>18</sup>

These statistics highlight the growing importance of affordable housing in communities.<sup>19</sup> As public awareness increased for the lack of affordable housing, the federal government has attempted solutions to alleviate the burden on households. The Department of Housing and Urban Development (HUD) imposes an affirmative duty on state and local governments that receive federal grants to further the goals of fair housing and equal opportunity.<sup>20</sup> To do so, state and local governments must take meaningful actions to make the community more inclusive.<sup>21</sup> Making housing more affordable for low- to moderate-income families is a way to promote inclusion within the community.

Several federal programs provide Federal Rental Assistance as an attempt to help alleviate the demand for affordable housing.<sup>22</sup> Three Federal Rental Assistance Programs are: (1) Section 8 Housing Choice Voucher Program,<sup>23</sup> (2) Section 8 Project-Based Rental Assistance,<sup>24</sup> and (3) public housing units.<sup>25</sup> Despite these best efforts, these federal programs are insufficient to meet the demand of affordable housing, especially as construction for two of these programs has halted.<sup>26</sup> Therefore, communities developed flexible zoning approaches to

---

<sup>17</sup> *Id.* at 10. The average workweek for an individual is only forty-seven hours a week. Lydia Saad, *The “40-Hour” Workweek Is Actually Longer—By Seven Hours*, GALLUP (Aug. 29, 2014), <http://www.gallup.com/poll/175286/hour-workweek-actually-longer-seven-hours.aspx>.

<sup>18</sup> Leopold, *supra* note 2, at 14; *see* Arnold, *supra* note 15, at 11.

<sup>19</sup> Arnold, *supra* note 15, at 11–17.

<sup>20</sup> Affirmatively Furthering Fair Housing, 24 C.F.R. § 5.150 (2016).

<sup>21</sup> 24 C.F.R. § 5.152 (2016).

<sup>22</sup> Leopold, *supra* note 2, at 4.

<sup>23</sup> The Section 8 Housing Choice Voucher Program benefits 2.1 million households by administering vouchers to pay the difference between what the family can afford and to locally determined rent limit. *Id.* To participate in this program families are required to contribute the larger of 30% of their income or \$50. *Id.*

<sup>24</sup> Section 8 Project-Based Rental Assistance currently serves 1.2 million households through an agreement between HUD and the property owner. *Id.* This program compensates a landlord for the remaining rent after tenants pay the minimum of 30% of their income or \$25. *Id.*

<sup>25</sup> Public housing units serve 1.2 million households by providing public housing owned and operated by local public housing agencies. *Id.*

<sup>26</sup> *Id.* at 3.

contribute to the affirmative duty to provide affordable housing, such as using set-asides and density bonuses.<sup>27</sup>

As a non-traditional method to provide affordable housing, an increasing number of communities across the nation are starting to look towards “tiny houses” as a solution to expand affordable housing opportunities available in their community.<sup>28</sup> Tiny homes are typically between 100 and 400 square feet, compared to the average American home of 2,600 square feet.<sup>29</sup>

Tiny homes offer a problematic addition to the affordable housing scheme as they lack compliance with zoning codes.<sup>30</sup> Local municipalities maintain the power to prevent tiny homes in their communities through exclusionary zoning.<sup>31</sup> Municipalities engage in exclusionary zoning when the required land use regulations raise the standard of housing quality to a point beyond necessary for health and safety, which results in decreased availability of affordable housing in the community.<sup>32</sup>

This Note explains the exclusion of tiny homes and argues that communities should encourage their construction. Tiny homes are a necessary and essential addition to the affordable housing scheme, as

---

<sup>27</sup> PETER W. SALSICH, JR. & TIMOTHY J. TRYNIECKI, *LAND USE REGULATION: A LEGAL ANALYSIS AND PRACTICAL APPLICATION OF LAND USE LAW* 472 (3d ed. 2015).

<sup>28</sup> Gale Holland, *L.A. is Seizing Tiny Homes from the Homeless*, L.A. TIMES (Feb. 25, 2016), <http://www.latimes.com/local/lanow/la-me-ln-tiny-houses-seized-20160224-story.html>; Janet Eastman, *Neighbor Complains, City Boots Young Couple Out of their Illegal Tiny House*, THE OREGONIAN (Aug. 14, 2016), [http://www.oregonlive.com/hg/index.ssf/2016/08/tiny\\_house\\_illegal\\_portland\\_cl.html](http://www.oregonlive.com/hg/index.ssf/2016/08/tiny_house_illegal_portland_cl.html); Jenny Berg, *Church Sues City of St. Cloud over Tiny House*, ST. CLOUD TIMES (Aug. 27, 2016), <http://www.sctimes.com/story/news/local/2016/08/27/church-sues-city-st-cloud-over-tiny-house/89479614/>; David Smiley, *A Purple-Haired Grandma Lives in a Tree House. Now She's Told It Has to Come Down*, MIAMI HERALD (Sept. 3, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article99662117.html>.

<sup>29</sup> *What is the Tiny House Movement?*, THE TINY LIFE: TINY HOUSES, TINY LIVING, 2015, <http://thetinylife.com/what-is-the-tiny-house-movement/>.

<sup>30</sup> SALSICH, *supra* note 27, at 453.

<sup>31</sup> *E.g.*, DEWITT, N.Y., ZONING CODE § 192-101(a) (2015) (requiring the floor space for a single-family home be 960 square feet).

<sup>32</sup> SALSICH, *supra* note 27, at 453.

they provide low- to moderate-income families with an opportunity to obtain affordable homeownership.

Part I of this Note further describes the Tiny House Movement and its market. It then provides a brief overview of the importance homeownership plays in American society.

Part II transitions into a discussion of zoning and how it is used to restrict and exclude tiny houses. The purpose of the authority to zone will be crucial to the analysis of why municipalities should modify the zoning code to allow the construction of tiny homes in communities. An overview of inclusionary zoning is also considered.

Part III discusses whether the exclusion is legally permissible. An economic analysis of the importance of strong property rights highlights the legal foundations for the exclusion of tiny houses. It then moves to a discussion of ways tiny houses have found compliance within the zoning code.

Lastly, Part IV provides a discussion of the municipality requirement of inclusionary zoning, and ends with recommendations as to how the Tiny House Movement can be used by municipalities to fulfill their obligation of providing affordable housing options.

## I. TINY HOUSES AND HOMEOWNERSHIP

Tiny houses are a growing trend in today's society. Their popularity is evident from their ever-increasing presence on prime time television.<sup>33</sup> Tiny houses embrace the growing movement to live small while offering the benefits of homeownership.

### A. *The Tiny House Movement*

The Tiny House Movement is a "social movement" where people have decided to downsize their livable space to a smaller size.<sup>34</sup> As previously mentioned, tiny houses differ from the average American house of 2,600 square feet by ranging from 100 and 400 square feet.<sup>35</sup> The decrease in house size reduces the cost. The average single-family home costs \$296,000, while the cost of tiny homes range from \$10,000 to \$100,000.<sup>36</sup> An increasing number of Americans are

---

<sup>33</sup> *Tiny House, Big Living: Jenna and Guillaume's Adventure House-on-Wheels* (HGTV television broadcast Dec. 15, 2014); *Tiny House Nation: 172 Sq. Ft. Dream Castle* (FYI television broadcast July 9, 2014).

<sup>34</sup> *What is the Tiny House Movement?*, *supra* note 29.

<sup>35</sup> *Id.*

<sup>36</sup> *The State of the Nation's Housing*, *supra* note 6, at 8, fig. 7; Jenna Spesard, *What Does a Tiny House Cost?*, TINY HOUSE GIANT JOURNEY (Mar. 15, 2016),

living from paycheck to paycheck.<sup>37</sup> The affordability tiny homes offer greatly contributes to their increasing popularity.

The financial instability many Americans face largely results from this increased housing cost.<sup>38</sup> In 2015, the average household spent twenty-six percent of their income on housing.<sup>39</sup> Therefore, tiny homes offer individuals a chance of homeownership at more affordable prices.

The Tiny House Movement has also found support in the ecofriendly community.<sup>40</sup> The design of tiny homes can incorporate features from solar panels to water collection systems.<sup>41</sup> Architectural design is a major focus for some tiny homeowners who are looking to promote sustainability.<sup>42</sup>

People are also attracted to the lifestyle that tiny living offers, as seen from its rising popularity on TV shows.<sup>43</sup> The ease of mobility combined with a lower financial burden allows households to have more capital to spend money on other means, which tiny homeowners find more valuable.

---

<http://tinyhousegiantjourney.com/2016/03/15/tiny-house-costs/>; Devon Thorsby, *The Big Impact of Tiny Homes: How Little Houses Are Changing Real Estate*, U.S. NEWS (Aug. 5, 2016, 11:07 AM), <http://realestate.usnews.com/real-estate/articles/the-big-impact-of-tiny-homes-how-little-houses-are-changing-real-estate/>.

<sup>37</sup> Johnson, *supra* note 5.

<sup>38</sup> *The State of the Nation's Housing*, *supra* note 6, at 4.

<sup>39</sup> BUREAU OF LABOR STATISTICS, U.S. DEP'T LABOR, CONSUMER EXPENDITURES – 2015, USDL-16-1768 (Aug. 30, 2016, 10:00 AM).

<sup>40</sup> Lindsey Ellis, *Syracuse Man Sees Tiny House As A Learning Experience*, TIMES UNION (June 1, 2016), <http://www.timesunion.com/tuplus-business/article/Syracuse-man-sees-tiny-house-as-learning-7958126.php>.

<sup>41</sup> John Philip Beam, *Tiny House, Big Rewards?* 7, 17 (Aug. 2015) (presented to the Faculty of the Graduate School of the University of Texas at Austin in Partial Fulfillment of the Requirements for the Degree of Master of Arts), <https://repositories.lib.utexas.edu/bitstream/handle/2152/32474/BEAM-MASTERSREPORT-2015.pdf?sequence=1&isAllowed=y>.

<sup>42</sup> *Id.*; Kristine Wong, *A Grand Tiny House*, BERKLEY ENGINEERING (Oct. 24, 2016), <http://engineering.berkeley.edu/2016/10/grandest-tiny-houses>.

<sup>43</sup> *Tiny House, Big Living*, *supra* note 33; *Tiny House Nation*, *supra* note 33.

People seeking to construct tiny homes face three common challenges: (1) social norms, (2) finances, and (3) access to land and zoning requirements.<sup>44</sup>

Modern American society places a great value on owning a large home.<sup>45</sup> The American social norm is to purchase a single-family home.<sup>46</sup> Individuals joining the Tiny House Movement are often left explaining why they desire to live in a space smaller than the American Dream home. Yet, people involved in the Tiny House Movement recognize that the size of the house does not lessen the benefits of homeownership.

Homeowners who chose a more affordable alternative living situation, like tiny homes, still face troubling financial constraints on affordability.<sup>47</sup> Banks are reluctant to give loans to homeowners looking to acquire a tiny home, since it is viewed as a risky asset purchase.<sup>48</sup> While tiny homes are a more affordable option than a traditional single-family house, they still may require financing.<sup>49</sup> Low-cost housing is more expensive to finance for the lender. The lender is required to complete the same amount of paperwork for lower fees, which is based off the commission from the sale.<sup>50</sup> Therefore, the cost and limited financing may preclude a sector of the population from even entering the Tiny House Movement.

Additionally, land is a scarce commodity. Therefore, individuals looking to join the Tiny House Movement are limited as to where they can purchase land.<sup>51</sup> The search for available land is

---

<sup>44</sup> *Top 5 Biggest Barriers to the Tiny House Movement*, THE TINY LIFE: TINY HOUSES, TINY LIVING (2015), <http://thetinylife.com/top-5-biggest-barriers-to-the-tiny-house-movement/>.

<sup>45</sup> Katherine M. Vail, *Saving the American Dream: The Legalization of the Tiny House Movement*, 54 U. LOUISVILLE L. REV. 357, 359 (2016).

<sup>46</sup> *Id.* at 359–60.

<sup>47</sup> *Top 5 Biggest Barriers to the Tiny House Movement*, *supra* note 44.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See BUREAU OF LABOR STATISTICS, U.S. DEP'T LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, LOAN OFFICERS: WHAT LOAN OFFICERS DO (Dec. 17, 2015), <https://www.bls.gov/ooh/business-and-financial/loan-officers.htm#tab-2>.

<sup>51</sup> *Top 5 Biggest Barriers to the Tiny House Movement*, *supra* note 44.



intertwined with zoning conflicts, as tiny homes are noncompliant with zoning codes, unless routes within the zoning code can be found.<sup>52</sup>

Members of the Tiny House Movement vary as to whether the tiny home is built as a stand-alone structure or if it is built on a trailer with wheels.<sup>53</sup> While there are benefits to building a tiny home on wheels, to meet zoning mobile home requirements, there are also different costs, financing, and life choices associated with tiny homes on wheels.<sup>54</sup> This Note focuses on tiny homes built as stand-alone structures, which provide a unique long-term addition to a municipality's affordable housing scheme. The benefits of tiny homes, considered as mobile homes, are not discussed beyond providing a possible means of finding tiny home inclusion within the zoning code.<sup>55</sup>

### *B. The Value of Homeownership*

The American Dream legitimizes homeownership as owning a detached single-family suburban home.<sup>56</sup> The federal government has encouraged single-family homeownership since President Herbert Hoover.<sup>57</sup> Almost every president since Hoover emphasized and promoted the value of homeownership in American society.<sup>58</sup> In 2005, these presidential efforts paid off when the American rate of homeownership reached its peak at seventy percent.<sup>59</sup> As a result, the

---

<sup>52</sup> See, e.g., DEWITT, N.Y., ZONING CODE § 192-18, § 192-101(a) (2015); See *infra* Part III.B.

<sup>53</sup> Vail, *supra* note 45, at 373.

<sup>54</sup> Converting a tiny home into a mobile home is often thought to be a short-term solution to meeting zoning requirements. The problem with the mobile home requirements, at least in accordance with the DeWitt, New York, zoning code, is that there is still minimum lot dimension requirements. DEWITT, N.Y., ZONING CODE § 122-12(a) (2016) (requiring mobile home lots to have a minimum area of 5,000 square feet). Furthermore, converting a tiny home to a mobile home and limiting their placement to mobile home parks may limiting the possible benefits of utilizing tiny homes in the affordable housing scheme offers.

<sup>55</sup> See *infra* Part IV.

<sup>56</sup> Priya S. Gupta, *The American Dream, Deferred: Contextualizing Property After the Foreclosure Crisis*, 73 MD. L. REV. 523, 535 (2014).

<sup>57</sup> *Id.* at 534.

<sup>58</sup> Vail, *supra* note 45, at 360.

<sup>59</sup> *Id.*

American Dream has become intensely intertwined with homeownership as a symbol of status.<sup>60</sup>

The high value Americans place on homeownership correlates to the level of success a homeowner is inferred to have based on the size of his house.<sup>61</sup> From 1949 to 2013, the average house size increased from 1,100 square feet to 2,598 square feet, respectively.<sup>62</sup> The increase in house size is problematic for the low-income households because it reduces the affordability of a home.<sup>63</sup> An increase in house size correlates to an increase in price.<sup>64</sup> The increased price prevents a portion of the population from purchasing a home.<sup>65</sup> This preclusion could range from first time homebuyers to those with low- to moderate- incomes. Therefore, tiny homes, with a lower cost, provide an important and unique opportunity for individuals to become homeowners. Tiny homes also provide the opportunity for more people to find the dignity associated with homeownership.<sup>66</sup>

## II. ZONING REGULATIONS EXCLUDING TINY HOUSES

Zoning codes are involved in the municipal scheme of regulating housing.<sup>67</sup> The inability to comply with the zoning code often precludes the construction of tiny houses in a community.

### A. *The Police Power Driving Zoning*

A property owner has four basic rights in reference to his property: the right to (1) use and possession of that property, (2) exclude, (3) transfer, and (4) profits of ownership.<sup>68</sup> As the common

---

<sup>60</sup> *Id.*

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

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Vail, *supra* note 45, at 360.

<sup>65</sup> *Id.*

<sup>66</sup> Frank S. Sengstock & Mary C. Sengstock, *Homeownership: A Goal for All Americans*, 46 J. URB. L. 313, 317 (1969).

<sup>67</sup> Vail, *supra* note 45, at 362. It is recognized that building codes also impact the construction of a tiny home. *Id.* at 365–67. However, this Note will focus on the legality of tiny homes within the zoning code. The basic difference between the applicable zoning codes and building codes to the construction of a home is that the building code determines *how* a house can be built while the zoning code determines *where* a house can be built. *Id.* (emphasis added).

<sup>68</sup> RANDY T. SIMMONS, *BEYOND POLITICS: THE ROOTS OF GOVERNMENT FAILURE* 132–33 (2011).

law of property developed, an increasing number of limits on the lawful use of one's property arose.<sup>69</sup> For example, the right to use your property was eventually limited by nuisance law.<sup>70</sup> The court prohibited the use of property that interfered with another's right to lawfully enjoy his property.<sup>71</sup>

*Village of Euclid v. Ambler Realty Co.*, in 1926, established the authority to promulgate zoning laws.<sup>72</sup> *Euclid* recognized four aspects of zoning: (1) that the local government has the authority to create zones and coordinate the uses of land; (2) there is a hierarchy to zoning; (3) zoning is cumulative; and (4) zoning is as of right.<sup>73</sup> During this time period, single-family homes became viewed as a preferential land use, which has undoubtedly contributed to America's lasting preference for single-family homes today.<sup>74</sup> Modern day zoning, while greatly modified from Euclidian Zoning is important to illustrate that the authority to zone is derived from the police power.<sup>75</sup>

The authority of a local government to zone became viewed as a means of allocating and protecting resources.<sup>76</sup> The constitutional police power to promote the health, safety, welfare, and morals provided state and local authorities with the ability to regulate land use through zoning.<sup>77</sup> This has resulted in very broad deference to local authority to zone.<sup>78</sup>

---

<sup>69</sup> *Id.*

<sup>70</sup> *See Bove v. Donner-Hanna Coke Corp.*, 236 A.D. 37, 39 (N.Y. App. Div. 1932).

<sup>71</sup> *Id.*

<sup>72</sup> 272 U.S. 365, 397 (1926); *See supra* Part I.B.

<sup>73</sup> *Village of Euclid*, 272 U.S. at 397.

<sup>74</sup> *See supra* Part I.B.

<sup>75</sup> Melvyn R. Durchslag, *Village of Euclid v. Ambler Realty Co., Seventy-Five Years Later: This is Not Your Father's Zoning Ordinance*, 51 CASE W. RES. L. REV. 645, 646–47 (2001).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> The level of deference applied depends on the challenge to the legislation. A facial challenge, an as applied challenge, adjudicative decision, or conflict with a fundamental right all require a different level of deference. A facial challenge to a zoning ordinance requires rational basis review, where the decision cannot be arbitrary or capricious. *See Euclid*, 272 U.S. 365. A facial challenge triggers a fairly debatable test where the court will examine whether there are any set of facts or justifications that would make the ordinance reasonable and justified. *See Euclid*, 272 U.S. 365. An as applied challenge also requires a rational basis, where

In an effort to promote the health, safety, welfare, and morals of the community, local authorities began implementing zoning requirements for residential districts.<sup>79</sup> A commonly cited example is that housing needs to be of a certain size in order to prevent unsanitary conditions caused by overcrowding.<sup>80</sup> Exemplified by the Town of DeWitt, New York, these zoning code requirements would set limits on lot size,<sup>81</sup> floor space,<sup>82</sup> height,<sup>83</sup> parking,<sup>84</sup> and setback.<sup>85</sup> The reality of setting minimums in these specific areas implies that a minimum cost is associated with building each house in compliance. On its face, the regulation would seem to preclude a portion of the population from building a home that cannot afford to build a home in compliance, due to the cost. Therefore, it is necessary to provide affordable housing to those in need through modification of the code.

---

the decision cannot be arbitrary or capricious. *See Nectow v. City of Cambridge*, 277 U.S. 183 (1928). An as applied challenge requires the court to review all of the actual evidence that the local authority used to base their decision to justify the government objective. *See Nectow*, 277 U.S. 183. A quasi-adjudicative decision triggers intermediate review requiring that the decision is rational and based on substantial competent evidence on the record. *See Fasano v. Board of County Comm'rs*, 507 P.2d 23 (1973). If the ordinance is challenged for conflicting with a fundamental right, then less deference is owed to the government. For the ordinance to withstand the strict scrutiny required, the ordinance must be narrowly tailored to accomplish a significant state purpose, with the least restrictive means. ERIWN CHERMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 1078 (5th ed. 2015).

<sup>79</sup> *Village of Euclid*, 272 U.S. at 387.

<sup>80</sup> *See Wendy Collins Perdue, et al., The Built Environment and its Relationship to the Public's Health: The Legal Framework*, 93(9) AM. J. PUB. HEALTH 1390 (2003).

<sup>81</sup> DEWITT, N.Y., CODE § 192-18(A)-(D) (2015) (requiring the lot size for a single-family home have a minimum width of 120 feet and a minimum area of 40,000 square feet).

<sup>82</sup> DEWITT, N.Y., CODE § 192-101 (2015) (requiring the floor space for a single-family home be 960 square feet).

<sup>83</sup> DEWITT, N.Y., CODE § 192-18(H) (requiring the height of a single-family home be no greater than thirty feet).

<sup>84</sup> DEWITT, N.Y., CODE § 192-103(D) (2015) (requiring there be two parking spaces for a single-family home).

<sup>85</sup> DEWITT, N.Y., CODE § 192-18(E)-(F) (requiring the setback of a single family be fifty feet in the front and that there shall be two sides with a total width of at least thirty-two feet).

Tiny homes then stand out by providing a unique opportunity for homeownership in the affordable housing scheme because the cost of building is reduced.

*B. Exclusionary Zoning Impacting Affordable Housing Opportunities*

A problem arises when zoning regulations create the appearance of segregating a community based on income status. A regulation with this described effect could be construed as a form of exclusionary zoning.<sup>86</sup> Zoning ordinances with a particular impact on low- to moderate- income persons may be viewed as exclusionary when the regulation requires a standard beyond necessary for the protection of the health, safety, and welfare.<sup>87</sup> New Jersey is unique in adopting the *Mount Laurel* fair-share rationale to confront this issue.<sup>88</sup>

In New Jersey, a clear recognition of the police power in promoting the public welfare must include “proper provision for adequate housing of all categories of people.”<sup>89</sup>

[T]he State controls the use of land, all of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. And the same applies to the municipality, to which this control over land has been constitutionally delegated.<sup>90</sup>

Therefore, a municipality must provide its fair-share of affordable housing for those economically disadvantaged. Otherwise, the municipality’s zoning ordinance could be

---

<sup>86</sup> SALSICH, *supra* note 27, at 453.

<sup>87</sup> *Id.*

<sup>88</sup> Peter W. Salsich, Jr., *The Impact of Land Use Laws on Affordable Housing* 13 (December 2003) (unpublished manuscript), [http://www.academia.edu/25054187/The\\_Impact\\_of\\_Land\\_Use\\_Laws\\_on\\_Affordable\\_Housing](http://www.academia.edu/25054187/The_Impact_of_Land_Use_Laws_on_Affordable_Housing).

<sup>89</sup> SALSICH, *supra* note 27, at 459 (quoting *S. Burlington Cty. NAACP v. Mt. Laurel*, 336 A.2d 713, 726 (N.J.1975)).

<sup>90</sup> *S. Burlington Cty. NAACP v. Mt. Laurel*, 456 A.2d 390, 415 (N.J. 1983).

construed as an impermissible attempt at exclusionary zoning.<sup>91</sup>

Although no state has chosen to follow the *Mount Laurel* rationale, several states were encouraged to adopt modified versions of the fair-share concept.<sup>92</sup> Twenty-four states now require local governments to address affordable housing concerns in local land use plans.<sup>93</sup>

Additionally, states began to increase the amount of affordable housing through the flexible inclusionary zoning principles of density bonuses and set-asides.<sup>94</sup> Density bonuses offer developers increases in permitted densities as the number of low- to moderate- income units increase.<sup>95</sup> Set-asides are an allocation program for developers where they set-aside a specified percentage of units in a development for low- to moderate - income units.<sup>96</sup> Both of these programs can be mandatory or voluntary.<sup>97</sup>

The problem arising from the use of both of these flexible inclusionary zoning methods is that they are still insufficient at meeting demand for affordable housing.<sup>98</sup> With profit margins in mind, developers prefer to construct residential units without consideration of including low- to moderate- income units, as they garner a lower profit for the developer.<sup>99</sup>

The failure of density bonuses and set-asides to adequately address affordable housing needs creates a window of opportunity for the introduction of tiny houses in the community to alleviate the pressure of affordable housing needs. Tiny houses are a unique way for developers to offer

---

<sup>91</sup> SALSICH, *supra* note 27, at 453.

<sup>92</sup> Salsich, *supra* note 88, at 13.

<sup>93</sup> *Id.* at 14.

<sup>94</sup> SALSICH, *supra* note 27, at 472. (Additionally, some states decided to override zoning by passing “anti-snob” legislation. This legislative response to affordable housing amends zoning procedures when affordable housing development applications are reviewed. This method is less popular.)

<sup>95</sup> *Id.* at 473.

<sup>96</sup> *Id.* at 472.

<sup>97</sup> *Id.* at 474.

<sup>98</sup> *Id.* at 475.

<sup>99</sup> SALSICH, *supra* note 27, at 475–76.

homeownership to individuals of low- to moderate-incomes at more affordable prices.

### III. THE LEGAL PERMISSIBILITY OF EXCLUDING TINY HOMES

The zoning code inevitably interferes with the property rights of individuals.<sup>100</sup> However, the question of concern regarding tiny homes is whether the relevant zoning provisions infringe too far on a property right; the right to seek housing of one's choice.<sup>101</sup>

The exclusion is legally permissible as long as the regulation meets a rational basis.<sup>102</sup> There is no infringement to an individual right of homeownership when another individual owns a larger home.<sup>103</sup>

Upholding the minimum zoning requirements has not been unanimous or constant., but there may be a trend to invalidate classifications based on economic level. The dissent in *Lionshead* found regulation to be nothing more than a disguised classification based on economic level.<sup>104</sup> Similarly, in *Home Builders*, where the court was also considering the validity of minimum floor size requirements, the court found the correlation between the size of a home and the cost to adversely affect the general welfare in order to invalidate the law.<sup>105</sup> If a similar case arose today, it is likely that the court could decide that the connection between housing cost and size is too substantial to not play a role in the current zoning requirements. Therefore, the court could find that the rationale of promoting the character of the community or protecting the community from illness from close living is no longer a sufficient reason for the minimum zoning requirements; that there is no legitimate reason to zone out a portion of the population based on economic factors. Importantly still, the case law has not moved this far and it is therefore legally permissible to exclude tiny homes.

Nevertheless, municipalities in receipt of HUD grants are required to provide a fair-share of affordable housing to

---

<sup>100</sup> CHEMERINSKY, *supra* note 78, at 678.

<sup>101</sup> SIMMONS, *supra* note 68, 78, at 140.

<sup>102</sup> CHEMERINSKY, *supra* note 78, at 819.

<sup>103</sup> *See Lionshead Lake, Inc. v. Wayne.*, 89 A.2d 693, 701 (N.J. 1952) (upholding a minimum floor requirement).

<sup>104</sup> *Id.*

<sup>105</sup> *Home Builders League v. Twp. of Berlin*, 405 A.2d 381, 389 (N.J. 1979).

individuals who would otherwise not be able to afford housing.<sup>106</sup>

#### A. *The Underlying Economic Theory*

A primary function of government is to protect the private property interests of its citizens.<sup>107</sup> Clear and distinct property rights embody an atmosphere that promotes individual liberty of its citizens and encourages economic activity and growth.<sup>108</sup> Secure property rights are the outcome of government behavior in policy decisions and market forces.<sup>109</sup>

Government is self-constrained by the Constitution when using the police power to place zoning regulations on lawful property uses.<sup>110</sup> However, a tension arises between the individual right to use property for any legal purpose and the government's view that property should be regulated to promote the public health, safety, welfare, and morals.<sup>111</sup>

At a fundamental level, property rights trigger the creation of a set of behavioral rules.<sup>112</sup> These behavioral rules change based on the government regulatory modifications (e.g. the zoning code).<sup>113</sup> Such rules condition our relationships to others around us.<sup>114</sup> The importance of the behavioral rules arising from property rights is believed to be the basis of a well-functioning society.<sup>115</sup> Therefore, government decisions to regulate property affect the allocation of efficient property uses that can exist.

Allocation inefficiencies arise when uncertainty surrounds property rights.<sup>116</sup> In an application to the zoning context, the zoning code is clearly defined and certain. The certainty of the zoning code creates clear individual expectations.<sup>117</sup> This means that an

---

<sup>106</sup> CHEMERINSKY, *supra* note 78, at 819; 24 C.F.R. § 5.150 (2016).

<sup>107</sup> KYLE SCOTT, *THE PRICE OF POLITICS: LESSONS FROM KELO V. CITY OF NEW LONDON 1* (Lanham: Rowman & Littlefield Education 2010).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 38, 75.

<sup>110</sup> SIMMONS, *supra* note 68, at 144.

<sup>111</sup> *Id.* at 140–41.

<sup>112</sup> *Id.* at 149.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> SCOTT, *supra* note 107, at 75–76.

<sup>117</sup> *See, e.g.*, DEWITT, N.Y., CODE § 192-18, §192-101 (2017).



individual's expectations with their legal property uses are well-defined. For example, by examining the zoning code, the individual could determine that tiny houses are noncompliant.<sup>118</sup> Nevertheless, an uncertainty arises because homeowners could petition for an exception to the zoning code to allow a tiny home.<sup>119</sup> This uncertainty indicates that the most efficient allocation of property rights may not currently exist when people are denied the desired use of a tiny home under current codes.

Having clear, well-defined property rights is essential to promote sustainable economic development.<sup>120</sup> Property rights are considered essential to societal well-being as they promote a shared understanding of rights, responsibilities, and limitations as a social contract.<sup>121</sup> When the property rights are well defined, well-enforced, and transaction costs are low, parties will naturally gravitate towards the most efficient and mutually beneficial outcomes.<sup>122</sup> Although it is important to keep in mind that transaction costs drastically increase when homeowners are forced to apply for zoning exceptions when attempting to have a legal tiny home, which might be a deterring factor from getting the most efficient result.<sup>123</sup>

Therefore, the zoning code can be described as reinforcing societal views (i.e. the value of large homeownership).<sup>124</sup> "Not in my back yard"<sup>125</sup> (NIMBY) is commonly stated when individuals with a

---

<sup>118</sup> *Id.*

<sup>119</sup> An application for an area variance is also a relevant zoning exception that a homeowner could apply for to petition for the tiny home to be a legal nonconforming use.

<sup>120</sup> SIMMONS, *supra* note 68, at 131.

<sup>121</sup> *Id.* at 149.

<sup>122</sup> R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 6 (1960).

<sup>123</sup> When petitioning for a variance, homeowners need to consider the additional cost of application fees, attorney's fees if one is hired to help with the process, and the time involved. These three factors contribute to higher transaction costs.

<sup>124</sup> See discussion *supra* Part I.B.

<sup>125</sup> NIMBY is "used to characterize an individual's position on a project when the individual supports the necessity or desirability but wants it located someplace where he or she will not be exposed to the [perceived] negative side effects." Jeni Mcray, ed., NIMBY, LEADERSHIP GLOSSARY: ESSENTIAL TERMS FOR THE 21ST CENTURY (2015), [search.credoreference.com/content/entry/mbmig/nimby/0](http://search.credoreference.com/content/entry/mbmig/nimby/0). The economic theory of rent-seeking underlies NIMBY behavior in the legal process. Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies and Theft*, 5 W. ECON.

certain threshold of wealth are able to use the political and judicial process to preclude an activity that may lower the value of their home.<sup>126</sup> This could explain why individuals with low- to moderate-income levels are zoned out of municipalities by the zoning code. Here, high valued property owners are less likely to want, or allow, lower value single homes in their community (e.g. tiny homes). The thought process being that lower valued tiny homes will drive down value of the larger homes in the community, just by proximity. On the other hand, it can also be argued that having income-integrated communities could benefit the value of all homes in the community. If diversity is a goal sought to be achieved, then dealing with strict property assessment values may fail to capture this goal. A monetary value may not necessarily be able to be placed on income diversity in a community.

The theory of the success of an income-integrated community that includes tiny homes rests on the theory of strong property rights to incentivize the creation of wealth.<sup>127</sup> Given the system of strong property rights in the U.S., allowing more people access to property rights, through the ownership of tiny homes, is beneficial to the overall community.<sup>128</sup> When someone owns property they are more likely to invest in it.<sup>129</sup> The Lockean theory of property rights explains that what an individual combines with his labor belongs under individual ownership.<sup>130</sup> Assuming this to be true, an individual is more likely to invest in their property if he is to earn the benefit from the investment.<sup>131</sup> Increased investment in property increases the economic value of the property.<sup>132</sup> Secure property rights signal to investors that the risk of loss from their investment in property will be

---

J., 224 (June 1967). Private citizens do not all have the same access to political power. Individuals in high valued homes, for example, wanting to keep the economic value of homes in their area high, are more likely to have the capabilities to influence government officials to maintain existing zoning regulations to keep lower valued homes out of the community. This is rent seeking behavior, which may not be in the best interest of the public.

<sup>126</sup> SALSICH, *supra* note 27, at 451–52.

<sup>127</sup> SCOTT, *supra* note 107, at 75–76.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 37.

<sup>131</sup> *Id.*

<sup>132</sup> SCOTT, *supra* note 107, at 1–3.

minimized.<sup>133</sup> They will have confidence that they will be able to keep the gains from their investment.<sup>134</sup> This encourages economic growth. The ownership of tiny homes in communities can contribute to this positive investment. Therefore, it should not matter what the base line size of the house is, the more people with access to property ownership (including that of a tiny home), the greater investment in property, and the bigger the benefit to the community.

Tiny homes are unique in the affordable housing scheme as providing a distinct opportunity to increase homeownership for low-to moderate- income levels that in return have a positive impact on the community. Therefore, the zoning code is problematic in limiting such access to homeownership based on affordability factors. The limitation of the law has created an unintended negative outcome that potentially harms economic investment in the area.

*B. Routes of Tiny House Permissibility within the Zoning Code*

Upfront, the zoning code regulates and controls land uses in furtherance of the public health, safety, welfare, and morals.<sup>135</sup>

Since the zoning code thus far has allowed the exclusion of tiny homes, people have developed ways of working within the confines of the zoning code to justify their construction. There are four common examples of using the code to find routes of permissible construction of tiny homes: (1) use and area variances,<sup>136</sup> as exceptions to the zoning code, (2) accessory dwelling units, (3) mobile homes, and (4) ignoring the code.<sup>137</sup>

The granting of a variance requires a finding of an unnecessary hardship.<sup>138</sup> Some states also require a finding of practical

---

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See discussion *supra* Part II.A.

<sup>136</sup> In the context of tiny homes, seeking a use variance may also be relevant. However, most cases will require an area variance. An area variance is defined as “the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.” Andrew M. Cuomo & Rossana Rosado, *Zoning Board of Appeals*, James A. Coon Local Government Technical Series, 11 (2015), [https://www.dos.ny.gov/lg/publications/Zoning\\_Board\\_of\\_Appeals.pdf](https://www.dos.ny.gov/lg/publications/Zoning_Board_of_Appeals.pdf). Thus, this Note will focus on area variances

<sup>137</sup> N.Y. TOWN LAW § 267(b)(3) (McKinney 2016).

<sup>138</sup> SALSICH, *supra* note 27, at 277.

difficulties.<sup>139</sup> In general, when a zoning board of appeals (ZBA) makes a determination on whether to grant an area variance, the ZBA inquires as to “whether strict application of the zoning ordinance will serve a valid public purpose that outweighs any injury to the landowner.”<sup>140</sup> In New York State, for example, the application of this test manifests itself in a balancing of five factors:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.<sup>141</sup>

The benefit of being granted an area variance is that it will run with the land.<sup>142</sup> Therefore, receiving a variance is beneficial as it binds all future owners to the now legal nonconforming use.<sup>143</sup> It is very difficult to get an area variance. When arguing for an area variance it is essential for the property owner to state that the zoning code imposes a burden because of impractical difficulties.<sup>144</sup> A relevant impractical difficulty for a tiny home variance application involves a consideration of the lack of affordability of complying with the current zoning regulations. A concern with a lack of affordability could trigger the community’s affirmative obligation to find spaces for

---

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 278.

<sup>141</sup> N.Y. TOWN LAW §§ 267 (b)(3), 192-98(B), 192-12 (McKinney 2016).

<sup>142</sup> *Kaufman v. City of Glen Cove*, 180 Misc. 349 (Sup. Ct. 1943).

<sup>143</sup> *Id.*

<sup>144</sup> Land Use Law Center, *Beginner’s Guide to Land Use Law*, PACE L. SCH., <http://www.law.pace.edu/sites/default/files/LULC/LandUsePrimer.pdf> (last accessed Jan. 27, 2017).

affordable housing within the community.<sup>145</sup> Granting an area variance for a tiny home is one way of meeting the obligation of affordable housing.

Another possibility is for the tiny house homeowner to apply for an accessory dwelling unit (ADU).<sup>146</sup> ADUs allow the construction of additional living space as independent living quarters from the primary dwelling unit.<sup>147</sup> Municipalities that offer ADUs find a primary benefit in that they offer an affordable housing option for many low- and moderate- income households.<sup>148</sup> ADU provisions need to be flexible, clear, have financial incentives, and strong public awareness in order for them to successfully contribute to an affordable housing scheme.<sup>149</sup>

ADUs are permitted on single-family zoned property, so long as setback requirements are met.<sup>150</sup> The problem with this solution is that construction of ADUs is limited to the property of another. This may limit the beneficial impact homeownership has on individuals when ownership of the parcel of land is not attached.<sup>151</sup> This scheme will also be counter-productive to the goal of providing tiny homes for low- to moderate- income individuals, as the individuals getting the tiny house will lack the dignity attached to full property ownership.

Converting a tiny home into a mobile home is often thought to be a short-term solution to meeting zoning requirements. The problem with the mobile home requirements, at least in accordance with the DeWitt, New York, zoning code, is that there are still minimum lot dimension requirements.<sup>152</sup> Furthermore, converting a tiny home into a mobile home limits their placement to mobile home parks, which may also limit the possible benefits of utilizing tiny homes in the

---

<sup>145</sup> 24 C.F.R. § 5.150 (2016).

<sup>146</sup> Office of Policy Dev. and Research, *Accessory Dwelling Units: Case Study*, HUD, 2 (June 2008), <https://www.huduser.gov/portal/publications/adu.pdf>. (There are three types of ADUs: (1) interior, (2) attached, and (3) detached. This Note focuses on detached ADUs.)

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 7.

<sup>150</sup> Office of Policy Dev. and Research, *supra* note 146.

<sup>151</sup> See discussion *supra* Part I.B, II.B.

<sup>152</sup> N.Y. Town Law § 192-12 (2016) (requiring mobile home lots to have a minimum area of 5,000 square feet).

affordable housing scheme if they are not completely integrated within the community.

Lastly, the zoning code could be ignored completely or a zoning code may not exist.<sup>153</sup> Ignoring the code will likely result in code violations, fines, or confiscation of the home, if caught.<sup>154</sup> Therefore, ignoring the zoning code does not provide the best option for achieving long-term success in bringing tiny homes to the affordable housing scheme.

#### IV. THE RATIONALE FOR TINY HOME INCLUSION IN THE AFFORDABLE HOUSING SCHEME

While there are current options of working within the zoning code to achieve a tiny home, the best and most effective solution would be for a modification in the zoning code. Allowing the construction of tiny homes would provide affordable housing options that would benefit society more than excluding the construction of tiny homes.

##### A. *The Proposition of Inclusion*

Inclusionary zoning “either mandates or encourages developers of new residential projects to set-aside a certain percentage of a project’s residential units for households of lower and moderate incomes.”<sup>155</sup>

A municipal desire to promote diversity and meet affirmative obligation goals in providing affordable housing increased the number of municipalities attempting inclusionary zoning.<sup>156</sup> The increased awareness of the benefits of inclusionary zoning is also a contributing factor to its use.<sup>157</sup> The benefits of inclusionary zoning include a recognized need for the creation of income-integrated communities and the creation of a variety of housing options to attract a diverse workforce.<sup>158</sup> Some municipalities take inclusionary zoning even further “with the goal of promoting a more equitable distribution of affordable housing throughout communities.”<sup>159</sup>

---

<sup>153</sup> Holland, *supra* note 28.

<sup>154</sup> *Id.*

<sup>155</sup> CECILY T. TALBERT & NADIA L. COSTA, *Inclusionary Zoning*, CURRENT TRENDS AND PRACTICAL STRATEGIES IN LAND USE LAW AND ZONING, 145 (Patricia E. Salkin, ed., 2004).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 145–46.

<sup>159</sup> *Id.*

Inclusionary zoning provisions can take many different forms. Some even provide alternative compliance provisions for developers.<sup>160</sup> As an alternative to allocating a percentage of a development to affordable housing, developers may be allowed to deposit money in a fund that contributes to the construction of affordable housing, dedicate land to the construction of affordable housing, or build affordable housing units on another site.<sup>161</sup>

Even inclusionary zoning methods may not create long-term affordable pricing.<sup>162</sup> Therefore, many programs place affordability controls as a means of insuring that prices remain affordable for a given period of time.<sup>163</sup> Price controls can take the form of price and rent restrictions, having a specified period of time where the unit must remain affordable, implementing a program to determine eligible applicants, or having a mechanism of monitoring and enforcement to ensure requirements are met.<sup>164</sup>

*B. The Benefits of Including Tiny Houses in the Affordable Housing Scheme*

When the government has the ability to step in and interfere with property rights, through the authority to zone, it is important to ask whether the government regulation achieves the positive outcomes government anticipated? In zoning out small houses, this Note argues that the government fails to meet its objectives of promoting the health, safety, welfare, and morals. It has been established that in promoting the morals, the government needs to provide its fair-share of housing for all income levels.<sup>165</sup>

While the government does provide some means of affordable housing, tiny houses actually offer the government a unique opportunity to greatly contribute to the affordable housing scheme. Tiny houses are an important element to the affordable housing scheme because they offer an opportunity for low- to moderate-income individuals to acquire the dignity associated with homeownership, which is missing from other affordable housing programs.<sup>166</sup> There is an important aspect of dignity associated with

---

<sup>160</sup> TALBERT & COSTA, *supra* note 155, at 153.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> 24 C.F.R. § 5.150 (2016).

<sup>166</sup> *See* discussion *supra* Part I.B.

homeownership that other affordable housing programs lack, as those other affordable housing programs promote renting property and therefore these programs cannot match the benefit of homeownership tiny homes offers to the affordable housing scheme.

Furthermore, people in America are already living in spaces less than five hundred square feet.<sup>167</sup> We should not limit the freedom of choice to live in a smaller house, especially when it can be a beneficial component of the affordable housing scheme. Additionally, in a comparison of eleven countries, the United States has the second largest average house size.<sup>168</sup> The mean house size in seven countries around the world is 1,250 square feet or less.<sup>169</sup> Therefore, the code should not unnecessarily be limited by implicitly creating a financial barrier to homeownership, when there is an increasing demand for affordable housing across the country. Municipalities should be doing all in their power to alleviate affordable housing demand, not make housing more expensive, in order to truly benefit society.

The government can amend the zoning code to allow a space for tiny homes through an amendment to the zoning code by providing an overlay in a residential district where tiny homes may be integrated into the community. This zoning overlay would contribute to the objective of increasing income-integrated diversity in their community through the use of inclusionary zoning.

Additionally, offering permissible tiny houses ADUs provides benefits beyond that of a traditional understanding of affordable housing groups. Tiny houses can offer families an opportunity to build homes for aging parents nearby.<sup>170</sup> Providing housing for aging parents can lower the cost spent on nursing home care, which could save a substantial sum of money. The latest data from 2012 shows that the national average rate spent on a private room in a nursing home is

---

<sup>167</sup> Graham Hill, *Living With Less. A Lot Less*, N.Y. TIMES, SR1(Mar. 10, 2013).

<sup>168</sup> Bridget Mallon, *How Big Is the Average House Size Around the World?*, Elle Décor (Aug. 26, 2015), <http://www.elledecor.com/life-culture/fun-at-home/news/a7654/house-sizes-around-the-world/>.

<sup>169</sup> *Id.* (This (1,250 square feet) is a little more than double that of the average tiny home in America (500 square feet)).

<sup>170</sup> Katie Young, *'Granny Pods' Become a Solution for Retirees with Limited Budgets*, CNBC (Aug. 20, 2017, 9:01 AM), <https://www.cnbc.com/2017/08/18/granny=pods-become-a-solution-for-retirees-with-limited-budgets.html>.



\$248 daily or \$90,520 annually.<sup>171</sup> For a semi-private room, the national average cost of a nursing home is \$222 daily or \$81,030 annually.<sup>172</sup> Nursing home rates are sky high and tiny homes provide a more affordable option to keeping a loved one home with a financial benefit. Tiny homes have many benefits, to both families and low- to moderate-income homeowners, in ways that may still be undiscovered.

Tiny homes offer a unique component to the affordable housing scheme, which municipalities should encourage as a matter of good policy.

---

<sup>171</sup> MetLife, Market Survey of Long-Term Care Costs: The 2012 MetLife Market Survey of Nursing Hom, Assisted Living, Adult Day Services, and Home Care Costs 4 (Nov. 2012).

<sup>172</sup> *Id.*

#### V. CONCLUSION

Municipalities should encourage “income-integrated communities and expand opportunities for low income households.”<sup>173</sup> Municipalities are required to provide inclusionary housing for low-income individuals.<sup>174</sup> As this Note has argued, a necessary modification of the zoning code to allow the construction of tiny homes would be a cost-effective opportunity for municipalities to meet Fair Housing Act obligations. Tiny homes provide great benefits as they promote the dignity of homeownership that is well founded in our society.

Joining the Tiny House Movement could improve affordable housing opportunities for low- to moderate-income households. Increasing the supply of affordable housing would alleviate the increased demand for affordable housing in today’s society. Those who become tiny homeowners will gain a sense of homeownership that will create the incentives for increased property investment. Tiny homes are important to the growth of our nation in meeting affordable housing needs

---

<sup>173</sup> *From the Field: California Supreme Court Upholds Inclusionary Housing*, Nat. Low Income House Coal. (June 29, 2015), <http://nlihc.org/article/field-california-supreme-court-upholds-inclusionary-housing>.

<sup>174</sup> 24 C.F.R. § 5.150 (2016).