

## Notes

# The Affordable Housing Crisis: Tiny Homes & Single-Family Zoning

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*Although California was by no means an affordable state to reside in prior to 2008, Californians are still experiencing the reverberating effects of the collapse of the housing market in its present affordable housing crisis. As a result of the spike in home foreclosures following the 2008 collapse, the rental market remains “tight” with low vacancies, while housing development has only slowly increased.<sup>1</sup> Combined with stagnant wages, rising housing costs, and growing demand,<sup>2</sup> California has failed to address its shortage of not only housing, but affordable housing.*

*Recent state action demonstrates the desire to increase housing density. But by focusing solely on density, the California legislature ignores the critical issue: affordability. While new housing development may help to reduce tight rental market conditions, it does not guarantee affordability and may in fact lead to further displacement of low-income residents.*

*To address the issue of density as well as affordability, California must amend its single-family zoning laws to permit the construction of smaller housing units, such as tiny homes. Without the financial barriers of high construction costs, land value, down payments, and mortgages, tiny homes address both issues of density and affordability.*

*While tiny homes may not solve the affordable housing crisis outright, they may help to alleviate the ever-increasing demands in the rental market and remove the staggering barriers that those seeking to become homebuyers face when looking to exit the rental market. With nearly two-thirds of renters declaring that they will never be able to achieve the American Dream,<sup>3</sup> it is time for California to reimagine the American Dream—in terms of square footage.*

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1. PUB. POL’Y INST. OF CAL., CALIFORNIA’S FUTURE: HOUSING 3 (2018), <https://www.ppic.org/wp-content/uploads/r-118hjr.pdf>.

2. PUB. POL’Y INST. OF CAL., REDUCING CHILD POVERTY IN CALIFORNIA 7 (2017), [https://www.ppic.org/wp-content/uploads/r\\_1117sbr.pdf](https://www.ppic.org/wp-content/uploads/r_1117sbr.pdf).

3. Patrick Sisson, Jeff Andrews & Alex Bazeley, *The Affordable Housing Crisis, Explained*, CURBED, <https://www.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment> (Mar. 2, 2020).

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## INTRODUCTION

During his campaign, Governor Gavin Newsom pledged to build 3.5 million new housing units in California by 2025.<sup>4</sup> Reports estimated Governor Newsom's goal required building at a rate of 500,000 units per year.<sup>5</sup> With trends of severe underproduction in California, such a rate was, and continues to be, unprecedented.<sup>6</sup>

Underproduction of housing is not the only factor contributing to California's affordable housing crisis. The cost of labor and materials, the lengthy review processes and expensive permit fees imposed by state and local governments, and stagnant incomes of residents also drive up the cost of housing.<sup>7</sup> With many state and local representatives reducing the affordable housing crisis to a simple supply and demand problem,<sup>8</sup> efforts to address the affordable housing crisis have fallen flat.

This Note discusses the potential for tiny homes—homes averaging under 1,000 square feet<sup>9</sup>—to alleviate the current conditions of the affordable housing crisis in California. With low construction costs, mortgages, down payments, and operational costs, tiny homes provide an affordable housing option to lower-income renters and homeowners when compared to traditional houses and state-subsidized affordable housing units.<sup>10</sup>

Many homeowners in California oppose tiny homes based on their belief that tiny homes do not provide the most effective use of land, may result in decreased property values on the traditional real estate market, and may not actually be affordable.<sup>11</sup> Given this resistance, there is little scholarship exploring the viability of tiny homes, particularly in California. This Note aims to augment that scholarship by analyzing current zoning practices in major metropolitan cities and the recent actions California has taken in an attempt to address the affordable housing crisis. With high minimum square footage and

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4. Sophia Bollag, *Gavin Newsom Took Office One Year Ago Today. Here's How He's Doing on 10 Campaign Promises*, SACRAMENTO BEE (Jan. 9, 2020, 9:23 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article223782070.html>.

5. Elijah Chiland, *California's Next Governor Wants to Build 3.5 Million New Homes by 2025*, CURBED (Nov. 8, 2018, 9:15 AM), <https://la.curbed.com/2018/11/8/18073066/california-governor-election-gavin-newsom-housing-plan>.

6. *See id.*

7. MAC TAYLOR, LEGIS. ANALYST'S OFF., CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 10 (2015), <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>; *see also* CAL. HOUS. P'SHIP, CALIFORNIA AFFORDABLE HOUSING NEEDS REPORT 1 (2020), [https://1p08d91kd0c03rlxhmhtydp-rpengine.netdna-ssl.com/wp-content/uploads/2020/03/CHPC\\_HousingNeedsReportCA\\_2020\\_Final-.pdf](https://1p08d91kd0c03rlxhmhtydp-rpengine.netdna-ssl.com/wp-content/uploads/2020/03/CHPC_HousingNeedsReportCA_2020_Final-.pdf).

8. *See* Gordon Mar, *Open Forum: Trickle-Down Housing Won't Solve Our Affordability Crisis*, S.F. CHRON. (Apr. 1, 2019), <https://www.sfchronicle.com/opinion/openforum/article/Open-Forum-Trickle-down-housing-won-t-solve-13727879.php>.

9. Ethan Waldman, *How Big Can a Tiny House Be?*, TINY HOUSE, <https://www.thetinyhouse.net/how-big-can-a-tiny-house-be/> (last visited Feb. 25, 2021); Hillary Hoffower, *Some People Choose Tiny Houses to Save Money, But They Might Not Always Be the Bargain You'd Expect*, BUS. INSIDER (Feb. 26, 2019, 12:15 PM), <https://www.businessinsider.com/how-much-does-tiny-house-cost-worth-it-2019-2>.

10. *See infra* Part II.B.

11. *See infra* Part II.B, II.C.

lot size requirements in single-family zoning areas, these cities' zoning practices effectively prevent the existence of smaller (more affordable) housing units, including tiny homes. These zoning practices result in the development of larger properties, driving up housing costs and encouraging urban sprawl.

Additionally, the analysis reveals that California's attempts to alleviate rising housing costs only addresses one part of the issue: supply. By only focusing on the issue of density, state legislators ignore the critical component: affordability. While an increase in supply may serve to reduce demand, this theory of "trickle-down housing" oversimplifies the complexity of affordability.<sup>12</sup> With high costs associated with construction, new development enters the housing market at or near market-rate.<sup>13</sup> Given the increasing demand for housing in California, new development does not drive down housing costs nor result in other properties "trickling down" to lower income residents.<sup>14</sup> The urgency of the affordable housing crisis demands housing options that provide immediate relief. Tiny homes, with less financial barriers and development costs, provide that relief.

Part I of this Note sets forth the traditional definition of "affordable housing," the history of the affordable housing crisis, and the current conditions of California's housing supply. Part II introduces the Tiny Home Movement, a social movement that promotes living in smaller homes in order to increase sustainability and decrease housing costs. This Part also discusses the main arguments for and against the integration of tiny homes into the current housing supply.

Part III identifies the legal obstacles that prevent tiny homes from being implemented across jurisdictions in California—zoning laws and building codes. First, Part III discusses common zoning practices and building codes that prevent smaller units of housing in single-family zoning areas. Second, Part III then examines the zoning practices of four large metropolitan areas in California and their effect on tiny homes.

Part IV reviews California's recent state legislation addressing the affordable housing crisis. With recent initiatives such as mandatory adoption of Appendix Q of the International Residential Code, removal of barriers for development of accessory dwelling units (ADUs), and amendments to single-family zoning to allow multi-dwelling units, the California legislature aims to address the affordable housing crisis through increased housing density.

Part V discusses the shortcomings of these recent legislative actions and concludes with a call to reform single-family zoning laws to permit smaller housing units such as tiny homes. Specifically, this Note calls for the following

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12. Mar, *supra* note 8. Trickle-down housing is the theory that development of new, market-rate housing "create[s] opportunities for moderate-income families to move into housing vacated by people stepping up to more expensive new housing." Alan S. Oser, *Perspectives: The 'Trickle-Down' Effect; Freeing Older Housing with New*, N.Y. TIMES (Aug. 31, 1986), <https://www.nytimes.com/1986/08/31/realestate/perspectives-the-trickle-down-effect-freeing-older-housing-with-new.html>.

13. See NAT'L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 11 (2019), [https://www.ncsha.org/wp-content/uploads/Gap-Report\\_2019.pdf](https://www.ncsha.org/wp-content/uploads/Gap-Report_2019.pdf).

14. See *id.*

state legislative actions: (1) amending the definition of Appendix Q of the International Residential Code to include tiny homes on wheels; (2) reducing minimum square footage requirements to at least 400 square feet; and (3) reducing minimum lot size requirements in proportion to lower minimum square footage requirements.<sup>15</sup> Additionally, this Note proposes implementing—at the local level—a program similar to the Cottage Home Program in Fresno, California.<sup>16</sup> By not only addressing the density of housing but also reducing the costs associated with the development and purchase of a home, individuals will be able to exit the rental market to homeownership through smaller, affordable homes.

## I. THE AFFORDABLE HOUSING CRISIS

### A. DEFINING AFFORDABILITY

Housing affordability has traditionally been defined by the percentage of income a household spends on their living arrangement.<sup>17</sup> The conventional approach to determining affordability dictates that no more than thirty percent of a household's income should be spent on housing.<sup>18</sup> The thirty-percent rule became the standard in 1981 and remains the standard for most current housing markets.<sup>19</sup>

Under the thirty-percent standard, the U.S. Department of Housing and Urban Development (HUD) agency considers households whose housing expenses exceed thirty percent of their income as “cost burdened.”<sup>20</sup> According to the 2017 American Community Service (ACS) by the U.S. Census Bureau, 37.8 million households are cost burdened, representing 31.5% of households in the United States.<sup>21</sup> Additionally, families that pay more than fifty percent of their income on housing are categorized as “severely cost burdened.”<sup>22</sup> The same 2017 ACS study found that 18.2 million households are severely cost-burdened—paying more than fifty percent of their income on housing.<sup>23</sup> This means that a third of renters and homeowners across the United States are not residing in affordable housing under the thirty-percent standard. Even more drastic, the National Low Income Housing Coalition found that a family with

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15. See *infra* Parts IV.A, V.B.

16. See *infra* Parts III.B.4, V.B.

17. *Defining Housing Affordability*, HUD USER, <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-Article-081417.html> (last visited Feb. 25, 2021).

18. MARY SCHWARTZ & ELLEN WILSON, WHO CAN AFFORD TO LIVE IN A HOME?: A LOOK AT DATA FROM THE 2006 AMERICAN COMMUNITY SURVEY 1 (U.S. Census Bureau ed.), <https://www.census.gov/housing/census/publications/who-can-afford.pdf>.

19. *Defining Housing Affordability*, *supra* note 17.

20. *Id.*

21. Sean Veal & Jonathan Spader, *Nearly a Third of American Households Were Cost-Burdened Last Year*, JOINT CTR. FOR HOUS. STD. (Dec. 7, 2018), <https://www.jchs.harvard.edu/blog/more-than-a-third-of-american-households-were-cost-burdened-last-year>.

22. *Rental Burdens: Rethinking Affordability Measures*, HUD USER, [https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_092214.html](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html) (last visited Feb. 25, 2021).

23. Veal & Spader, *supra* note 21.

one full-time worker earning the minimum wage cannot afford to rent a two-bedroom apartment *anywhere* in the United States.<sup>24</sup>

The thirty-percent standard has been criticized as an oversimplified or inaccurate metric of the realities of the housing market.<sup>25</sup> By using a cost-to-income standard, this standard does not incorporate trade-offs or other expenses that may be associated with housing that appears affordable on its face.<sup>26</sup> For example, an individual may choose housing farther from his or her job, increasing the cost of monthly transportation.<sup>27</sup> Other trade-offs may include lower quality of housing, low opportunity neighborhoods, school quality, and public safety.<sup>28</sup> Incorporating such trade-offs into the evaluation of housing affordability may provide better metrics regarding housing stability long term and more accurately reflect the true monthly living expenses of the average individual. Nevertheless, an alternative method to measuring housing affordability has yet to be adopted because the thirty-percent standard continues to provide a flexible and simple approach that applies across markets.<sup>29</sup>

#### B. A NATIONWIDE CRISIS—INCREASED DEMAND IN HOUSING

The affordable housing crisis is not unique to the state of California, nor did it originate in 2008.<sup>30</sup> From the 1980s to the early 2000s, the United States witnessed the decline of affordable housing.<sup>31</sup> With the continuous increase in monthly rent and utility costs coupled with the decrease in renters' incomes, the availability of affordable housing has dramatically decreased for renters.<sup>32</sup> Although fluctuation occurred during this time period due to varying economic circumstances, overall rent increases have significantly outpaced income growth and inflation, resulting in a gradual increase of cost-burdened renters.<sup>33</sup>

The Great Recession of 2008 only exacerbated the affordable housing problem. From 2008 to 2014, the number of severely cost-burdened households

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24. NAT'L LOW INCOME HOUS. COAL., *OUT OF REACH* 2020, at 4 (2020), [https://reports.nlihc.org/sites/default/files/oor/OOR\\_2020.pdf](https://reports.nlihc.org/sites/default/files/oor/OOR_2020.pdf).

25. *Rental Burdens: Rethinking Affordability Measures*, *supra* note 22; see also Karen Weise, *Housing's 30-Percent-of-Income Rule Is Nearly Useless*, BLOOMBERG (July 17, 2014, 1:56 PM), <https://www.bloomberg.com/news/articles/2014-07-17/housings-30-percent-of-income-rule-is-near-useless>.

26. *Defining Housing Affordability*, *supra* note 17.

27. *Id.*

28. *Id.*

29. CHRISTOPHER HERBERT, ALEXANDER HERMANN & DANIEL MCCUE, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *MEASURING HOUSING AFFORDABILITY: ASSESSING THE 30 PERCENT OF INCOME STANDARD* 1 (2018), [https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_Herbert\\_Hermann\\_McCue\\_measuring\\_housing\\_affordability.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Herbert_Hermann_McCue_measuring_housing_affordability.pdf).

30. See JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *RENTAL MARKET STRESSES: IMPACTS OF THE GREAT RECESSION ON AFFORDABILITY AND MULTIFAMILY LENDING* 7–8 (2011), [https://www.jchs.harvard.edu/sites/default/files/jchs\\_what\\_works\\_rental\\_market\\_stresses.pdf](https://www.jchs.harvard.edu/sites/default/files/jchs_what_works_rental_market_stresses.pdf).

31. *Id.* at 8.

32. *Id.* at 5–6.

33. *Id.* at 6.

increased from 2.1 million to 11.4 million,<sup>34</sup> while the number of cost-burdened homeowners declined to 18.5 million.<sup>35</sup> However, this decline in cost-burdened homeowners resulted not from increased household incomes or decreased housing costs but from increased foreclosures, which forced individuals incapable of affording their mortgage back into the rental market.<sup>36</sup> Consequently, the number of cost-burdened renting households increased from 2008 to 2014 by 3.6 million, totaling 21.3 million households.<sup>37</sup> This increase of households exiting the homeowner market with foreclosures put a strain on the rental market. Characterized as a “tight” rental market, rental prices increased significantly due to the increase in demand, with most of the demand coming from middle-aged individuals, and vacancies decreased—resulting in a shortage of available and affordable housing.<sup>38</sup>

Although more than ten years have passed since the economic downturn that devastated global financial markets, the United States is still dealing with the aftermath of the Great Recession in the housing market.<sup>39</sup> With house prices and rents outpacing income growth, households continue to struggle not only to afford rental housing but also to gain access to the coveted “American Dream” of homeownership.<sup>40</sup> Despite the fact that the number of cost-burdened households has decreased and the number of households purchasing homes has slightly increased from the metrics of 2008 to 2014, tight renter conditions persist because high-income renters are still present in the rental market with low vacancy rates, driving up the cost of rent.<sup>41</sup>

Additionally, at the time of this writing, the COVID-19 pandemic has erupted across the globe, disrupting the economy and devastating communities.<sup>42</sup> While it is too early to fully understand the effects COVID-19 has had and will have on housing affordability, many predict increased “financial strain” and housing “instability” due to unemployment.<sup>43</sup>

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34. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *THE STATE OF THE NATION’S HOUSING* 4 (2016), [https://www.jchs.harvard.edu/sites/default/files/jchs\\_2016\\_state\\_of\\_the\\_nations\\_housing\\_lowres\\_0.pdf](https://www.jchs.harvard.edu/sites/default/files/jchs_2016_state_of_the_nations_housing_lowres_0.pdf) [hereinafter *STATE OF THE NATION’S HOUSING* 2016].

35. *Id.*

36. *Id.* at 2 (“CoreLogic estimates that more than 9.4 million homes (the majority owner-occupied) were forfeited through foreclosures, short sales, and deeds-in-lieu of foreclosure from the start of the housing crash in 2007 through 2015.”).

37. *Id.* at 4.

38. *Id.*

39. Sisson, *supra* note 3.

40. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *THE STATE OF THE NATION’S HOUSING* 11–12 (2019), [https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2019.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf) [hereinafter *STATE OF THE NATION’S HOUSING* 2019].

41. *Id.* at 4. Cost-burdened households declined for the seventh straight year in 2017. *Id.*

42. See Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (Jan. 10, 2021), <https://www.nytimes.com/article/coronavirus-timeline.html>.

43. Daniel Tan, *How COVID-19 Could Deepen California’s Housing Crisis*, PUB. POL’Y INST. OF CAL. (Aug. 7, 2020), <https://www.ppic.org/blog/how-covid-19-could-deepen-californias-housing-crisis/>; see also Ingrid Ellen, Erin Graves, Katherine O’Regan & Jenny Schuetz, *Strategies for Increasing Affordable Housing Amid the COVID-19 Economic Crisis*, BROOKINGS (June 8, 2020), [brookings.edu/research/strategies-for-increasing-affordable-housing-amid-the-covid-19-economic-crisis/](https://brookings.edu/research/strategies-for-increasing-affordable-housing-amid-the-covid-19-economic-crisis/).

### C. THE CURRENT STATE OF CALIFORNIA'S HOUSING SUPPLY

The United States is experiencing a shortage of 7.3 million homes—with California accounting for 3.4 million of these homes.<sup>44</sup> Making up nearly half of the shortage of homes across the nation, California is acutely aware of the affordable housing crisis. In 2017, 53.9% of renters were cost burdened and 28.4% of renters were severely cost burdened in California.<sup>45</sup> In comparison, only 37.8% of homeowners in California were cost burdened and 16.3% of homeowners were severely cost burdened.<sup>46</sup> To demonstrate the high costs of housing, for example, a family of four in the San Francisco Bay Area with an income of \$117,000 per year “qualify . . . as ‘low income’ according to HUD.”<sup>47</sup> But this unaffordability is not limited to major metropolitan cities or coastal areas. With more than half of renters and a third of homeowners across the state paying more than 30% of their income on housing, the shortage of affordable housing is affecting both rural and urban communities.<sup>48</sup>

According to a study by Up for Growth, the primary factor contributing to the affordable housing crisis is California's severe underproduction of housing.<sup>49</sup> Simply put—California is experiencing a housing shortage because supply has not kept pace to match demand.<sup>50</sup> The study further indicated the significant barriers impacting housing production in California: (1) zoning restrictions, which limit high-density areas and prevent increased density in single-family zones; (2) escalating fee structures; (3) miscalculated inclusionary housing; and (4) lengthy review processes for development.<sup>51</sup> With restrictive zoning practices, long permitting processes, and costly materials, local jurisdictions have “prohibited higher density, affordable, or multi-family housing developments that [are] sorely needed to keep production in line with demand.”<sup>52</sup>

A study by the U.C. Berkeley Turner Center for Housing Innovation provides a closer look into the development costs preventing production of cheaper housing in California. Unaffordable housing production is a consequence of many factors, including: (1) land values, (2) construction costs, (3) materials and labor, (4) development fees, (5) permitting and development

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44. UP FOR GROWTH, HOUSING UNDERPRODUCTION IN CALIFORNIA 7 (2018), [https://www.upforgrowth.org/sites/default/files/2018-12/UFG\\_CA\\_HousingUnderproduction\\_Web\\_DEC14-18.pdf](https://www.upforgrowth.org/sites/default/files/2018-12/UFG_CA_HousingUnderproduction_Web_DEC14-18.pdf).

45. SARA KIMBERLIN, CAL. BUDGET & POL'Y CTR., CALIFORNIA'S HOUSING AFFORDABILITY CRISIS HITS RENTERS AND HOUSEHOLDS WITH THE LOWEST INCOMES THE HARDEST 2 fig.1 (2019), [https://calbudgetcenter.org/wp-content/uploads/2019/04/Report\\_California-Housing-Affordability-Crisis-Hits-Renters-and-Households-With-the-Lowest-Incomes-the-Hardest\\_04.2019.pdf](https://calbudgetcenter.org/wp-content/uploads/2019/04/Report_California-Housing-Affordability-Crisis-Hits-Renters-and-Households-With-the-Lowest-Incomes-the-Hardest_04.2019.pdf).

46. *Id.*

47. UP FOR GROWTH, *supra* note 44, at 5.

48. KIMBERLIN, *supra* note 45, at 3 fig.3.

49. UP FOR GROWTH, *supra* note 44, at 5.

50. *Id.*

51. *Id.*

52. *Id.*

timelines, and (6) regulatory requirements.<sup>53</sup> Land values have increased exponentially, with San Francisco and Los Angeles doubling or tripling in property values.<sup>54</sup> Construction costs have increased, with San Jose, San Francisco, and Oakland being among the most expensive construction sites.<sup>55</sup> Development fees have increased, with California's impact fees "almost three times the national average."<sup>56</sup> Permitting requirements have increasingly delayed development in California's "complex" system.<sup>57</sup> Regulatory requirements such as environmental impact statements under the California Environmental Quality Act have also increased development costs.<sup>58</sup> These separate, inflated costs add up—to the point where the cost to build a 100-unit affordable housing project increased from \$265,000 per unit in 2000 to almost \$425,000 per unit in 2016.<sup>59</sup> Costing a minimum of \$500,000 to construct, California's "affordable" housing is no longer affordable.<sup>60</sup>

Adding to California's challenges to meet the demand for affordable housing are California's stagnant wages and rising rental prices.<sup>61</sup> Rental costs have skyrocketed with median rent increasing forty percent since 2000, while renter incomes have only increased by eight percent.<sup>62</sup> Additionally, other economic factors, such as student loan debt, increase financial barriers to affording a down payment or receiving a mortgage loan.<sup>63</sup>

In response to the state of California's current housing supply, Governor Newsom has called for creative solutions to address the affordable housing crisis.<sup>64</sup> In October 2019, when Governor Newsom committed state-owned land to affordable housing development, he declared that the state "ha[s] to use every tool in [its] toolbox to deliver more affordable housing for low-income and middle class Californians."<sup>65</sup> Acknowledging the need to develop housing that is actually affordable for the groups most impacted by the current housing conditions in California, Governor Newsom has made housing affordability a

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53. Michelle Claros, *The Cost of Building Housing Series*, U.C. BERKELEY TURNER CTR. FOR HOUS. INNOVATION (Mar. 30, 2020), <https://turnercenter.berkeley.edu/construction-costs-series>.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*; Thomas Fuller, *Why Does It Cost \$750,000 to Build Affordable Housing in San Francisco?*, N.Y. TIMES (Feb. 20, 2020), <https://www.nytimes.com/2020/02/20/us/California-housing-costs.html>.

59. Claros, *supra* note 53.

60. See Fuller, *supra* note 58; see also Edward Ring, *California's Unaffordable "Affordable" Housing*, CAL. POL'Y CTR. (Apr. 23, 2019), <https://www.californiapolicycenter.org/californias-unaffordable-affordable-housing/>.

61. CAL. HOUS. P'SHIP, *supra* note 7, at 4.

62. *Id.*

63. See Hillary Hoffower, *61% of Millennials Said They've Delayed Buying a House Because of Student-Loan Debt, a New Study Found*, BUS. INSIDER (Sept. 26, 2019, 6:02 AM), <https://www.businessinsider.com/millennials-delaying-homeownership-student-loan-debt-2019-9>.

64. Press Release, Gavin Newsom, Governor, State of Cal., Governor Newsom Announces State Partnership with Sacramento and Stockton to Develop Affordable Housing on State-Owned Land (Oct. 1, 2019), <https://www.gov.ca.gov/2019/10/01/10536/>.

65. *Id.*

top priority of his administration.<sup>66</sup> Tiny homes—homes under 800 square feet—might be the creative solution California is looking for.

## II. TINY HOMES: A CREATIVE SOLUTION

To address the affordable housing crisis, cities across the United States are turning to tiny homes as a creative solution to the shortage of affordable housing. Without the barriers of a down payment, mortgage interest rates, or high development, land, and operating costs, tiny homes offer an affordable alternative to renting or buying in the traditional housing market. With advocates of tiny homes pushing for widespread acceptance of this smaller housing unit in the housing market based on its affordability, opponents of tiny homes continue to question whether affordability is an accurate description of tiny homes. Due to the minimal studies on tiny homes, information regarding the costs of tiny homes is rather limited. In order to properly assess the affordability of tiny homes, further studies by neutral agencies or organizations are required.

### A. THE TINY HOME MOVEMENT

The Tiny Home Movement (“the Movement”) is a growing real estate trend where individuals are choosing to live in smaller homes—commonly referred to as “tiny homes.”<sup>67</sup> The Movement advocates for a minimalist lifestyle through the reduction of housing size.<sup>68</sup> Primarily, the Movement attracts individuals on both sides of the homeowner spectrum—appealing to first-time buyers looking to attain homeownership and to the older generation of homeowners near retirement looking to downsize.<sup>69</sup>

While the concept of living in smaller homes is not new, the most recent trend toward smaller houses has its origins in 1997 with Jay Shafer, the man credited with revitalizing the Tiny Home Movement.<sup>70</sup> Throughout the early 2000s, the Movement grew with the emergence of blogs detailing personal experiences with downsizing, housing construction businesses specific to tiny homes, and reality television shows such as “Tiny House Nation” and “Tiny House Hunters.”<sup>71</sup> Against the backdrop of society’s desire for large, mansion-

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66. *Id.*

67. *What Is the Tiny House Movement?*, TINY LIFE, <https://thetinylife.com/what-is-the-tiny-house-movement/> (last visited Feb. 25, 2021).

68. *Id.*

69. Lindsay Lowe, *Here’s Why So Many Seniors Are Joining the Tiny-House Movement*, TODAY (Mar. 21, 2018, 10:39 AM), <https://www.today.com/home/senior-citizens-are-moving-tiny-homes-now-t125102>; *Tiny House Statistics*, IPROPERTY MGMT., <https://ipropertymanagement.com/research/tiny-home-statistics> (last visited Feb. 25, 2021) (“Because of the large number of Baby Boomers who are set to retire, and the Millennials’ debt, those two groups are projected to have the greatest impact on sales of new tiny homes for the foreseeable future.”).

70. *How Did the Tiny House Movement Get Started?*, TINY HOUSE TALK (Nov. 10, 2012), <https://tinyhousetalk.com/how-did-tiny-house-movement-start/>; *see also* Emily Nonko, *A Tiny House Movement Timeline*, CURBED (July 19, 2017, 1:30 PM), <https://www.curbed.com/2017/7/19/15974554/tiny-house-timeline>.

71. *See generally* Nonko, *supra* note 70.

like houses,<sup>72</sup> the Movement antithetically advocated for smaller square footages.

The true accelerator of the Movement, however, was the Great Recession of 2008.<sup>73</sup> Averaging around 2.3 million to 2.8 million home foreclosures in the United States during the years of 2008 to 2010, many homeowners that foreclosed turned to alternative housing options.<sup>74</sup> In California, home foreclosures reached 1.1 million total in the ten years after the housing market crash,<sup>75</sup> with a record number of 236,000 home foreclosures in 2008 alone.<sup>76</sup> Not only has the Great Recession turned previous homeowners to tiny homes, but it continues to fuel the interest of prospective homeowners out of fear of potential future foreclosure.<sup>77</sup>

There are two types of tiny homes—tiny homes on wheels and tiny homes on a permanent foundation.<sup>78</sup> Each tiny home structure implicates different property rights. For example, varying across jurisdictions, a tiny home on wheels may be classified as a recreational vehicle (RV) and subject to RV specific regulations.<sup>79</sup> Alternatively, a tiny home on a permanent foundation may be classified as an accessory dwelling unit (ADU)<sup>80</sup> and subject to zoning laws and building codes.<sup>81</sup>

While there is no specific square footage requirement, tiny homes typically range from 100 to 400 square feet,<sup>82</sup> but can get as large as 1,000 square feet.<sup>83</sup> In comparison, the average size of a single-family home built in 2014 was 2,453

72. Brian J. Miller, *Competing Visions of the American Single-Family Home: Defining McMansions in the New York Times and Dallas Morning News, 2000–2009*, 38 J. URB. HIST. 1094, 1095 (2012) (defining McMansion as “a home that is large” and “as symbols for broader concepts including sprawl and excessive consumption”). This trend towards mansion-like houses has developed over the last fifty years—demonstrated by the continuous increase in square footage for newly built homes. Lisa Smith, *McMansion: A Closer Look at the Big House Trend*, INVESTOPEDIA, <https://www.investopedia.com/articles/pf/07/mcmansion.asp> (Mar. 20, 2020) (“In America, the National Association of Home Builders reports that the average home size was 983 square feet in 1950, 1,500 square feet in 1970, and 2,349 square feet in 2004.”).

73. Nonko, *supra* note 70.

74. Adrian D. Garcia, *Foreclosure Rates Haven't Been This Low Since Before the Great Recession*, BANKRATE (Mar. 6, 2019), <https://www.bankrate.com/mortgages/foreclosure-rates/>.

75. CORELOGIC, UNITED STATES RESIDENTIAL FORECLOSURES CRISIS: TEN YEARS LATER 3 (2017), <https://sfsco.net/wp-content/uploads/2017/08/National-Foreclosure-Report-Ten-Years-Later.pdf>.

76. William Heisel, *California Home Foreclosures Top 236,000 in 2008*, L.A. TIMES (Jan. 28, 2009, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2009-jan-28-fi-foreclosure28-story.html>.

77. Charisse Jones, *Recession-Scarred Millennials Fuel Growing Interest in Tiny Homes*, USA TODAY (May 19, 2016, 7:58 PM), <https://www.usatoday.com/story/money/2016/05/18/recession-millennials-tiny-home-house/84284316/>.

78. Emily Nonko, *Tiny House Zoning Regulations: What You Need to Know*, CURBED (Sept. 22, 2016, 11:30 AM), <https://www.curbed.com/2016/9/22/13002832/tiny-house-zoning-laws-regulations>.

79. *Id.*

80. ADUs, also known as also known as secondary units, in-law units, cottages, or granny flats, are units added to existing residential property. See A.B. 68, 2019–2020 Leg., Reg. Sess. (Cal. 2019) (defining ADUs as “an attached or a detached residential dwelling unit that provides complete independent living facilities . . . and is located on a lot with a proposed or existing primary residence”).

81. Nonko, *supra* note 78.

82. *What Is the Tiny House Movement?*, *supra* note 67.

83. Waldman, *supra* note 9; Hoffower, *supra* note 9.

square feet, an increase in size from the average 1,660 square feet in 1973.<sup>84</sup> With a mantra of “bigger is better,” the average square footage of houses has continued to increase over the years.<sup>85</sup> According to census data, only 8% of homes completed in 2014 were under 1,400 square feet.<sup>86</sup>

It is estimated that 10,000 tiny homes exist across the United States.<sup>87</sup> However, the exact number of tiny homes across the United States—and in California specifically—remains unknown because some tiny homes are built illegally to evade city regulations and are not disclosed while others are built to “live off the grid.”<sup>88</sup> Without any type of centralized data on tiny homes, these estimates are based off the number of tiny homes sold and the number of tiny homes that are privately constructed per year.<sup>89</sup> These estimates indicate that sales of tiny homes in the United States increased in 2017 by 67%.<sup>90</sup>

#### B. THE AFFORDABILITY OF TINY HOMES

Popular for their affordability, many factors contribute to tiny homes’ cheaper housing costs. First, tiny homes cost less than a traditionally sized house—whether paying to construct one or buying one on the real estate market.<sup>91</sup> The average tiny home can cost less than \$23,000 to construct.<sup>92</sup> However, for a professionally built tiny home, the median cost of construction is \$59,884.<sup>93</sup> With construction of new, traditionally sized houses costing more than \$300,000,<sup>94</sup> some estimate that tiny home construction costs ten times less than construction for a traditionally sized house.<sup>95</sup> Constructing a tiny home is a cheaper alternative to traditional houses because it takes less materials, time, and labor to construct.<sup>96</sup> Additionally, some tiny homes are mass produced or prefabricated, which reduces costs to construction.<sup>97</sup> While construction costs are based on a variety of aspects such as labor, materials, time, customization,

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84. Teresa Mears, *Could You Survive in 150 Square Feet? The Lowdown on Tiny Homes*, U.S. NEWS & WORLD REP. (June 18, 2015, 9:56 AM), <https://loans.usnews.com/factors-to-consider-before-joining-the-tiny-house-movement>.

85. Smith, *supra* note 72.

86. Mears, *supra* note 84.

87. Maria Fredgaard, *Tiny House Statistics: 8 Really Encouraging Numbers & Facts*, GO DOWNSIZE, <https://www.godownsize.com/tiny-house-statistics/> (last visited Feb. 25, 2021).

88. *Id.*

89. *Id.*

90. *Id.*

91. Amy Livingston, *What Is the Tiny House Movement—Plans, Resources, Pros & Cons*, MONEY CRASHERS, <https://www.moneycrashers.com/living-tiny-house-movement-plans/> (last visited Feb. 25, 2021).

92. *Id.*; see Hoffower, *supra* note 9.

93. To determine the median cost of constructing a tiny home in the United States, Sullivan compared the 2017 prices of twenty-five tiny home building companies from thirteen different states. Deirdre Sullivan, *How Much Does a Tiny Home Really Cost?*, SPRUCE, <https://www.thespruce.com/how-much-does-a-tiny-house-cost-4139914> (Feb. 1, 2021).

94. *Id.*

95. Livingston, *supra* note 91.

96. Hoffower, *supra* note 9.

97. *See id.*

and location, the upfront costs associated with tiny homes are significantly less than traditionally sized houses in the United States.<sup>98</sup>

It also costs less to buy a tiny home than a traditionally sized house because of its lower price on the real estate market and the removal of financial barriers such as a down payment or mortgage. The real estate market shows that tiny homes on average cost anywhere between \$10,000 to \$40,000 to purchase.<sup>99</sup> In contrast, in the United States, the average price of a traditionally sized house on the real estate market is \$226,800,<sup>100</sup> and, in California, the average price to buy a traditionally sized house is \$549,900.<sup>101</sup>

Opponents of the Movement argue that tiny homes are not in fact a cheaper option for housing.<sup>102</sup> Depending on the features included, construction can cost up to \$150,000 if building a “luxury” tiny home.<sup>103</sup> However, this price is still less than half the average cost of construction for a traditionally sized house.<sup>104</sup> Additionally, opponents point out that tiny homes may have additional or external costs that do not normally accompany the purchase of a traditional house.<sup>105</sup> For example, some tiny homes may require utility hook-ups and land rental, whereas land and utility hook-ups are included in the sale of a traditionally sized house.<sup>106</sup> Furthermore, not all tiny homes require land rentals—it depends on the zoning laws of the jurisdiction.<sup>107</sup> If a jurisdiction allows for a tiny home on a permanent foundation, a tiny home owner may purchase land to place the tiny home on—avoiding land rental costs.<sup>108</sup> However, if a jurisdiction does not permit tiny homes on a permanent foundation, the owner must place the tiny home on wheels and either rent or own

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98. Hillary Hoffower, *America Is Swept Up in Tiny-House Fever—Here’s How Much It’ll Actually Cost to Build One of Your Own*, BUS. INSIDER (Sept. 19, 2019, 7:16 AM), <https://www.businessinsider.com/how-much-does-it-cost-to-build-a-tiny-house>; see Rick Porco, *Comparing the True Cost of a Tiny House Versus a Traditional House*, B&B MICRO MFG., INC. (Dec. 21, 2018), <https://www.bbtinyhouses.com/blog/comparing-the-true-cost-of-a-tiny-house-versus-a-traditional-house/> (“However, in a tiny house, the overall material cost is less than in a traditional house, simply because there’s less space, which means less material, labor, and time to build.”).

99. *What Is the Tiny House Movement?*, *supra* note 67.

100. Hillary Hoffower & Libertina Brandt, *The Most Expensive and Affordable States to Buy a House, Ranked*, BUS. INSIDER (July 5, 2019, 7:42 AM), <https://www.businessinsider.com/cost-to-buy-a-house-in-every-state-ranked-2018-8>; see also *United States Home Prices & Values*, ZILLOW, <https://www.zillow.com/home-values/> (last visited Feb. 25, 2021) (listing the typical home value in the United States around \$266,000); Fuller, *supra* note 58 (“The average home in the United States costs around \$240,000.”).

101. Hoffower & Brandt, *supra* note 100; see also *California Home Values*, ZILLOW, <https://www.zillow.com/ca/home-values/> (last visited Feb. 25, 2021) (listing the typical home value in California around \$618,000).

102. Hoffower, *supra* note 9.

103. Sullivan, *supra* note 93.

104. See *id.*

105. Porco, *supra* note 98.

106. *Id.*

107. Amy Fontinelle, *Financial Considerations of Buying a Tiny House*, INVESTOPEDIA, <https://www.investopedia.com/articles/personal-finance/050515/financial-considerations-buying-tiny-house.asp> (Feb. 20, 2020).

108. *Id.*

the land.<sup>109</sup> As discussed later in this Note, the issue of land rental costs and utility hookups can be removed if jurisdictions amend zoning laws that prevent tiny homes from residing on a plot of land on their own.<sup>110</sup>

It is important to note that the average price to purchase a tiny home, as listed above, may not include the cost of land value. A significant factor dictating housing costs in California is the high cost of land.<sup>111</sup> With many jurisdictions in California not permitting tiny homes, the average price to purchase a tiny home likely does not factor in the high land values of California or any land value at all depending on the rules of the jurisdiction. Therefore, it is not certain what the exact price of a tiny home would be in California if allowed to have a permanent foundation.

Second, it costs a homeowner less to operate and maintain a tiny home than a traditionally sized house. In addition to mortgage payments, utilities and other monthly expenses can dramatically increase the cost of living for homeowners. One important factor impacting monthly expenses is the size of the home.<sup>112</sup> With less space to heat or cool, owners of tiny homes spend less in monthly utilities such as electricity, gas, and water.<sup>113</sup> Owners of tiny homes pay an average of \$40 to \$50 per month in utilities,<sup>114</sup> while owners of traditional houses pay an average of \$400 per month in utilities.<sup>115</sup> While the cost of utilities varies depending on the location of the house,<sup>116</sup> ultimately, owners of tiny homes save on average \$100 per month on their utility bills in comparison to their traditional house counterparts.<sup>117</sup>

Third, owners of tiny homes produce a smaller environmental footprint because tiny homes are typically more sustainable and environmentally friendly.<sup>118</sup> Using less energy to heat or cool the space and having less appliances and lighting, tiny homes reduce the amount of energy consumed by homeowners.<sup>119</sup> Moreover, because of the smaller square footage of a tiny home,

109. *Id.*

110. *See infra* Part IV.

111. Matt Levin, *5 Reasons Why California's Housing Costs Are So High*, KQED (May 4, 2018), <https://www.kqed.org/news/11666284/5-reasons-californias-housing-costs-are-so-high>.

112. *How Much Is the Average Household Utility Bill?*, NATIONWIDE, <https://www.nationwide.com/le/resources/personal-finance/articles/average-cost-of-utilities> (last visited Feb. 25, 2021).

113. Porco, *supra* note 98; *see also* Livingston, *supra* note 91.

114. *See* Frank Olito, *6 Tiny Home Owners Reveal How Much They Spend on Housing, Starting as Low as \$600 Each Month on Rent and Utilities*, BUS. INSIDER (Apr. 13, 2020, 6:42 AM), <https://www.businessinsider.com/personal-finance/how-much-tiny-homeowners-spend-each-month-2019-9> (providing numbers based on the personal accounts of six owners of tiny homes).

115. Geoff Williams, *How to Estimate Utility Costs*, U.S. NEWS & WORLD REP. (June 10, 2020, 10:05 AM), <https://money.usnews.com/money/personal-finance/spending/articles/how-to-estimate-utility-costs#:~:text=Homeowners%20should%20budget%20closer%20to,cable%20and%20%20%20460%20for%20internet>.

116. *Id.*

117. Stephanie Colestock, *How Much Does a Tiny House Cost?*, DOUGHROLLER, <https://www.doughroller.net/money-life/how-much-does-a-tiny-house-cost/> (Dec. 28, 2020); *see also* Janna Herron, *How Much Does a Tiny House Really Cost?*, FISCAL TIMES (June 9, 2016), <https://www.thefiscaltimes.com/2016/06/09/How-Much-Does-Tiny-House-Really-Cost>.

118. *What Is the Tiny House Movement?*, *supra* note 67.

119. *Id.*

less materials are used to construct the home and owners have an increased opportunity to use more environmentally friendly resources for construction.<sup>120</sup>

Finally, tiny homes can provide their owners with financial freedom. Because less of the owner's income goes towards making mortgage payments, the homeowner has more financial advantages and opportunities than the typical homeowner of a traditionally sized house.<sup>121</sup> Additionally, because most owners of tiny homes can purchase the homes outright, the owner of the tiny home may carry less debt than the traditional homeowner.<sup>122</sup> In fact, 68% of tiny home owners own their homes "free and clear." In comparison, only 29% of all homeowners own their traditionally sized homes outright.<sup>123</sup>

Conversely, opponents of tiny homes argue that tiny homes do not provide financial freedom to owners. Although entry to the tiny home market is accessible with the cheaper construction costs and purchase prices, the tiny home real estate market does not provide the same appreciation value and property rights that are found in the traditional real estate market.<sup>124</sup> Seeing as most individuals currently view the traditional real estate market as an investment, where the land appreciates over time, tiny homes are viewed as a bad investment because they typically depreciate in value.<sup>125</sup> However, tiny homes typically depreciate because they are not attached to the land.<sup>126</sup> Therefore, if zoning laws were amended to permit tiny homes on permanent foundations, tiny homes may develop into stable investments on the traditional real estate market.

### C. THE ISSUE OF URBAN SPRAWL

Tiny homes also serve as a solution to combat urban sprawl<sup>127</sup>—a well-known characteristic of California's development landscape. Urban sprawl is "low-density development that disperses the population over the widest possible area, with rigidly separated functions—homes, shops, and workplaces—connected by limited access roadways."<sup>128</sup> Urban sprawl has led to the growth of suburban neighborhoods stretching across California with individuals living further and further away from employment, resulting in longer commutes,

120. *Id.*

121. *Id.*

122. See Matthew McNulty, *Tiny House Trend: Why So Many People Are Looking to Live Small*, FOX BUS. (Oct. 2, 2019), <https://www.foxbusiness.com/real-estate/tiny-home-phenomena-the-pros-and-cons-of-living-in-a-micro-home>; see also *Tiny Home Infographic Shows 68 Percent of Small-Space Dwellers Don't Have a Mortgage*, HUFFPOST, [https://www.huffpost.com/entry/tiny-home-infographic-mortgage\\_n\\_3867269](https://www.huffpost.com/entry/tiny-home-infographic-mortgage_n_3867269) (Dec. 6, 2017) (finding that 68% of tiny home owners do not have a mortgage, 78% of tiny home owners own their house, and 55% of tiny home owners have more savings than the average American).

123. Livingston, *supra* note 91.

124. *Do Tiny Homes Appreciate or Depreciate in Value over Time?*, TINY HOUSE TALK (Apr. 7, 2018), <https://tinyhousetalk.com/do-tiny-homes-appreciate-or-depreciate-in-value-over-time/>.

125. Morten Storgaard, *Tiny House Depreciation—12 Important Things to Consider*, GO DOWNSIZE, <https://www.godownsize.com/tiny-house-depreciation/> (last visited Feb. 25, 2021).

126. *Id.*

127. A. Robin Donnelly, *Smart Growth Through Tiny Homes: Incentivizing Freedom of Housing*, 4 TEX. A&M J. PROP. L. 327, 353 (2018).

128. ANTHONY FLINT, *THIS LAND: THE BATTLE OVER SPRAWL AND THE FUTURE OF AMERICA* 47 (2006).

increased traffic, and car pollution. However, with more young professionals moving to cities for employment and marrying later in life, the demand for smaller spaces has increased in central, urban areas.<sup>129</sup> With the prediction that single-person households will continue to increase,<sup>130</sup> the housing landscape must change to match the demographics. Characterized as “infill development,” tiny homes are an efficient way to increase density in already developed areas, “weaving” tiny homes into the vacant, underutilized spaces near urban centers.<sup>131</sup>

Generally, infill development provides significant advantages to communities including: (1) reducing development pressures on farmland, open space, and habitat lands; (2) slowing vehicle travel by developing in areas with existing transit services or “walkable” areas; and (3) providing increased private investment in older neighborhoods.<sup>132</sup>

In 2004, Caltrans and the California Department of Housing and Community Development commissioned a study by UC Berkeley’s Institute of Urban and Regional Development to determine potential infill locations, assess the ability of these sites to accommodate additional housing, identify barriers to development of infill housing, and estimate the demand for infill development.<sup>133</sup> Taking into consideration the appropriateness of infill development based on location, availability of transit services, and other neighborhood services that may alleviate strains of increased density, the study determined that California could accommodate an additional four million housing units.<sup>134</sup> Since this study in 2004, the demand for housing across California has only exponentially increased. While this earlier study does not assess the practicability of tiny home integration as infill development, it does demonstrate that infill development can be tailored to areas with services capable of accommodating more housing within its already-existing framework.

Nevertheless, opponents of the Movement argue that tiny homes are an ineffective approach to address the shortage of affordable housing. They argue that tiny homes, in comparison to other structures such as high-density apartment complexes, are not the most efficient use of land. In densely populated urban

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129. Franklyn Cater, *Living Small in the City: With More Singles, Micro-Housing Gets Big*, NPR (Feb. 26, 2015, 5:58 PM), <https://www.npr.org/2015/02/26/389263274/living-small-in-the-city-with-more-singles-micro-housing-gets-big>.

130. *Id.* (“When you look at the fastest growing category of households, it’s singles. . . . By 2030, the largest category of households is singles.”).

131. Joe Archibald, *Small-Scale Residential Housing: Infill Housing, ADUs and Tiny Homes*, GREEN BUILT ALL., <https://www.greenbuilt.org/articles/small-scale-residential-housing-infill-housing-adus-and-tiny-homes/> (last visited Feb. 25, 2021); see Dawn Withers, *Looking for a Home: How Micro-Housing Can Help California*, 6 GOLDEN GATE U. ENV’T L.J. 125, 126 (2012); Josh Cohen, *Spokane Hopes Tiny Homes and Cottages Spur Infill Density*, NEXT CITY (Feb. 15, 2018), <https://nextcity.org/daily/entry/spokane-hopes-tiny-homes-and-cottages-will-spur-infill-density>.

132. John Landis, Heather Hood & Chris Amado, *The Future of Infill Housing in California: Opportunities, Potential, Constraints, and Demand Infill*, U.C. BERKELEY ENV’T DESIGN (2006), <https://frameworks.ced.berkeley.edu/2006/the-future-of-infill-housing-in-california/>.

133. *Id.*

134. *Id.*

areas, tiny homes do not provide the most housing that is possible on the land available for development.<sup>135</sup> Instead, opponents argue that tiny homes may be a more appropriate solution for rural areas where space is more freely available because tiny homes do not provide the most density to urban areas with limited space for development.<sup>136</sup>

While this may be true, most of the land in California that is zoned for residential purposes is zoned for single-family housing—not multi-dwelling housing.<sup>137</sup> With many communities against completely overhauling its zoning laws to permit multi-dwelling housing in traditionally single-family housing zones,<sup>138</sup> tiny homes provide a unique solution within the category of single-family zoning to infill underutilized areas in already-existing neighborhoods.

#### D. THE COSTS OF NIMBYISM

Proposed housing developments or changes to neighborhoods have routinely been met with opposition in the past.<sup>139</sup> Coined “Not in My Backyard” (NIMBY), residents broadly oppose changes to their local communities that they deem undesirable.<sup>140</sup> Expressing views along the lines of NIMBYism, traditional homeowners oppose tiny homes because they believe tiny homes will decrease the property value of their traditional home nearby.<sup>141</sup> Others suspect that this argument is a pretext. Rather than being against the housing itself, communities fear *who* may reside in the tiny homes: households with incomes lower than theirs.<sup>142</sup>

Regardless of the true reason for opposition, it cannot be determined whether tiny homes would negatively affect property values of traditional houses at this time because no city in California has permitted the development

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135. Dylan Matthews, *The Case Against Tiny Homes*, VOX, <https://www.vox.com/a/new-economy-future/tiny-houses> (last visited Feb. 25, 2021) (“And not only do tiny houses not make land cheaper, they’re a really inefficient use of it. If you have a given piece of land and want to produce the most affordable housing possible out of it, you don’t stick a tiny house on there. You build a many-stories-tall residential skyscraper with hundreds of apartments inside it.”).

136. *Id.*

137. Laura Bliss, *The Political Battle Over California’s Suburban Dream*, BLOOMBERG: CITYLAB (Apr. 5, 2019, 10:36 AM), <https://www.citylab.com/equity/2019/04/california-affordable-housing-bill-sb50-single-family-zoning/586519/> (finding that eighty percent of California’s residential neighborhoods are zoned for single-family dwellings).

138. See Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House with a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> (stating that “[s]ingle-family zoning is practically gospel in America” and that a California bill altering zoning was “stalled by homeowners”).

139. See Sasha Perigo, *Who Are the Bay Area’s NIMBYs—and What Do They Want?*, CURBED (Feb. 20, 2020, 9:06 AM), <https://sf.curbed.com/2020/2/20/21122662/san-francisco-bay-area-nimbys-history-nimby-development>.

140. See *id.*; see also NIMBY, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/NIMBY> (last visited Feb. 25, 2021).

141. Courtney Campbell, *The Problem with Tiny Houses That No One Talks About*, COUNTRYLIVING (Oct. 24, 2017), <https://www.countryliving.com/real-estate/news/a45312/tiny-houses-property-value/>.

142. *Id.*

of tiny homes.<sup>143</sup> Recently, studies indicated that values of tiny homes are in fact appreciating in value.<sup>144</sup>

Homes less than 500 square feet are appreciating twice as fast as the overall market. . . . In December [2017], the median list price of tiny homes was \$119,000, up 19 percent from last year. The overall market median list price [of traditional houses] is up *just* 9 percent.<sup>145</sup>

If their appreciation is any indication of their treatment on the traditional real estate market, tiny homes may not negatively impact neighboring property values.

While opponents analogize tiny homes to mobile parks,<sup>146</sup> it is not necessarily the case that tiny homes will have the same effect as mobile parks. As demonstrated by their rising popularity and the growing demand for smaller housing units, tiny homes are more desirable for their “glamorized” lifestyle.<sup>147</sup> However, current zoning practices classify tiny homes as mobile parks. By treating tiny homes as mobile homes legally, it almost creates a self-fulfilling prophecy of depreciation. If jurisdictions were to regulate tiny homes as traditional houses—permitting them to have permanent foundations with ownership of the land underneath—it would likely result in tiny homes having a neutral or positive effect on the traditional housing market.

Lastly, by excluding tiny homes from being considered real estate, jurisdictions are losing revenue from property taxes on these houses because it restricts their tax base.<sup>148</sup> Considered personal property rather than real property, tiny home owners are not taxed at the same rate as traditional homeowners.<sup>149</sup> Thus, cities are not capitalizing on individuals currently residing within their boundaries and using city-funded resources. Therefore, tiny homes would provide a larger tax base by increasing the number of homeowners in each jurisdiction, resulting in increased revenue in each jurisdiction through property taxes.

In California, tiny homes have not been formally presented as a solution to the affordable housing crisis at the state or local level.<sup>150</sup> However, state

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143. Moreover, outside of California, typically the areas in which tiny homes have been permitted are rural. Therefore, the effect on neighboring property values does not exist. *See generally* Nonko, *supra* note 78 (providing an overview of regulations across the states).

144. *See* Kayleigh Kulp, *Tiny Houses Grow in Popularity, Yet Drawbacks Abound*, CNBC (Feb. 2, 2017, 9:30 AM), <https://www.cnbc.com/2017/02/02/tiny-houses-grow-in-popularity-yet-drawbacks-abound.html>.

145. *Id.* (emphasis added).

146. Campbell, *supra* note 141.

147. *See* Kulp, *supra* note 144.

148. Patrick Sisson, *Tiny Houses: Big Future, or Big Hype?*, CURBED (July 18, 2017, 12:04 PM), <https://www.curbed.com/2017/7/18/15986818/tiny-house-zoning-adu-affordable-housing>.

149. *See* Fontinelle, *supra* note 107 (noting that tiny home owners are not subject to property taxes, but some states have personal property taxes that a tiny home may be subject to).

150. Tiny homes have been implemented in San Jose, California, as interim housing for homeless individuals. Maggie Angst, *San Jose Opens First Tiny Home Community for Formerly Homeless Residents*, MERCURY NEWS, <https://www.mercurynews.com/2020/02/27/san-jose-opens-first-tiny-home-community-for-formerly-homeless-residents/> (Sept. 20, 2020). The tiny home community received opposition from NIMBY groups. Ramona Giwargis, *After Backlash, San Jose Reduces Number of ‘Tiny Homes’ Sites for Homeless*,

proposals to increase the housing supply through smaller housing units, such as high-density apartment complexes, have drawn staunch opposition from NIMBY groups. For example, Livable California, a nonprofit organization that “advocates for empowerment of local governments,”<sup>151</sup> has lobbied against many major housing bills seeking to alter local zoning laws.<sup>152</sup> For example, the organization lobbied against Assembly Bill 725 because it was “a severe threat to 400+ communities” and would “force demolition and density on communities” by “rezo[n]g single-family areas” to allow for apartment buildings.<sup>153</sup> The organization claims to have defeated “seven bad [housing] bills.”<sup>154</sup> Firmly opposed to rezoning single-family areas—especially through legislation at the state level<sup>155</sup>—Livable California and other NIMBY groups would likely oppose any state action seeking to introduce tiny homes into the housing supply.

#### E. THE BENEFITS TO TAXPAYERS

Affordable housing is financed through many different sources—federal, state, and local.<sup>156</sup> With funding coming mostly from public sources, taxpayers foot the bill for developing affordable housing. The California Legislative Analyst’s Office (LAO) estimates that, in order to meet current housing demands, that bill will cost approximately \$250 billion in public subsidies.<sup>157</sup> The LAO concluded that “attempting to address the state’s housing affordability challenges primarily through expansion of government programs likely would be impractical.”<sup>158</sup> Moreover, in reviewing the main tools states use to incentivize developers to provide housing at an affordable rate, these programs, funded by taxpayer dollars, do not provide housing affordable to low-income households in California.

The majority of funding for affordable housing comes from the Low-Income Housing Tax Credit (LIHTC), a federal tax credit granted to development projects that designate “at least either 20 percent of its apartments

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MERCURY NEWS, <https://www.mercurynews.com/2017/08/20/after-backlash-san-jose-reduces-number-of-tiny-homes-sites-for-homeless/> (Aug. 21, 2017).

151. *About Us*, LIVABLE CAL., <https://www.livablecalifornia.org/mission/> (last visited Feb. 25, 2021).

152. *Act Now*, LIVABLE CAL., <https://www.livablecalifornia.org/act-now-3-2/> (last visited Feb. 25, 2021).

153. *Id.*

154. *Id.*

155. *See id.*

156. *See Fuller, supra* note 58 (“A single affordable housing project requires financing from an average of six different sources—federal, state and local agencies.”); Pamela Blumenthal, Ethan Handelman & Alexandra Tilsley, *How Affordable Housing Gets Built*, URB. INST. (July 26, 2016), <https://www.urban.org/urban-wire/how-affordable-housing-gets-built> (“It’s not uncommon, however, for developers to rely on upward of 20 financing sources as they try to fill the gap between what it costs to build affordable housing and the money they have available.”); U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-637, *LOW-INCOME HOUSING TAX CREDIT: IMPROVED DATA AND OVERSIGHT WOULD STRENGTHEN COST ASSESSMENT AND FRAUD RISK MANAGEMENT 20* (2018), <https://www.gao.gov/assets/700/694541.pdf> (“[P]rojects in California used about six funding sources in addition to LIHTC equity, on average.”).

157. MAC TAYLOR, LEGIS. ANALYST’S OFF., *PERSPECTIVES ON HELPING LOW-INCOME CALIFORNIANS AFFORD HOUSING 4* (2016), <https://lao.ca.gov/Reports/2016/3345/Low-Income-Housing-020816.pdf>.

158. *Id.*

to people who earn less than half of the area median income or 40 percent of its apartments to people who earn less than 60 percent of the area median income.<sup>159</sup> Created in 1986, LIHTC allows for the development of affordable housing through investment rather than direct provisions.<sup>160</sup> First, the Internal Revenue Service (IRS) issues nonrefundable tax credits to state housing agencies.<sup>161</sup> Developers of housing projects then apply to the state housing agency to receive the tax credits.<sup>162</sup> The state housing agency then awards the tax credits to selected developers of those projects.<sup>163</sup> This process is highly competitive.<sup>164</sup> Next, developers sell these tax credits to investors in exchange for financing.<sup>165</sup> Finally, investors claim the tax credits on their tax returns.<sup>166</sup>

However, even if a development project does receive federal tax credits, these tax credits do not cover the entire costs of the project.<sup>167</sup> States, including California, have created additional programs to encourage development of housing targeted for low-income residents. For example, in California, the state legislature enacted a state density bonus law.<sup>168</sup> This law permits developers to construct more units beyond the maximum residential density with the amount based on the percentage of affordable units offered.<sup>169</sup> Additionally, California provides housing bonds to fund housing programs under the Department of Housing and Community Development.<sup>170</sup> Bonds, authorized by voter propositions, are used to fund development of affordable housing, provide rental and mortgage assistance, and other targeted housing programs.<sup>171</sup>

Unfortunately, affordable housing funded and developed through these various programs is not, in reality, affordable—especially in California.<sup>172</sup> A report by the Government Accountability Office found that average development costs for new LIHTC projects in California were the highest in the nation, surpassing costs in New York City.<sup>173</sup> In fact, the average costs of developing affordable housing in California is three times higher than other states<sup>174</sup>—with the average cost of a single affordable housing unit at

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159. Blumenthal et al., *supra* note 156.

160. Mihir Desai, Dhammika Dharmapala & Monica Singhal, *Tax Incentives for Affordable Housing: The Low Income Housing Tax Credit*, 24 TAX POL'Y & ECON. 181, 181 (2010).

161. *Id.* at 184.

162. *See id.*

163. *Id.*

164. Blumenthal et al., *supra* note 156.

165. Desai et al., *supra* note 160, at 184.

166. *Id.* at 181.

167. Blumenthal et al., *supra* note 156.

168. 7 CAL. GOV. CODE § 65915 (2019).

169. *Id.*

170. *Programs: Active*, CAL. DEP'T OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/grants-funding/active-funding/index.shtml> (last visited Feb. 25, 2021).

171. *Id.*; *see also* Fuller, *supra* note 58 (“[A]ffordable housing funding including mortgage assistance for first-time buyers and bonds for veterans’ housing.”).

172. *See* Fuller, *supra* note 58.

173. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 156.

174. *See* Fuller, *supra* note 58.

approximately \$500,000 in Los Angeles and \$600,000 in Oakland.<sup>175</sup> For many, particularly low-income households, this housing is still financially out of reach.

Alternatively, tiny homes can be funded without taxpayer dollars. Because tiny homes require fewer materials and labor to build,<sup>176</sup> construction costs are lower—resulting in privately funded housing that is affordable to a larger portion of California residents. Private individuals, either looking to reside in or rent a tiny home on their private property, may personally finance construction without requiring tax credits or bonds from the state.

In order to meet the current demands of housing in California, private housing construction must be facilitated at the state and local level.<sup>177</sup> In their report, LAO determined that expansion of government affordable housing programs to address the affordable housing crisis was “extremely challenging and prohibitively expensive.”<sup>178</sup> LAO concluded that a “key remedy to California’s housing challenges is a substantial increase in private home building in the state’s coastal urban communities.”<sup>179</sup> With public subsidies unable to meet housing demands, tiny homes offer a privately funded solution.

Furthermore, with construction costs and purchase prices ranging under \$100,000, tiny homes are significantly more affordable.<sup>180</sup> With traditional homes costing an average of \$549,900<sup>181</sup> and state-funded affordable housing costing around \$500,000,<sup>182</sup> tiny homes achieve what private and public construction cannot—a price within reach for average residents of the state.

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At this time, information regarding the costs of tiny homes and the ability to weave them into the current housing supply is rather speculative because various stakeholders have conducted limited studies on the viability of tiny homes. If Governor Newsom is serious about using “every tool,” including “creative” solutions,<sup>183</sup> to solve the affordable housing crisis, state agencies focused on housing affordability should consider the potential of tiny homes to serve as that solution. Namely, within Governor Newsom’s office sits the California Department of Housing and Community Development (HCD), a state agency created to “[p]romote safe, affordable homes and strong vibrant communities throughout California.”<sup>184</sup>

To discover the true costs of tiny homes and their viability as a technique for infill development, HCD should conduct a study on tiny home construction costs and development land availability. This study could: (1) determine the

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175. *Id.*

176. See discussion *supra* Part II.

177. See TAYLOR, *supra* note 157, at 1; TAYLOR, *supra* note 7, at 34–35.

178. TAYLOR, *supra* note 157, at 1.

179. *Id.*

180. See *supra* Part II.B.

181. Hoffower & Brandt, *supra* note 100.

182. Fuller, *supra* note 58.

183. Press Release, *supra* note 64.

184. *Our Mission & What We Do*, CAL. DEP’T OF HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/about/mission.shtml> (last visited Feb. 25, 2021).

varying costs associated with building a tiny home; (2) discover how such costs can be further mitigated in the development process; and (3) identify key areas within cities and counties across California that are underutilized and best suited for tiny home infill development. However, as it stands, tiny homes are generally not permitted in California due to legal obstacles at the local level.

### III. WHY CAN'T CALIFORNIANS DOWNSIZE?

Although tiny homes' popularity continues to increase, legal obstacles still act as barriers to the adoption of tiny homes as permanent dwellings.<sup>185</sup> This Part will discuss the main obstacles embedded in the zoning laws and building codes of local municipalities that outlaw tiny homes. With the authority to set zoning laws and building codes at the local level, zoning laws and building codes vary across jurisdictions in California. However, one characteristic remains constant across jurisdictions: zoning laws and building codes prevent individuals from residing in smaller housing units.

#### A. LEGAL OBSTACLES TO THE TINY HOME MOVEMENT

##### 1. Zoning Laws

Zoning laws determine where tiny home owners are permitted to build or place their homes. In 1926, the U.S. Supreme Court upheld the constitutionality of zoning laws in *Village of Euclid v. Ambler Realty Co.*<sup>186</sup> In doing so, the Supreme Court applied a substantive due process analysis to determine whether an ordinance reasonably furthers some legitimate public purpose.<sup>187</sup> Therefore, although property owners have the right to use their property as they wish, zoning laws are permitted to interfere with that right as a constitutional exercise of a government's police powers to promote health, safety, morals, and general welfare of the public.<sup>188</sup> Governments cannot, however, "under the guise of police power," implement zoning laws that are "unnecessary and unreasonable" restrictions upon the use of private property.<sup>189</sup>

The constitutional exercise of the states' police power to promulgate zoning laws has been delegated to cities and counties.<sup>190</sup> Municipalities implement zoning laws to manage the development and use of land by dividing the land into different zones and dictating what constitutes permissible use in

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185. Lloyd Atler, *Why Hasn't the Tiny House Movement Become a Big Thing? A Look at 5 Big Barriers*, TREEHUGGER, <https://www.treehugger.com/green-architecture/why-hasnt-tiny-house-movement-become-big-thing-look-5-big-barriers.html> (Oct. 11, 2018).

186. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395–97 (1926).

187. *Id.*; see Nisha Ramachandran, Note, *Realizing Judicial Substantive Due Process in Land Use Claims: The Role of Land Use Statutory Schemes*, 36 *ECOLOGY L.Q.* 381, 387 (2009).

188. *Ambler Realty Co.*, 272 U.S. at 395; see also 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, 119–21 (2017).

189. *Washington ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 121 (1928).

190. 1 *NORMAN WILLIAMS JR. & JOHN M. TAYLOR, AMERICAN LAND PLANNING LAW* § 17:13 (rev. ed. 2020).

each zone.<sup>191</sup> Modern zoning classifications generally include commercial, residential, agricultural, and industrial zones. Zones can be divided further into sub-districts based on distinguishing factors such as density.<sup>192</sup> Exemplified by San Jose, California, residential zones can be divided up based on density with districts for single-family residence, two-family residence, multiple residence, and mobile home park.<sup>193</sup> Municipalities may also pass ordinances to regulate housing with requirements regarding lot size, floor area ratio (percentage of land to be left unbuilt upon), height, parking, driveway length, and setbacks.<sup>194</sup> Criticized frequently as resulting in exclusionary zoning, ordinances setting minimum requirements may prevent lower income residents from moving into wealthier neighborhoods by restricting the construction of multi-family rental units and other affordable housing options.<sup>195</sup>

Such zoning practices affect owners of tiny homes. With high minimum lot size requirements, owners of tiny homes are forced to buy larger than necessary lots in order to reside on the property in their tiny home, resulting in: (1) decreased efficiency of the land use; and (2) increased housing costs due to land value.<sup>196</sup> With land being one of the leading factors increasing housing costs, owners of tiny homes may not be able to afford larger plots of land.<sup>197</sup> Moreover, requiring the purchase of larger, more expensive land ultimately defeats the main appeal of the tiny home—affordability.<sup>198</sup> And when there are high minimum square footage requirements, tiny homes cannot even be the primary residence of the property.<sup>199</sup> As I will discuss in Part III.B., California cities’ zoning practices—specifically high lot size and square footage requirements—effectively prevent any individual from residing in a tiny home.

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191. *Id.* § 17:8; see Marc C. McAllister, *Go Tiny or Go Home: How Living Tiny May Inadvertently Reduce Privacy Rights in the Home*, 69 S.C. L. REV. 265, 271 (2017).

192. McAllister, *supra* note 191, at 271.

193. SAN JOSE, CAL., MUN. CODE § 20.30.010 (2019).

194. *Id.*

195. Elliott Anne Rigsby, *Understanding Exclusionary Zoning and Its Impact on Concentrated Poverty*, CENTURY FOUND. (June 23, 2016), <https://tcf.org/content/facts/understanding-exclusionary-zoning-impact-concentrated-poverty/?session=1>.

196. See Mollie McGee, *Tiny House Laws in the United States; States that Allow Tiny Houses*, TINY HOUSE SOC’Y (Dec. 13, 2018), <https://www.tinysociety.co/articles/tiny-house-laws-united-states/>; see also Lisa Prevost, *Where Can You Park a Tiny Home?*, N.Y. TIMES (Oct. 6, 2017), <https://www.nytimes.com/2017/10/06/realestate/where-can-you-park-a-tiny-home.html> (“Zoning also commonly specifies a minimum home or lot size that is too large and expensive for a lifestyle geared toward affordability.”); 2 NORMAN WILLIAMS JR. & JOHN M. TAYLOR, *AMERICAN LAND PLANNING LAW* § 39:20 (rev. ed. 2020).

197. See *supra* note 54 and accompanying text.

198. See 2 WILLIAMS JR. & TAYLOR, *supra* note 196, § 39:20 (“In several of the lot-size decisions . . . the courts have explicitly and frequently noted the possibility that such requirements may result in so large an increase in land cost as to remove such housing from the reach of the lower- and middle-income groups.”); see also Adam A. Millsap, *Minimum-Lot-Size Regulations Means Less Housing*, FORBES (May 8, 2019, 9:27 AM), <https://www.forbes.com/sites/adammillsap/2019/05/08/minimum-lot-size-regulations-mean-less-housing/?sh=36ac259b575b> (citing a study on Texas zoning practices that found that high minimum lot size requirements forced individuals to buy larger plots, increasing cost of housing and sprawl).

199. *Understanding Zoning and Tiny Houses*, TINY HOUSE BUILD (Feb. 20, 2015), <https://tinyhousebuild.com/understanding-zoning-and-tiny-houses/>.

Alternatively, tiny home owners may evade zoning laws by placing their tiny home on wheels.<sup>200</sup> Because tiny homes on wheels are classified in most jurisdictions as RVs, tiny homes on wheels must instead meet the requirements set forth for RVs with DMV licensing.<sup>201</sup> One drawback to this evasion technique is that owners of tiny homes on wheels must then find a legal place to park an RV. Additionally, most city ordinances do not permit individuals to live in their RVs permanently or full time.<sup>202</sup> Therefore, tiny home owners resort to relocating their tiny home frequently or residing in the tiny home only temporarily, defeating the purpose of the tiny home as a permanent residence.<sup>203</sup>

## 2. *Building Codes*

Building codes regulate the construction, repair, removal, alteration, use, and reconstruction of structures.<sup>204</sup> Similar to zoning laws, states have delegated the power to implement and enforce building codes to local municipalities.<sup>205</sup> Additionally, like zoning laws, building codes must also promote the health, safety, morals, and general welfare of the public.<sup>206</sup> Therefore, building codes are implemented for the purpose of ensuring that buildings are safe, sanitary, convenient, and efficient.<sup>207</sup> Building codes commonly dictate the height and density of buildings, space between buildings, number of rooms in a building, means of egress and ingress, height of ceilings, minimum size of certain rooms, amount of light and windows, and sleeping room with the purpose of regulating fire safety, earthquake safety, and the structural integrity of buildings.<sup>208</sup> Additional ordinances may also dictate plumbing and electricity in order to maintain sanitation standards.<sup>209</sup>

Building codes do provide an essential public good by regulating structures for safety and health purposes. However, because tiny homes are a relatively new phenomena and not legally adopted across jurisdictions, building codes that are later applied to tiny homes are commonly drafted with only one type of housing in mind—traditional houses. Alternatively, other housing types, such as apartment buildings, condominiums, and other similarly smaller housing units, have building codes that are specific to their housing type.<sup>210</sup> It is important to note that this Note does not argue for the removal of building codes entirely. Rather, this Note advocates for either reducing the minimum requirements set

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200. Megan Craig, *10 Loopholes to Build a Tiny Home Legally*, HUFFPOST, [https://www.huffpost.com/entry/10-loopholes-to-build-a-t\\_b\\_9942198](https://www.huffpost.com/entry/10-loopholes-to-build-a-t_b_9942198) (Dec. 6, 2017).

201. *Id.*

202. *Id.*

203. *Id.*

204. 7A MCQUILLIN MUN. CORPS. § 24:500 (rev. 3d ed. 2020).

205. *Id.*

206. *Id.*

207. Eric Damian Kelly, *Fair Housing, Good Housing or Expensive Housing? Are Building Codes Part of the Problem or Part of the Solution?*, 29 J. MARSHALL L. REV. 349, 349 (1996).

208. See 7A MCQUILLIN MUN. CORPS. § 24:499.

209. See Kelly, *supra* note 207, at 354.

210. See, e.g., SAN JOSE, CAL., MUN. CODE § 20.170 (2019) (providing different regulations and exceptions for condominiums and apartments).

forth in current building codes or adopting building codes that are specific to tiny homes in order to strike a balance between safety and the ability to reside in smaller housing units.

For owners of tiny homes, the main building codes presenting an obstacle to residing legally in a tiny home are the minimum requirements for: (1) ceiling height; (2) egress; and (3) room size.<sup>211</sup> For example, ceiling height requirements affect the typical design of tiny homes, which includes lofts.<sup>212</sup> Additionally, egress requirements may mandate that tiny homes use stairs rather than ladders to access the loft.<sup>213</sup> Lastly, while a jurisdiction may or may not have minimum square footage requirement, minimum room sizes in the building codes may require tiny home owners to build a larger tiny home to meet the standards.<sup>214</sup>

Again, tiny home owners may evade building codes by placing their tiny homes on wheels because such homes are subject to RV regulations while tiny homes on foundations must adhere to building codes.<sup>215</sup> By not adapting the building codes to permit tiny homes, individuals continue to reside in tiny homes “off the grid”—resulting in potential hazards for housing communities due to lack of proper regulation. Therefore, in order to provide utmost safety, jurisdictions should instead work to bring tiny homes within regulation.

California has done just that. The state recently adopted Appendix Q of the International Residential Code (IRC), establishing specific building codes for tiny homes across jurisdictions in California.<sup>216</sup> As I will discuss further in Part IV.A., the adoption of Appendix Q effectively removes building codes as a barrier for *some* tiny homes.<sup>217</sup>

## B. REGULATIONS IN CALIFORNIA’S MAJOR CITIES

This Subpart will examine the single-family zoning laws of Los Angeles, San Diego, San Jose, and Fresno, California, to determine why California cannot build smaller, more affordable housing. Reviewing the zoning laws of these major cities, the local regulations reveal the impediments owners of tiny homes encounter when attempting to legally reside in a tiny home. With common

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211. Nonko, *supra* note 78 (quoting Andrew Morrison on the fact that “[i]ssues like ceiling heights, emergency escape egress and lofts are almost impossible to pass through the existing IRC code”). *But see* NAT’L FIRE PROT. AGENCY, APPLYING BUILDING CODES TO TINY HOMES 6–9 (2017), <https://www.nfpa.org/-/media/Files/White-papers/WhitePaperTinyHomes.ashx> (explaining that tiny homes are not exempt from building code requirements and are treated the same as traditional houses under national building codes standards). The report found that ceiling heights, headroom, and egress requirements for lofted sleeping areas may frustrate the design of tiny homes. *Id.* In contrast, the report also found that certain requirements, such as room size, did not impact the design of tiny homes. *Id.* However, the report does not make clear how it came to that determination. *See id.*

212. *See* NAT’L FIRE PROT. AGENCY, *supra* note 211, at 7–9.

213. *See id.*

214. For example, although San Jose, California, does not have a minimum square footage requirement in the zoning laws, building codes require that one room be at least 150 square feet with other habitable rooms being at least 70 square feet. *See* SAN JOSE, CAL., MUN. CODE § 17.20.270 (2019).

215. Craig, *supra* note 200.

216. *See infra* Part IV.A.

217. *Id.*

zoning practices setting high minimum lot size and square footage requirements, Los Angeles, San Diego, and San Jose effectively prohibit the existence of tiny homes in single-family zones. However, Fresno, serving as an example for progress, has altered its zoning practices to incorporate tiny homes into the housing supply as a method to increase density and affordability of housing.

### 1. *Los Angeles, California*

Under Los Angeles' zoning laws, the residential zone is subdivided into many districts, including residential agricultural, single-family residence, two-family residence, limited density multiple residence, medium density multiple residence, high density multiple residence zone, and residential planned development.<sup>218</sup>

For single-family residences, the minimum lot size required is 5,000 square feet.<sup>219</sup> Single-family residences must have two covered parking spaces.<sup>220</sup> Also, the Los Angeles zoning laws establish minimum standards for yard requirements—the front yard must be twenty feet, the rear yard must be fifteen feet, and the side yard must be five feet.<sup>221</sup> Lastly, the zoning laws impose a requirement of a minimum floor area of 800 square feet for single-family residences.<sup>222</sup>

The first problem posed by Los Angeles' regulatory scheme is the minimum lot size requirement that forces tiny home owners to purchase larger plots of land than are necessary for their tiny homes. With a minimum lot size of 5,000 square feet, tiny homes ranging from 100 square feet to 400 square feet only utilize 8% of the land for the house. By requiring such a large plot of land, Los Angeles zoning laws effectively defeat the purpose of downsizing to a tiny home because the venture is no longer affordable or sustainable. The purchase of a large plot of land necessarily drives up the price of the tiny home venture, reducing affordability and reinforcing the traditionally sized house construction. Additionally, if a tiny home owner constructed a tiny home on a 5,000 square foot lot, land use becomes inefficient and environmentally unsustainable, frustrating the aim of increasing the density for the purpose of providing more housing on underutilized land.

Second, Los Angeles zoning laws effectively prohibit the existence of tiny homes by requiring a minimum floor area of 800 square feet for single-family residences. With the average size of tiny homes ranging from 100 to 400 square feet, the minimum requirement of at least 800 square feet for single-family homes is significantly larger than the average tiny home and approaches the size for traditional homes. Accordingly, the minimum square footage requirement for single-family homes eliminates the possibility of tiny homes as an affordable housing option in Los Angeles. Seventy-five percent of residential land in Los

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218. L.A., CAL., MUN. CODE § 22.18.020 (2019).

219. *Id.* §§ 22.110.130, 22.110.140.

220. *Id.* § 22.112.060.

221. *Id.* §§ 22.18.040, 22.110.080.

222. *Id.* § 22.140.580.

Angeles is zoned for single-family housing, yet Los Angeles has one of the lowest rates of homeownership in the United States.<sup>223</sup> With less than a quarter of the land zoned for denser living accommodations, Los Angeles' restrictive zoning laws force the production of larger homes, resulting in affordable housing shortages in Los Angeles.<sup>224</sup>

Recently, Los Angeles adopted an ordinance to amend ADU regulations to classify tiny homes on wheels as "Movable Tiny Homes" in December 2019.<sup>225</sup> Under this new ordinance, tiny homes on wheels are classified as "Junior Accessory Dwelling Units (JADU)" but must still be licensed and registered with the DMV like an RV.<sup>226</sup> Additionally, the tiny home on wheels must be between 150 and 430 square feet, the property must contain a proposed or existing property, and only one tiny home on wheels is permitted on the property within a twelve month period.<sup>227</sup>

## 2. San Diego, California

San Diego, California, has three residential zones that permit use of land for single-family dwellings applicable to tiny home development—residential estate, residential single unit, and residential small lot. For the residential estate zone, the purpose is "to provide for single dwelling units on large lots . . . this zone [is] applied to areas that are rural in character, where the retention of low *density residential development* is desired."<sup>228</sup> The residential single unit zone allows for single-family dwellings with a variety of lot sizes and flexibility in development.<sup>229</sup> The residential single unit zone is further subdivided into fourteen different districts that are based "on the minimum lot size and whether the premises [are] located in an Urbanized Community or a Planned Urbanized Community or Proposition A Lands."<sup>230</sup> The residential small lot zone permits attached and detached single-family dwellings on smaller lots than required in the residential single unit zone.<sup>231</sup> The purpose of this zone is to provide an alternative to multiple dwelling units where single-family dwellings can be developed at similar densities.<sup>232</sup>

For the residential estate zone, the minimum lot size ranges from 1 acre to 10 acres, and the maximum floor area ratio ranges from 0.10 to 0.35.<sup>233</sup> For the residential single unit zone, the minimum lot size ranges from 5,000 square feet

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223. Alissa Walker, *The Real Reason California's Upzoning Bill Failed*, CURBED (Feb. 7, 2020, 3:50 PM), <https://www.curbed.com/2020/2/7/21125100/sb-50-california-bill-fail>.

224. Noah Buhayar & Christopher Cannon, *How California Became America's Housing Market Nightmare*, BLOOMBERG (Nov. 6, 2019), <https://www.bloomberg.com/graphics/2019-california-housing-crisis/>.

225. L.A. CITY PLAN. COMM'N, PROPOSED ACCESSORY DWELLING UNIT ORDINANCE, NO. 16-1468 (2018).

226. *Id.*

227. *Id.*

228. SAN DIEGO, CAL., MUN. CODE § 131.0402 (2019).

229. *Id.* § 131.0403.

230. *Id.*

231. *Id.* § 131.0404.

232. *Id.*

233. *Id.* §§ 131.0402, 131.0431.

to 40,000 square feet and the maximum floor area ratio ranges from 0.45 to 0.70.<sup>234</sup> For the residential small lot zone, the minimum lot size ranges from 3,000 square feet to 4,000 square feet and the maximum floor area ratio is based on “the minimum lot area of the zone, or the area of the lot with a gradient less than 10 percent, whichever is greater.”<sup>235</sup> Additionally, for single-family dwellings across all zones, San Diego municipal code requires two parking spaces per dwelling.<sup>236</sup>

San Diego’s regulations appear to be more lenient towards smaller house sizes based on the lower minimum lot size requirement in the residential small lot zone and the use of a *maximum* floor area ratio as opposed to a *minimum* square footage requirement. For areas designated as residential estate and residential single unit zones, the minimum lot sizes of 1 acre and 5,000 square feet make tiny homes impractical because it is an inefficient use of the land and a costly land purchase. And the minimum lot size for the residential small lot zone is not all that *small*. With a minimum square lot size of 3,000, tiny home owners with a tiny home of 400 square feet will still only be utilizing 13% of the land.

For tiny home developers in San Diego, the most significant hurdle to building tiny homes is the parking requirements.<sup>237</sup> Regardless of the size of the dwelling, single-family homes must have at least two parking spaces. Therefore, when attempting to build smaller housing options, developers are still required to allocate significant amounts of square footage to parking spaces, which is not only uneconomical but also increases the square footage of the project.<sup>238</sup>

Recently, San Diego’s Land Use and Housing Committee unanimously voted to pass regulations that will permit tiny homes on wheels in homeowners’ backyards.<sup>239</sup> Citing the benefits of tiny homes with their quick development cycle and low cost, San Diego’s regulation would impose the following requirements on tiny homes on wheels: 150 to 430 square feet in size; fire-resistant roofs; connection to utilities; registration with the DMV; and inability to move with their own power.<sup>240</sup> Additionally, homeowners would not be required to provide an additional parking spot.<sup>241</sup>

### 3. *San Jose, California*

In 2016, California passed Assembly Bill 2176 (A.B. 2176) to allow San Jose, California, to implement a tiny home program for individuals experiencing

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234. *Id.* §§ 131.0403, 131.0446.

235. *Id.* §§ 131.0404, 131.0446.

236. *Id.* § 142.0520.

237. Claire Trageser, *Why Micro-Homes Aren’t Taking Off in San Diego*, KPBS (Apr. 21, 2015), <https://www.kpbs.org/news/2015/apr/21/why-microliving-wont-come-san-diego-any-time-soon/>.

238. *Id.*

239. David Garrick, *San Diego Housing Panel OKs Movable Tiny Houses as New, Low-Cost Option*, SAN DIEGO UNION-TRIBUNE (Oct. 10, 2019, 7:03 PM), <https://www.sandiegouniontribune.com/communities/san-diego/story/2019-10-10/san-diego-housing-panel-oks-movable-tiny-houses-as-new-low-cost-option?>

240. *Id.*

241. *Id.*

homelessness.<sup>242</sup> In order to permit such a program, it required legislation to suspend the state and local zoning and building codes.<sup>243</sup> To do so, San Jose was required to declare a shelter crisis based on the significant increase in individuals experiencing homelessness over the past two years.<sup>244</sup> The legislation defined the housing as an “emergency bridge housing community” consisting of “temporary structures.”<sup>245</sup> A.B. 2173 further “[s]uspend[ed] the provisions of any state or local statute, regulation, or ordinance prescribing standards of housing . . . to the extent that strict compliance would in any way prevent, hinder, or delay” development of the emergency housing structures.<sup>246</sup> In the alternative, the legislation permitted San Jose “in lieu of compliance with state and local building, housing, health, habitability, or safety standards and laws,” to adopt local ordinances to regulate the construction, placement, and operation of the emergency bridge housing communities.<sup>247</sup> Therefore, A.B. 2173 effectively removed state and local barriers to building smaller housing units for the narrow purpose of providing temporary tiny homes for individuals experiencing homelessness—with the ultimate goal of transitioning these individuals to permanent housing.<sup>248</sup>

However, single-family zoning in San Jose still prevents the existence of tiny homes for other purposes. Non-homeless San Jose residents are still subject to several restrictive state and local zoning laws that prevent smaller housing units. Although San Jose does not have a minimum square footage requirement, single-family house size is restricted in San Jose based on the minimum lot size requirement. With the minimum lot size of 5,445 square feet for a single-family dwelling, any individual looking to build a tiny home ranging from 100 to 400 square feet only utilizes 7% of their property.<sup>249</sup> As previously mentioned, requiring tiny home owners to purchase such large lots defeats the essential

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242. Ramona Giwargis, *San Jose: New Law Would Make City First to Allow “Tiny Homes” for Homeless*, MERCURY NEWS (Oct. 7, 2016, 5:54 PM), <https://www.mercurynews.com/2016/10/07/san-jose-new-law-would-make-city-first-to-allow-tiny-homes-for-homeless/>; see also A.B. 2176, 2016 Leg., Reg. Sess. (Cal. 2016). Since the passage of A.B. 2176, Berkeley, Emeryville, Oakland, Los Angeles, San Diego, the County of Santa Clara, the City and County of San Francisco, Alameda County, and Orange County have been added to the list of cities and counties that may declare shelter crises to suspend state or local regulations for housing production. A.B. 932, 2017–2018 Leg., Reg. Sess. (Cal. 2017); A.B. 143, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

243. Giwargis, *supra* note 242.

244. Emily Deruy, *San Jose: Tiny Homes Delayed amid Site Negotiations*, MERCURY NEWS (July 15, 2019, 8:05 AM), <https://www.mercurynews.com/2019/07/15/san-jose-tiny-homes-delayed-amid-site-negotiations/?clearUserState=true> (finding that homelessness increased by 42% within two years in San Jose).

245. A.B. 2176, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

246. Analysis of A.B. 2176, 2015–2016 Leg., at 2 (Aug. 2016).

247. A.B. 2176, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

248. See *id.* In addition to experiencing the Affordable Housing Crisis, California is also experiencing a related issue of increased homelessness. With over 151,000 estimated homeless individuals, California “has more people experiencing homelessness than any other state in the nation.” GABRIEL PATEK, LEGIS. ANALYST’S OFF., THE 2020–21 BUDGET: THE GOVERNOR’S HOMELESSNESS PLAN 4 (2020), <https://lao.ca.gov/reports/2020/4152/homelessness-plan-021120.pdf>. I believe that addressing the issue of housing affordability may also help to reduce the number of unsheltered individuals in California.

249. SAN JOSE, CAL., MUN. CODE § 20.30.200 (2019).

purposes of tiny homes because it increases the cost and makes land use inefficient.

*Ninety-four percent* of residential land in San Jose is zoned for single-family dwellings.<sup>250</sup> With an overwhelming majority of land zoned for single-family dwellings, San Jose continues to perpetuate the development of large homes, resulting in low density and a shortage of affordable housing.

#### 4. Fresno, California

In 2016, Fresno, California, changed its zoning laws to authorize the construction and placement of tiny homes in homeowners' backyards.<sup>251</sup> While many jurisdictions treat tiny homes on wheels as RVs for purposes of regulation, Fresno is instead treating tiny homes with permanent foundations and tiny homes with wheels as backyard cottages.<sup>252</sup> Believed to be the first city in the United States to include a zoning code addressing tiny homes, the City Council classified tiny homes as an ADU under the category of "backyard cottages."<sup>253</sup> Therefore, for the purposes of zoning laws and building codes, tiny houses are governed by section 15-2754 of the Fresno Municipal Code.<sup>254</sup> Significantly, this zoning law removed the limitation on where the tiny homes may be placed, how long the tiny homes may be placed there, and permitted owners to live in the tiny homes full time.<sup>255</sup>

Additionally, Clovis, California, a city in Fresno County, expanded their "Cottage Home Program" to the entire city in May 2019 as a means to incentivize homeowners to build tiny homes on their lots in response to the affordable housing crisis.<sup>256</sup> Specifically, the city offers homeowners three free, pre-approved building plans to choose from for their "cottages."<sup>257</sup> These three plans are designs for tiny homes under 450 square feet, removing the costs associated with developing personal building plans and securing approved plans and permits from the city.<sup>258</sup> Codified in section 9.40.020 of the Clovis Municipal Code, the property must have access to an alley and utilities and the

250. See Buhayar & Cannon, *supra* note 224.

251. Sasha Khokha, *Fresno Passes Groundbreaking 'Tiny House' Rules*, KQED (Jan. 19, 2016), <https://www.kqed.org/news/10833592/fresno-passes-groundbreaking-tiny-house-rules>.

252. *Id.*

253. *Clovis Expands Its Tiny Homes Program*, BUS. J. (May 9, 2019, 11:19 AM), <https://thebusinessjournal.com/clovis-expands-its-tiny-homes-program/>; see also CITY OF FRESNO, DEV. & RES. MGMT. DEPT, TINY HOMES (2018), <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2018/01/Tiny-Homes-submittal-requirements.pdf>.

254. See FRESNO, CAL., MUN. CODE § 15-2754 (2019).

255. BoNhia Lee, *Tiny Houses Can Be Permanent Homes Under New Fresno Ordinance*, FRESNO BEE, <https://www.fresnobee.com/news/business/biz-columns-blogs/real-estate-blog/article54581715.html> (Jan. 15, 2016).

256. Brianna Calix, *Are Tiny Homes the Answer for Affordable Housing? Clovis Is Giving It a Try*, FRESNO BEE, <https://www.fresnobee.com/news/local/article230219344.html> (May 13, 2019); see also *Clovis Expands Its Tiny Homes Program*, *supra* note 253.

257. *Cottage Home Program*, CITY OF CLOVIS, <https://cityofclovis.com/planning-and-development/planning/cottage-home-program/> (last visited Feb. 25, 2021).

258. Calix, *supra* note 256.

property owner must keep ownership of the cottage.<sup>259</sup> On average, this program saves homeowners looking to build tiny homes on their property \$10,000.<sup>260</sup>

The cost of building a cottage ranges from \$60,000 to \$100,000.<sup>261</sup> Because these costs may act as a barrier to homeowners taking advantage of the Cottage Home Program, the City of Clovis also recently partnered with Self-Help Enterprises to provide financing to eligible homeowners.<sup>262</sup> Acting as yet another incentive for homeowners to build a cottage in Clovis, “[t]he goal of the program is to increase housing densities in existing neighborhoods, provide affordable housing opportunities . . . and create viable economic opportunities for owners to maximize the use of their properties.”<sup>263</sup>

Permitting tiny homes to be woven seamlessly into already established neighborhoods, Clovis carefully integrates tiny homes to increase density through a monitored, controlled program. The program also tackles the issue of affordability on both spectrums of the housing market. Significantly, the program provides two benefits—one for homeowners and one for renters. Homeowners receive a stream of income that alleviates the prices of their already purchased homes by renting out cottages and renters benefit from the increase in supply of affordable housing. As of January 2021, eleven cottages have been completed and nine additional permits have been issued through the Cottage Home Program.<sup>264</sup>

#### IV. CALIFORNIA’S RESPONSES TO THE AFFORDABLE HOUSING CRISIS

Although local jurisdictions may or may not alter their own zoning practices slowly, at the state level California has recently implemented drastic alterations to zoning laws and building codes in an attempt to address the affordable housing crisis. By adopting measures such as Appendix Q of the IRC to amend building codes and various bills on ADUs to amend zoning practices, California seeks to increase the housing supply across the state with smaller housing units.

##### A. MANDATORY ADOPTION OF APPENDIX Q OF THE IRC

California’s Department of Housing and Community Development adopted the 2018 version of the IRC, effective on January 1, 2020. The IRC is a model set of codes created by the International Code Council, a non-profit association that performs research to develop model building codes and

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259. *Id.*; see also CLOVIS, CAL., MUN. CODE § 9.40.020 (2019).

260. Calix, *supra* note 256.

261. *Id.*

262. *Id.*

263. *Accessory Dwelling Unit (ADU) Loan Program: Policies and Procedures*, SELF-HELP ENTERPRISES, <https://www.selfhelpenterprises.org/wp-content/uploads/2019/04/ADU-Policies-and-Procedures-FINAL-2719.pdf> (last visited Feb. 25, 2021).

264. *Cottage Home Program*, *supra* note 257. Of the eleven cottages, nine have already been rented out for the year. Casey O’Brien, *How Clovis, CA Is Fast-Tracking Backyard Tiny Homes to Create More Affordable Housing*, SHAREABLE (Aug. 19, 2020), <https://www.shareable.net/how-clovis-ca-is-fast-tracking-backyard-tiny-homes-to-create-more-affordable-housing/>.

establishes minimum regulations for residential property.<sup>265</sup> The 2018 edition includes an appendix specific to tiny homes—the first of its kind.

California ensured in its adoption of the IRC that Appendix Q was incorporated into the California Residential Code.<sup>266</sup> Although state adoption of the IRC immediately effectuates application across jurisdictions, appendices of the IRC adopted by the state are optional provisions that *typically* must be further adopted at the local jurisdiction level in order for application. California, however, not only explicitly adopted Appendix Q to regulate tiny homes, but also made the regulations of Appendix Q *mandatory* across all 540 local government jurisdictions within California.<sup>267</sup>

Appendix Q provides building safety standards for tiny houses on foundations that are 400 square feet or less.<sup>268</sup> Specifically, Appendix Q sets minimum requirements for ceiling height, loft area and dimensions, loft access, and emergency escape and rescue openings. Rather than attempting to apply building codes for regular sized homes to tiny homes, the ceiling height explicitly addresses living spaces with lofts and sets separate standards for loft areas within tiny homes.<sup>269</sup> Additionally, Appendix Q allows for ingress and egress to the loft area by either stairs or ladders and dictates the applicable standards for each.<sup>270</sup>

Consequently, the building codes contained in Appendix Q will have uniform application to tiny homes on permanent foundations in all jurisdictions in California without any further adoption at the local level. By stipulating the mandatory application of Appendix Q across jurisdictions, the California legislature superseded local building codes for tiny homes on foundations, rendering most building code obstacles addressed in Part III.B moot. However, such building codes do not apply to tiny homes on wheels or tiny homes exceeding 400 square feet. Therefore, any tiny homes not meeting the specific definition included in Appendix Q are still regulated by the local jurisdiction's building codes.

#### B. RECENT STATE LEGISLATION ALTERING LOCAL ZONING ORDINANCES

Because zoning laws are promulgated by cities and counties, the “[s]tate is seldom involved in local land use and development decisions; these have been delegated to the city councils and boards of supervisors of the individual cities and counties. Local decision makers adopt their own sets of land use policies

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265. See *Who We Are*, INT'L CODE COUNCIL, <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 25, 2021); see also *The International Residential Code*, INT'L CODE COUNCIL, <https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/irc/> (last visited Feb. 25, 2021).

266. Alexis Stephens, *Tiny House Model Building Code Now Mandated Across ALL of California*, TINY HOUSE EXPEDITION (June 17, 2019), <https://tinyhouseexpedition.com/tiny-house-model-building-code-now-mandated-across-all-of-california/>.

267. *Id.*

268. INT'L RESIDENTIAL CODE app. Q (2018).

269. *Id.*

270. *Id.*

and regulations based upon the state laws.”<sup>271</sup> Title 7, Planning and Land Use, of the California Government Code establishes the power of local municipalities to regulate land use and imposes requirements on the municipality of adopting “a comprehensive, long-term general plan for [its] physical development.”<sup>272</sup> In addition to the general plan, municipalities are required to adopt zoning, subdivision, and other ordinances to regulate land uses and to carry out its general plan.<sup>273</sup>

However, municipalities’ power to prescribe zoning laws is not absolute. As the California Constitution states: “A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”<sup>274</sup> Therefore, “local legislation in conflict with general law is void.”<sup>275</sup> Accordingly, the California legislature has the power to preempt local zoning ordinances by enacting state legislation.<sup>276</sup>

Characterized as the end of single-family zoning in California, the state legislature recently passed a series of bills addressing ADUs in order to spur development of affordable housing.<sup>277</sup> Acknowledging that local ordinances prohibit or prevent homeowners from building ADUs in their backyard, the California legislature passed Assembly Bills 68, 587, 670, 671, 881, and Senate Bill 13 to reduce such barriers. Estimates indicate that if ten percent of homeowners build an ADU in their backyard, around 900,000 new homes will be added to the housing market at no cost to taxpayers.<sup>278</sup>

A.B. 68 and A.B. 881 remove the barriers of processing times and local ordinances for ADU development. First, the new law requires local agencies to either approve or deny an ADU application within sixty days of receiving a complete building permit application.<sup>279</sup> Second, the law prohibits local agencies from adopting ordinances that require the following: minimum lot size in order to be eligible to build an ADU on property, certain maximum ADU dimensions, and replacement off-street parking when the ADU development results in the

271. CAL. CODE GOVERNOR’S OFF. OF PLAN. & RES., A CITIZEN’S GUIDE TO PLANNING 2 (2011).

272. CAL. CODE ANN. tit. 7, § 65300 (2019).

273. *Id.* § 65103.

274. CAL. CONST. art. XI, § 7.

275. *Deukmejian v. Cty. of Mendocino*, 683 P.2d 1150, 1155 (Cal. 1984). For further discussion on the standard applied when assessing whether a local ordinance is preempted by state legislation, see, for example, the following cases: *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 536–37 (Cal. 1993); *Viacom Outdoor, Inc. v. City of Arcata*, 140 Cal. App. 4th 230, 236 (Ct. App. 2006); and *Korean Am. Legal Advocacy Found. v. City of Los Angeles*, 23 Cal. App. 4th 376, 384 (Ct. App. 1994).

276. Skye L. Daley, *The Gray Zone in the Power of Local Municipalities: Where Zoning Authority Clashes with State Law*, J. BUS., ENTREPRENEURSHIP & L. 215, 222 (2012); see also CHRISTINE DIETRICK & JON ANSOLABEHERE, *CITY OF SAN LUIS OBISPO, LAND USE 101: A FIELD GUIDE 2* (2015), <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2015/Land-Use-101-Webinar-Paper.aspx>.

277. Christian Britschgi, *Did California Just Abolish Single-Family Zoning?*, REASON (Sept. 19, 2019, 2:20 PM), <https://reason.com/2019/09/19/did-california-just-abolish-single-family-zoning/>.

278. Patrick Sisson, *Will California’s New ADU Laws Create a Backyard Building Boom?*, CURBED (Oct. 11, 2019, 12:00 PM), <https://www.curbed.com/2019/10/11/20909545/adus-development-california-real-estate-housing-shortage>.

279. A.B. 68, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

demolishment or conversion of a garage, carport, or covered parking structure.<sup>280</sup>

S.B. 13 establishes that local governments may not condition approval of an ADU building permit application on the applicant being the “owner-applicant” of either the primary house on the property or the ADU in the backyard.<sup>281</sup> Additionally, the law prohibits local governments from imposing impact fees on ADUs under 750 square feet in the hopes of reducing the cost of ADU development.<sup>282</sup>

A.B. 587 creates an exception to local government ordinances that do not allow ADUs to be sold or conveyed separately from the primary residency if built by a “non-profit whose mission is to sell those units to low-income families, that both the primary house and ADU are sold to low-income families, and that any subsequent sale also be to a low-income family.”<sup>283</sup>

A.B. 670 attempts to spur development of ADUs in single-family neighborhoods established as common-interest communities by making void any covenants, restrictions, or conditions included in the governing documents of these communities that “effectively prohibit or unreasonably restricts” development of ADUs.<sup>284</sup>

Finally, A.B. 671 requires local governments to include in their General Plan housing elements to incentivize the development of ADUs “that can be offered at an affordable rent for very low, low-, and moderate-income households.”<sup>285</sup>

Significantly, these new laws only apply to ADUs—secondary housing on lots already developed for and occupied by a primary house. Although these bills have loosened zoning laws for the development of ADUs, they do not provide a bridge between renting and homeownership as most ADUs must remain in the possession of the owner of the primary house. Furthermore, although increasing the supply of housing through ADU development, such development does not ensure or guarantee affordability. While A.B. 671 incentivizes homeowners to in turn rent ADUs to lower-income individuals, such arrangements are not binding or required. As such, homeowners are not prevented from offering their ADU for rent at market-rate.

Therefore, ordinances at the local level still prevent tiny homes from standing on their own in many jurisdictions. Additionally, as these laws pertain to permanent structures on already developed land, the new laws do not address regulation of tiny homes on wheels. California instead classifies a tiny home on wheels as an RV subject to RV regulations and most jurisdictions do not permit individuals to live in their tiny home on wheels full time.<sup>286</sup>

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280. A.B. 881, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

281. S.B. 13, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

282. *Id.*

283. Assembly Floor Analysis of A.B. 587, 2019–2020 Leg., Reg. Sess., at 1 (Cal. 2019).

284. A.B. 670, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

285. A.B. 671, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

286. Kristin Hanes, *How to Live in a Tiny House Without Breaking the Law*, S.F. GATE (Jan. 23, 2018), <https://www.sfgate.com/realestate/article/How-to-Live-in-a-Tiny-House-Without-Breaking-the-12517454.php>.

## C. S.B. 50 &amp; A.B. 1279: THE CALL FOR MORE PROGRESSIVE ZONING

Recent bills have called for more progressive zoning laws as a response to the affordable housing crisis—with particular focus on increasing the density of the housing market. Senate Bill 50 (S.B. 50), authored by State Senator Scott Weiner, aimed to reform zoning laws to increase density around transit hubs and jobs centers.<sup>287</sup> The controversial and hotly debated bill proposed “increas[ing] building heights statewide to five stories near major transit stops or job-rich areas, and allowed multifamily apartments on most properties.”<sup>288</sup> For jurisdictions with a population of 600,000 or more, the bill would streamline the approval process for high-density development within a half-mile of areas determined to be major transit stops or job-rich areas.<sup>289</sup> In doing so, the state bill would suspend local zoning laws, including maximum controls on density, maximum controls on height, and minimum parking requirements—termed as an “equitable communities incentive” for development.<sup>290</sup> In order to also address the affordability of these potential new developments, the development must allocate a portion of the units as “affordable” in order to be eligible for the economic communities incentive and therefore bypass local zoning law.<sup>291</sup> What constitutes “affordable” would then be determined either by the local jurisdictions inclusionary housing ordinance or standards set by sections of the Health and Safety Code.<sup>292</sup> However, for the third time, the bill did not secure the necessary 21 votes, falling short with a margin of 18–15 votes.<sup>293</sup>

Critically, S.B. 50 was opposed on both sides of the aisle.<sup>294</sup> NIMBYs, organized under lobbyist group Livable California, opposed S.B. 50 because they believed the definition of “transit hub” was too broad, allowing for any public transportation location to qualify for development under the bill.<sup>295</sup> Instead, these suburban stakeholders argued against state intervention in favor of protection of local control over housing decisions.<sup>296</sup> Alternatively, housing groups and tenants’ rights advocates opposed S.B. 50 on grounds that the bill, aimed at increasing density and affordable housing, would instead further

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287. See S.B. 50, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

288. Walker, *supra* note 223.

289. Cal. S.B. 50; Gabrielle Canon, *California’s Polarizing Housing Bill SB 50 Has Died in the State Senate*, USA TODAY, <https://www.usatoday.com/story/news/politics/2020/01/30/californias-controversial-housing-bill-sb-50-fails/4614387002/> (Jan. 30, 2020).

290. Cal. S.B. 50.

291. *Id.*

292. *Id.*

293. Walker, *supra* note 223.

294. See Hannah Wiley, *Make Housing Cheaper? Here’s How California Lawmakers Are Getting Started in 2020*, SACRAMENTO BEE (Jan. 5, 2020, 5:00 AM), <https://www.sacbee.com/article238910033.html> (“Critics of SB 50 said the legislation signaled the end to single-family neighborhoods. Others said it would exacerbate gentrification in communities of color in urban areas.”).

295. Camille von Kaenel, *Opponents of Transit Density Bill Find an Audience in Palo Alto*, CURBED (Mar. 19, 2019, 10:03 AM), <https://sf.curbed.com/2019/3/19/18271688/palo-alto-sb50-yimby-nimby-housing-california-wiener>.

296. *Id.*

displace low-income residents.<sup>297</sup> Other state representatives also voiced concerns that the bill would result in market-rate, luxury apartment buildings without clear commitments of affordable housing to low-income residents.<sup>298</sup>

Assembly Bill 1279 (A.B. 1279), authored by Assembly Member Richard Bloom, attempted to mitigate the controversy of S.B. 50 by limiting its application to “high-opportunity areas.”<sup>299</sup> Overriding local zoning laws, the bill would have permitted residential development projects with a minimum of 50 units and a maximum of 120 units at a maximum height of 55 feet.<sup>300</sup> By focusing on increasing density in areas with excess neighborhood amenities and low residential density, the bill hoped to resolve complaints that S.B. 50 does not prevent gentrification of low-income neighborhoods.<sup>301</sup> Additionally, A.B. 1279 provided for an increase in affordable housing because developers would be required to set aside a portion of units for low-income residents—depending on the size of the development, up to 50% of the units could be reserved for affordable housing.<sup>302</sup> The bill was re-referred to the Commission on Housing for further amendments and is currently inactive.<sup>303</sup>

As demonstrated by these recent bills, the California legislature continues to consider amendments to single-family zoning aimed at increasing the density of housing in California. However, these amendments do not provide immediate relief for those most impacted by the affordable housing crisis. Moreover, these amendments may not necessarily result in development of actually affordable housing.

#### V. A STEP TOWARD DENSITY—BUT NOT TOWARD AFFORDABILITY

In order to address the affordable housing crisis, California cannot only focus on the density of housing, but must also directly address the issue of affordability. Part V.A will discuss how California’s recent measures focused on density may not address affordability. Then Part V.B will propose solutions that provide immediate, affordable housing tackling both density and affordability.

##### A. PRODUCTION DOES NOT EQUAL AFFORDABILITY

California is experiencing a severe underproduction of housing with estimates of 3.5 million housing units needed to meet demand. However, the

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297. Marisa Endicott, *California’s Controversial Housing Bill Just Died. It Wasn’t Just Because of NIMBYs*, MOTHER JONES (Jan. 30, 2020), <https://www.motherjones.com/politics/2020/01/california-housing-bill-sb50-failed-nimby-housing-justice-advocates/>.

298. Erin Baldassari, *Closely Watched California Housing Bill SB 50 Now Officially Dead*, KQED (Jan. 30, 2020), [https://www.kqed.org/news/11798945/\\_trashed-4](https://www.kqed.org/news/11798945/_trashed-4).

299. A.B. 1279, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

300. *Id.*

301. Elijah Chiland, *SB 50 Didn’t Pass. But California Is Still Considering These Housing Bills*, CURBED (Feb. 6, 2020, 1:35 PM), <https://la.curbed.com/2020/2/6/21125037/sb-50-other-laws-california>.

302. *Id.*

303. *History of A.B. 1279*, CAL. LEGIS. INFO., [http://www.leginfo.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200AB1279](http://www.leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB1279) (last visited Feb. 25, 2021).

tightness of the rental market or household's inability to afford housing is not quickly resolved by merely increasing the housing supply.<sup>304</sup>

By proposing legislation only addressing underproduction, legislators advance the theory of “trickle-down” housing. Also called “filtering,” the theory promotes an assumption that new development sold at market-rate creates vacancies in older market-rate housing, which “becomes more affordable as new units are added to the market.”<sup>305</sup> However, trickle-down housing does not remedy the issue of unaffordability quickly—if at all. In 2016, the Berkeley Institute of Governmental Studies (IGS) conducted a study on housing production and found that filtering may take generations to trickle down, “meaning that units may not filter at a rate that meets needs at the market’s peak, and the property may deteriorate too much to be habitable.”<sup>306</sup> Additionally, the study found that “it would take approximately 15 years before those units filtered down to people at 80% of the median income and closer to 50 years for households earning 50% of the median income.”<sup>307</sup> IGS also indicated that these estimates still do not guarantee that this housing, when it trickled down, would be affordable to low-income households.<sup>308</sup> The study concluded that market-rate housing production alone cannot solve the immediate needs of the affordable housing crisis.<sup>309</sup> Subsidized housing and other protective strategies would be required to ensure affordability.<sup>310</sup> Given the urgency of the affordable housing crisis, California cannot adopt a wait-and-see approach.

As demonstrated with the opposition to S.B. 50, legislation that focuses solely on production and density does not guarantee affordable housing, particularly for low-income households most impacted by the affordable housing crisis.<sup>311</sup> Additionally, housing advocates caution that such legislation may even accelerate gentrification and displacement of low-income residents as a result of flooding the housing market with new market-rate development.<sup>312</sup>

In order to adequately address the complexity of the affordable housing crisis, legislation that only seeks to address density fails to address affordability. Therefore, smaller housing units such as tiny homes, which increase density *and* provide affordability, are uniquely situated to resolve both components of the affordable housing crisis.

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304. See NAT'L LOW INCOME HOUS. COAL., *supra* note 13, at 1–3.

305. MIRIAM ZUK & KAREN CHAPPLE, BERKELEY INST. OF GOVERNMENTAL STUD., HOUSING PRODUCTION, FILTERING AND DISPLACEMENT: UNTANGLING THE RELATIONSHIPS 3 (2016), [https://www.urbandisplacement.org/sites/default/files/images/udp\\_research\\_brief\\_052316.pdf?eType=EmailBlastContent&eId=2c7e0668-686e-4664-bc57-5edb67cf96d7#\\_blank](https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf?eType=EmailBlastContent&eId=2c7e0668-686e-4664-bc57-5edb67cf96d7#_blank).

306. *Id.*

307. *Id.* at 4.

308. *Id.*

309. *Id.* at 10–11.

310. *Id.*

311. See *supra* notes 297–298 and accompanying text.

312. See *supra* notes 297–298 and accompanying text. IGS's study also indicates that new market-rate development in previously undesirable neighborhoods may generate demand in that area based on a perception of safety. Therefore, the new demand would drive prices up on the market and displace current residents. ZUK & CHAPPLE, *supra* note 305, at 7.

## B. CALIFORNIA NEEDS SINGLE-FAMILY ZONING REFORM

California cannot resolve the affordable housing crisis without amending its zoning practices. Government agencies such as the HCD and other institutions have concluded that zoning reform is necessary to reduce the costs of housing in the state.<sup>313</sup> With most of the residential land in California zoned for single-family, the restrictive minimum requirements of this zoning classification directly contribute to the unaffordability of housing.

In order to meet the demands of the affordable housing crisis, California should alter its single-family zoning practices through state legislation. Although state intervention in local zoning laws is used sparingly, the current affordable housing crisis warrants exercise of state preemption power.<sup>314</sup> First, California should amend Appendix Q of the IRC to include tiny homes on wheels within the Code's definition of tiny homes and to increase the minimum square footage requirement from a maximum of 400 square feet to 700 square feet. With these revisions of Appendix Q, California would be more inclusive of the various styles, shapes, and sizes that tiny homes come in—thus encouraging more individuals to adopt this affordable housing alternative.

Second, California should reduce the minimum square footage requirement to at least 400 square feet across jurisdictions, preempting local ordinances that require larger minimum square footage requirements. Although mandatory adoption of Appendix Q was a significant step toward permitting tiny homes across jurisdictions with uniform regulation, Appendix Q has no effect if jurisdictions do not permit homes at or under 400 square feet.<sup>315</sup> Without this key legislation, mandatory adoption of Appendix Q remains obsolete, and affordable housing remains out of reach for many households.

Third, California should reduce the minimum lot size requirement across jurisdictions in proportion to the minimum square footage requirement in order to enable efficient use of land for smaller housing units. With valid arguments that tiny homes are not the most efficient use of land, especially on large lot sizes, opponents of smaller housing units quickly conclude that tiny homes cannot be a solution to the state's current housing problem. However, rather than simply writing off tiny homes as impractical under the current zoning laws, review of the current zoning laws demonstrates that the laws themselves—and not tiny homes—are impractical. By setting large minimum lot size requirements, local jurisdictions encourage urban sprawl and inefficient use of

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313. CAL. DEP'T OF HOUS. & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES 54–57 (2018), [https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha\\_final\\_combined.pdf](https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf); PUBLIC POL'Y INST. OF CAL., CALIFORNIA'S FUTURE: HOUSING 4 (2020), <https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf>.

314. For the purposes of this argument, discussions of municipalities' police power and the state's power to preempt are beyond the scope of this Note. As previously mentioned, although the state has delegated the power to regulate zoning to local municipalities, the state legislature still has the power to promulgate legislation that preempts local ordinances. *See supra* notes 274–276 and accompanying text.

315. Assuming the state does not increase the maximum square footage requirement to 700 square feet for Appendix Q, reduction to at least 400 square feet is required in order for Appendix Q to have an impact on the adoption of tiny homes across jurisdictions.

land and frustrate California's attempts to increase density. California must increase its housing density to meet the housing demands and large minimum lot sizes are incompatible with such goals.

In addition to state legislation, local jurisdictions should adopt a similar program to the Cottage Home Program in Clovis, California, in order to spur development of smaller housing units. However, unlike Clovis's Cottage Home Program, which classifies tiny homes as ADUs that cannot serve as the main residence, these new programs should treat tiny homes as an independent residence, severable from the main residence (if any residence already exists on the property in the first place).<sup>316</sup> Furthermore, these programs should facilitate the creation of tiny homes similar to the Cottage Home Program by streamlining the process with features such as pre-approved building plans and personal financing partnerships. By providing a streamlined process for individuals to build tiny homes, local jurisdictions would encourage private, infill development of affordable housing at no cost to the taxpayer.

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Operating within a system that still favors single-family zoning, tiny homes provide a viable solution to affordability. Unlike high-density apartment buildings that (1) NIMBYs oppose for altering the character of suburban areas and (2) may in fact enter at market-rate and further displace low-income households, tiny homes offer a cheaper housing alternative that can be seamlessly weaved into the existing framework of neighborhoods. Additionally, rather than requiring an overhaul of current zoning by reclassifying zones for high-density apartments, the loosening of restrictive zoning practices within single-family zoning allows for areas to maintain their character—that is, single-family zoning—while still increasing the affordability and density of housing in the state.

Although tiny homes may not be considered the most efficient use of land, especially when compared to high-density apartment buildings, this argument misses the mark. While efficient use of land is important, the argument prioritizes efficiency *over* affordability, which results in the continued development of unaffordable, market-rate housing. By failing to acknowledge that the development (that is, materials, labor, land, and permits) and purchase (that is, down payment and mortgage) of such housing is still expensive, new housing development does not alleviate the current conditions of the affordable housing crisis. Lastly, arguments over which housing alternatives are the most efficient use of land *delays* action. The desperate calls for affordable housing demand immediate action, and tiny homes, which can provide that immediate relief, are more efficient than the current unaffordable housing system that restrictive zoning practices perpetuate.

With predictions that California's population will grow to 50 million by 2050, HCD recommends building "new homes in already developed areas" not only to alleviate the affordable housing crisis, "but also [to] support[] the state's

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316. See *supra* Part III.B.4.

climate change and equity goals.”<sup>317</sup> Identifying land use reform as a long-term solution to the affordable housing crisis, HCD cites infill development as an option to advance affordability, sustainability, and equity.<sup>318</sup> Notably, HCD concluded that alternative housing models—including tiny homes—can assist in meeting California’s housing demand because “[s]maller size units reduce the cost of entry to housing.”<sup>319</sup>

Most importantly, however, is that California has yet to build housing—either traditional single-family homes or high-density apartment buildings—that is in fact *affordable* to even the average California resident. The high costs associated with building a traditional house and state-subsidized affordable housing has resulted in housing that is unaffordable to the majority of households in California. Tiny homes uniquely combat unaffordability directly with cheaper construction costs; cheaper purchase prices, down payments, and mortgages; and cheaper monthly operating costs. In order to reap these benefits of tiny homes, single-family zoning must be reformed.

#### CONCLUSION

California must alter its zoning practices—specifically, single-family zoning—to allow for smaller, and, most importantly, affordable housing development. Although California has taken steps to increase density across jurisdictions by removing certain local zoning laws, it has yet to solve the main issue of affordability. As Californians continue to experience a shortage of affordable housing across the state, it is no longer reasonable to discredit tiny homes as a viable solution on the grounds of inefficient land use or fear of property value depreciation. Tiny homes increase density, combat urban sprawl, take less time and materials to build, are cheaper than other housing, and cost less over time to operate and maintain—allowing for individuals to achieve homeownership and reduce costs of housing below the thirty-percent standard. With the ever-increasing rise of individuals experiencing homelessness and cost-burdened renters and homeowners in California, the state legislature must turn to creative, unconventional solutions, such as tiny homes, to meet the demands of the affordable housing crisis.

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317. CAL. DEP’T OF HOUS. & CMTY. DEV., *supra* note 313, at 3.

318. *Id.* at 54.

319. *Id.* at 16.