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## Tiny Homes: A Big Solution to American Housing Insecurity

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# Tiny Homes: A Big Solution to American Housing Insecurity

Lisa T. Alexander\*

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## INTRODUCTION

“There’s no place like home,” said Dorothy.<sup>1</sup> Yet, millions of people in the United States may face eviction, foreclosure, or homelessness in 2021 and beyond.<sup>2</sup> America is on the brink of an unprecedented housing crisis in the wake of Covid-19.<sup>3</sup> Prior to the Covid-19 pandemic, an increasing number of Americans were facing housing insecurity, defined as the limited or uncertain *availability, access, or the inability to acquire, [or retain], stable, safe, adequate, affordable housing and neighborhoods.*<sup>4</sup> The economic fallout from the Covid-19 pandemic has only exacerbated American housing

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<sup>1</sup> THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).

<sup>2</sup> Yulia Panfil, *There’s a Looming Eviction Crisis, and We Have No Idea How Bad It Will Be*, SLATE (Sept. 28, 2020, 5:45 AM), <https://slate.com/business/2020/09/eviction-crisis-data-coronavirus.html> [<https://perma.cc/AD27-MRAS>].

<sup>3</sup> Abby Vesoulis, *Millions of Tenants Behind on Rent, Small Landlords Struggling, Eviction Moratoriums Expiring Soon: Inside the Next Housing Crisis*, TIME MAG. (Feb. 18, 2021, 5:29 AM), <https://time.com/5940505/housing-crisis-2021/> [<https://perma.cc/MUZ9-JNK8>].

<sup>4</sup> See Robynn Cox et al., *Measuring Population Estimates of Housing Insecurity in the United States: A Comprehensive Approach* 1 (CESR Working Paper Series, Working Paper No. 2017-012, 2017), [https://cesr.usc.edu/documents/WP\\_2017\\_012.pdf](https://cesr.usc.edu/documents/WP_2017_012.pdf) [<https://perma.cc/K6VR-ZYQC>] (defining housing insecurity) (emphasis added); see also JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., STATE OF THE NATION’S HOUSING 2020: KEY FACTS 1–3, [https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Key\\_Facts.pdf](https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_State_of_the_Nations_Housing_2020_Key_Facts.pdf) [<https://perma.cc/6GQ6-BBCC>] (explaining that thirty percent of American households were cost burdened in 2019).

insecurity.<sup>5</sup> The federal government, and various states and localities, have taken actions to avert a housing crisis in the wake of Covid-19.<sup>6</sup> While these measures undeniably help mitigate widespread eviction and foreclosure crises, they do not fully address the more fundamental American housing challenge—an inadequate supply of affordable housing at all income levels, a long-standing problem that Covid-19 has only intensified.<sup>7</sup> Even with the rental assistance, mortgage forbearance, and eviction moratoria provided by governments, thus far, many Americans are still “falling through the cracks” and legal loopholes.<sup>8</sup> The U.S. simply needs a greater supply of habitable, affordable, and sustainable housing that advances residents’ human flourishing—defined as housing that affords “a life of dignity, self-respect, and satisfaction of basic material [and social] needs.”<sup>9</sup>

This Article argues that tiny homes—homes that are less than 400 square feet<sup>10</sup>—are an understudied and potentially big solution to the problem of housing insecurity, particularly during times of crisis, such as the Covid-19 pandemic.<sup>11</sup> “The tiny house movement is an architectural and social movement that advocates living simply in small homes.”<sup>12</sup> It first emerged in the early 2000s, but gained increasing popularity in the United States with the advent of the television shows, “Tiny House Nation in 2014, and Tiny House Hunters.”<sup>13</sup> While these shows profiled market-rate tiny

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<sup>5</sup> JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., STATE OF THE NATION’S HOUSING 2020 1 (2020), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Report.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report.pdf) [<https://perma.cc/9MYD-GSDF>] (“The economic fallout from the Covid-19 pandemic has amplified the rental affordability crisis.”).

<sup>6</sup> See *infra* Part II.

<sup>7</sup> JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *supra* note 5, at 123.

<sup>8</sup> Vanessa Yurkevich, *Evictions, Unemployment and Hunger: The American Economy Joe Biden Inherits*, CNN BUS. (Jan. 26, 2021, 11:22 AM) <https://www.cnn.com/2021/01/26/economy/evictions-unemployment-hunger-biden/index.html> [<https://perma.cc/UYV7-77DT>] (explaining that even with Biden extending the eviction moratorium landlords are still using legal loopholes to evict tenants).

<sup>9</sup> GREGORY S. ALEXANDER, PROPERTY AND HUMAN FLOURISHING 5 (2018).

<sup>10</sup> While the term “tiny homes” connotes many types of smaller homes and shelters, the 2018 International Residential Code, Appendix Q, a model code, defines a tiny home as “[a] dwelling that is 400 square feet (37m<sup>2</sup>) or less in floor area excluding *lofts*.” INTERNATIONAL RESIDENTIAL CODE, APP. Q, §102.1 (Int’l Code Council 2018). This Article will use the 2018 IRC definition of tiny homes and will, primarily, analyze tiny homes on foundations, rather than tiny homes on wheels, as well as tiny homes that are part of a village or in a communal setting with common rules.

<sup>11</sup> This article mainly focuses on tiny homes that are between eighty to four hundred square feet on foundations, although there are many other types of small homes that are characterized in popular culture as tiny homes, such as recreational vehicles (RVs) on wheels, manufactured homes (MNs), or mobile homes, boats, house boats, converted barges, tugboats, “liveabords,” sheds, or tree houses. See JENIFER LEVINI, ESQ., BUILDING, OCCUPYING & SELLING TINY HOMES LEGALLY 20–25 (2019).

<sup>12</sup> See *Tiny-House Movement*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Tiny-house\\_movement](https://en.wikipedia.org/wiki/Tiny-house_movement) [<https://perma.cc/H4WH-Z5K7>]; see also Ryan Mitchell, *What Is The Tiny House Movement?*, TINY LIFE (Aug. 8, 2009), <https://thetinylife.com/what-is-the-tiny-house-movement/> [<https://perma.cc/K3MF-F829>].

<sup>13</sup> See WIKIPEDIA, *supra* note 12.

homes, some homeless people working with housing advocates began to transition from tent cities to tiny homes villages for homeless people.<sup>14</sup>

Now, increasing numbers of localities and nonprofits work in public and private partnerships to develop tiny homes villages as emergency housing or affordable housing in addition to housing for homeless people.<sup>15</sup> Tiny homes villages, if designed properly, can be an affordable and efficient way to add to the housing supply, providing residents with a community in which to advance their human flourishing as well as obtain shelter.<sup>16</sup> The tiny homes villages this Article analyzes often consist of more than one tiny home, including some villages that can accommodate up to 350 tiny homes, with plans for even more to come.<sup>17</sup> Each tiny home serves one to two people; and some villages can accommodate families.<sup>18</sup> The villages provide either temporary or permanent housing for unhoused people.<sup>19</sup>

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<sup>14</sup> See ANDREW HEBEN, TENT CITY URBANISM: FROM SELF-ORGANIZED CAMPS TO TINY HOUSE VILLAGES 47-48 (2014). See generally Lisa T. Alexander, *Community in Property: Lessons from Tiny Homes Villages*, 104 MINN. L. REV. 385, 394 (2019).

<sup>15</sup> For example, the Cottages on Vaughn will be the first of its kind tiny house community in Clarkston, Georgia, providing eight permanent tiny homes on foundations ranging from 250–492 square feet each on an approximately 750 square foot lot centered around a common green. The owners will purchase and own the home and the lot on which it sits and pay a modest homeowners association fee of one hundred dollars per month. The community in which the tiny homes are situated will have sustainable features such as common green space and consolidated parking, electric vehicle charging stations, proximity to the Path trail leading to Atlanta, Decatur, and Stone Mountain, Georgia, solar packages, permaculture, and edible landscaping, among other features. The Cottages on Vaughn is a project of the MicroLife Institute, a non-profit that educates and promotes micro living in Georgia. It is an example of the growing ecosystem of tiny homes projects developing in the greater Atlanta, GA area. See, e.g., J.D. Capelouto, *Georgia's First 'Tiny Home Neighborhood' Coming to Metro Atlanta*, ATLANTA J.-CONST. (May 12, 2019), <https://www.ajc.com/news/local/georgia-first-tiny-home-neighborhood-coming-metro-atlanta/wislGqCKEIOGayqngUG81H/> [perma.cc/P9MN-CZZL]; Microlife Institute, *The Cottages on Vaughn*, MICROLIFE INSTITUTE: PROJECTS & PROGRAMS, <https://www.microlifeinstitute.org/clarkston> [https://perma.cc/U6FX-PM8M]; Brian Douglas, *Atlanta's Tiny House Movement: A Work In Progress*, BRIAN M. DOUGLAS & ASSOCIATES, LLC (Jan. 24, 2020), [atlantagaestateplanning.com/atlantas-tiny-house-movement-a-work-in-progress/](http://atlantagaestateplanning.com/atlantas-tiny-house-movement-a-work-in-progress/) [https://perma.cc/32H8-UZ3Y]. See generally Alexander, *supra* note 14.

<sup>16</sup> See Alexander, *supra* note 14 at 427.

<sup>17</sup> David Leffler, *Community First! Village Celebrates Its Fifth Anniversary*, AUSTIN MONTHLY (Jan. 2021), <https://www.austinmonthly.com/community-first-village-celebrates-its-fifth-anniversary/> [https://perma.cc/V28E-4DLJ].

<sup>18</sup> See, e.g., Alexander, *supra* note 14 at 440.

<sup>19</sup> *Id.* at 394.



FIGURE 1: Interbay Village Collage, Low Income Housing Institute

The villages often encourage sharing and social cohesion through communal spaces and shared facilities.<sup>20</sup> In many villages, “[r]esidents often share basic amenities such as bathrooms, water, and cooking facilities as well as green spaces and other basic resources.”<sup>21</sup> The villages foster community enhancement through sustainable design practices, gardening, and sometimes sweat equity, in which residents contribute to the construction of homes or shared facilities.<sup>22</sup> Some villages provide microenterprise opportunities, social, health, and job placement services to connect residents to opportunity.<sup>23</sup> The communities, therefore, endeavor to provide more than just shelter by providing opportunities to restore residents’ dignity and connections to community and opportunity.<sup>24</sup>

Many municipal leaders are learning that well-designed tiny home communities may serve their respective economic as well as social objectives.<sup>25</sup> Due to the smaller size of the units, the shared facilities and utilities, the low costs and ease of construction, the use of private donations and volunteer efforts, and the smaller-environmental footprint, tiny homes villages

<sup>20</sup> *Id.* at 396, 432–48.

<sup>21</sup> *Id.* at 396.

<sup>22</sup> *Id.* at 396, 432–48.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Lisa Ward, *Cities Hope for Big Benefits from Tiny Houses*, WALL ST. J. (June 26, 2018), <https://www.wsj.com/articles/cities-hope-for-big-benefits-from-tiny-houses-1530065161> [<https://perma.cc/SFU4-4CHJ>].

can be cheaper, quicker and more environmentally sustainable than other affordable housing options, such as those produced by the Low-Income Housing Tax Credit.<sup>26</sup> These communities emphasize community self-governance and self-determination, while artfully balancing privacy, security, and sustainability in ways that, if replicated, can serve as models for temporary housing during times of crisis or as long-term affordable housing.<sup>27</sup> During the Covid-19 pandemic, tiny homes villages can provide homeless, evicted, or unhoused people shelter, as well as the ability to shut the front door and isolate. The villages' common-interest community structure, however, also provides shared outdoor and indoor facilities that provide residents community and stability, while usage rules encouraging masks and social distancing help mitigate the spread of the pandemic.

Tiny homes villages will not work for every homeless person or in every community. Tiny homes villages should not replace all other forms of shelter for homeless people or all other forms of affordable housing. Localities, however, should develop the necessary building codes, zoning designations, land use categories, and approval processes to make living tiny legal and to permit tiny homes villages to mitigate housing insecurity. In order to legalize tiny home villages, municipalities and states ought to, at least, do the following: (1) amend zoning and building codes to permit dwellings less than 400 square feet; (2) reduce minimum area requirements; (3) permit Accessory Dwelling Units (ADUs)<sup>28</sup> and other tiny homes designations; (4) allow for lofts within tiny homes;<sup>29</sup> (5) define and permit different types of tiny homes at the state level;<sup>30</sup> (6) maintain lists of relevant regulations in various municipalities in a state; (7) foster crowdfunding and socially responsible investment funds for tiny homes; and (8) and create databases of best practices and reputable industry participants. While tiny homes communities are not a panacea, they should be one tool in the toolkit of law and policy strategies to forestall a widespread housing and homelessness crisis. Tiny homes villages can adequately and safely house people experiencing housing insecurity during the Covid-19 pandemic and beyond.

In Part I, this Article explains that Covid-19 has exacerbated the problem of the inadequate supply of affordable housing, particularly for low-income and very low-income households. Part II argues that the federal, state,

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<sup>26</sup> Michael A. Stegman, *The Excessive Costs of Creative Finance: Growing Inefficiencies in the Production of Low-Income Housing*, 2 HOUS. POL'Y DEBATE 357, 370 (1991) (arguing that the low-income housing tax credit is inefficient and plagued by high-transaction costs).

<sup>27</sup> See Chris Winters, *Tiny Houses Alone Can't Solve the Housing Crisis. But Here's What Can, YES! SOLS. JOURNALISM* (May 8, 2018), <https://www.yesmagazine.org/issue/affordable-housing/2018/05/08/tiny-houses-alone-cant-solve-the-housing-crisis-but-heres-what-can/> [<https://perma.cc/PH4D-EA2G>].

<sup>28</sup> John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 STAN. L. & POL'Y REV. 53, 53–54 (2014).

<sup>29</sup> State of Oregon Legislative Policy and Research Office, *Tiny Home Regulation: Background Brief* (Oct. 16, 2019), <https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Tiny-Home-Regulation-2019.pdf> [<https://perma.cc/5DAB-PPWG>].

<sup>30</sup> LEVINI, *supra* note 11, at 29 (explaining that California has legalized six types of tiny homes that can be legally occupied).

and local actions taken, thus far, to avert a housing crisis, in the wake of Covid-19, are insufficient to address the inadequate supply of habitable and affordable housing for people at all income levels. In the wake of Covid-19 significant numbers of people are losing income, Americans may face a housing crisis in 2021, and beyond, that will rival the housing crisis and Great Recession of 2008, if federal actions to address the problems of supply are not taken.

Part III provides examples of model tiny homes villages that provide permanent long-term housing as well as transitional housing for unhoused people. Part III also argues that states and localities, as well as nonprofits and private individuals and groups, should consider tiny homes villages as both temporary and permanent long-term solutions to rising housing insecurity. Part IV analyzes the challenges to the implementation of tiny homes villages in the U.S. The legal landscape for tiny homes differs throughout the U.S. and in many places tiny homes communities may still be illegal.<sup>31</sup>

Part IV describes how states and localities can legalize tiny homes villages as solutions to mitigate homelessness and housing insecurity, particularly in times of crisis. Part IV also acknowledges the challenges that the NIMBYism and racial discrimination in housing present for the siting and development of tiny homes villages, but offers examples of how some communities have overcome these obstacles. Finally, the Article concludes that the federal government, through the U.S. Department of Housing and Urban Development (HUD), should identify best practices and direct financial resources to states and localities to help develop a national strategy to use tiny homes communities to ameliorate housing insecurity.

## I. THE IMPENDING HOUSING CRISIS

Before the Covid-19 pandemic, there was a growing affordable housing crisis in America. 37.1 million households (30 percent) were cost burdened in 2019, meaning they spent more than 30 percent of their incomes on housing, “including 17.6 million (14 percent) who were severely cost burdened (spending over 50 percent of their incomes on housing).”<sup>32</sup> Moderate-income households, who historically have not suffered cost burdens, also experienced increased cost burdens prior to the pandemic, as “the share of cost burdened households earning between \$25,000 and \$49,999 increased from 44 percent in 2001 to 58 percent in 2019.”<sup>33</sup>

The Covid-19 pandemic also intensified housing and economic insecurity “with 49 percent of renters and 36 percent of homeowners experiencing employment income loss between March and September.”<sup>34</sup> Renters at

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<sup>31</sup> Katherine M. Vail, *Saving the American Dream: The Legalization of the Tiny House Movement*, 54 UNIV. OF LOUISVILLE L. REV. 357, 370–75.

<sup>32</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 4, at 1.

<sup>33</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5, at 1.

<sup>34</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 4, at 1.

lower-incomes experienced the greatest cost burdens as “more than half (52 percent) of lowest-income renters” reported lost wages during this period, “compared with 41 percent of all households.”<sup>35</sup> “One in five renters earning less than \$25,000 also said they were behind on rent, compared with 15 percent of all renters and just 7 percent of renters earning more than \$75,000.”<sup>36</sup> Moderate-income households were also negatively affected by the pandemic, as 53 percent of those earning \$25,000 to \$49,000 reported losing income and 16 percent reported being behind on rent from the start of the pandemic in March 2020 to September.<sup>37</sup>

These income losses and cost burdened households coincided with the continuing problem of a low-inventory of affordable home ownership opportunities, a problem Covid-19 also exacerbated. In 2019, the supply of for-sale homes was at its lowest level since at least 1982.<sup>38</sup> The pandemic made the shortage even worse, as many potential sellers refrained from putting their homes on the market, and the number of single-family homes for sale stood at just 1.24 million in September 2020, compared with an already low number of 1.60 million in September 2019.<sup>39</sup> The decreased inventory contributed to high prices for sales of available homes, since the supply of homes was less than the demand, particularly in a period of low interest rates.<sup>40</sup>

Regulatory requirements and development fees in many cities also increase construction costs and limit the amount of new housing that can be built as of right.<sup>41</sup> The costs of construction materials and labor shortages are also rising, contributing to decreased inventory, increased costs, and higher prices.<sup>42</sup> If moderate-income, low-income, and very low-income households seek to purchase new homes in 2021 and beyond, the inventory of affordable homes for purchase will likely still be less than the demand for new homes.<sup>43</sup>

Affordable rental units are also undersupplied. The demand for higher-quality rental units in urban and high-income areas has declined, which might create and expand supply opportunities for more moderate-income renters to afford rents.<sup>44</sup> If those renters face job or income insecurity in the wake of Covid-19, however, their ability to take advantage of high rental vacancy rates may be limited. The undersupply of affordable rental units for those at low- and very low-income levels is also particularly acute.<sup>45</sup> Expiring

<sup>35</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5, at 1.

<sup>36</sup> *Id.*

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

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Id.*

<sup>40</sup> “Still, the supply of homes for sale has not kept up with demand, shrinking already tight inventories.” *See id.* at 4.

<sup>41</sup> *See id.* at 12.

<sup>42</sup> *Id.* at 12–13.

<sup>43</sup> *Id.* at 11.

<sup>44</sup> *Id.* at 30.

<sup>45</sup> “Lower-income renters, especially those who have lost wages, are likely to see little relief from rising rents and limited housing choices, although the downward filtering of higher-end apartments could help to expand the affordable stock. But without a significant job recovery



affordable units are a continuing reason for a decreasing supply of affordable housing. From 2004-2019, “[l]osses of the low-rent stock were concentrated in small multifamily buildings, where the supply fell by more than 850,000 units. The number of low-rent apartments built before 1970 also declined by 2.1 million over this period, and 44 percent of the low-rent supply was at least 50 years old in 2019. As the rental stock continues to age and landlords of some smaller buildings are unable to collect full rents, more low-cost units will be at risk of deterioration or loss.”<sup>46</sup>

Publicly subsidized housing for the very lowest-income renters is particularly scarce. “According to HUD’s latest Worst Case Housing Needs report, only one in four very low-income renter households (earning less than 50 percent of area median income) received housing assistance in 2017. Nearly two in four very low-income renter households lack assistance and face either severe cost burdens or severely inadequate housing, or both.”<sup>47</sup>

Unsubsidized very low-income renters are left to navigate the private rental market which lacks suitable and affordable units.<sup>48</sup> “According to the National Low Income Housing Coalition’s (NLIHC’s) latest Gap Report, only 10 million rentals on the private market were affordable and available for the nation’s nearly 18 million households with very low incomes in 2018.”<sup>49</sup> Further, the location of many existing subsidized very low-income units does not lead to human flourishing as a majority of federally subsidized units are in racially segregated low-opportunity areas.<sup>50</sup> This data shows there is a significant need for additional rental or ownership units for low-income and very low-income people. Covid-19 only complicates this problem, as more people face housing insecurity, and there are declining suitable units.

This growing American housing insecurity also coincides with a rise in homelessness.<sup>51</sup> “Even before the pandemic, the affordable housing crisis was fueling an increase in homelessness. After edging up in 2017 and 2018, the number of people experiencing homelessness rose more sharply in 2019. HUD’s latest point-in-time estimates show a spike of 15,000 more people

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and a renewal of income or rental supports, more and more households may have difficulty paying their rents, in turn adding to the financial distress of property owners.” *Id.*

<sup>46</sup> *Id.* at 32.

<sup>47</sup> *Id.* at 37.

<sup>48</sup> See generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROPERTY IN THE AMERICAN CITY* (2016).

<sup>49</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5 at 37.

<sup>50</sup> Federally subsidized units are the most spatially concentrated of all rentals. About half of all affordable units subsidized by tax credits are located in just 5 percent of census tracts. The project-based HUD stock, including public housing, is similarly concentrated in just 4 percent of tracts. Although somewhat more dispersed, about half of the private market units that accept vouchers are located in 10 percent of tracts. On average, neighborhoods with the most subsidized units have higher rentership rates, lower median incomes, and more households of color than those with the least subsidized housing, directly reinforcing longstanding patterns of economic and racial segregation. *Id.* at 33.

<sup>51</sup> *Id.* at 36.

experiencing homelessness last year, bringing the total to nearly 568,000.”<sup>52</sup> Homelessness is increasing in both high-cost states, such as California and New York, as well as in low-cost states, “with increases of more than 10 percent in six states.”<sup>53</sup>

Covid-19 has also complicated the viability and safety of the shelter system, as recent evidence reveals that homeless residents of shelters are at a greater risk of catching and transmitting Covid-19.<sup>54</sup> The CDC found that “a quarter of residents in 19 homeless shelters in four cities tested positive for the coronavirus between March 27 and April 15.”<sup>55</sup> Several cities and states in the U.S. also responded to the public health crisis that Covid-19 and homelessness can create by providing “emergency shelter in hotels, motels, and trailers.”<sup>56</sup>

An Urban Institute study in August found that “about 70 percent of the nation’s continuums of care (governing bodies that coordinate homeless services)” used hotels as emergency isolation shelters, yet they were “only able to house about 18 percent of their homeless populations on average. Only a few of these communities had plans to transition their programs to permanent supportive housing, which may be in increased demand if the incidence of homelessness rises over the course of the pandemic.”<sup>57</sup> Hotels for homeless and displaced people are also not a viable long-term solution.<sup>58</sup> As greater portions of the population become vaccinated, the economy will slowly rebound, and most hotels will likely resume their more traditional functions of serving the paying public.

Not all communities experienced housing insecurity in 2020. Homeownership markets for higher-income households were robust at the end of 2020, leading some to argue that the prospects for homeownership opportunities are good in 2021 and beyond, with potentially improving job conditions, continuing stable low-interest rates, and increasing house prices.<sup>59</sup> Yet, these optimistic outlooks ignore that approximately 6.3 million home owners entered into mortgage forbearance plans between March and October of

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<sup>52</sup> *Id.*

<sup>53</sup> The six states that experienced increases in homelessness of more than 10 percent in 2019 are California, Idaho, Kentucky, Minnesota, New Mexico, and West Virginia. *See id.* at 37.

<sup>54</sup> *See infra* Part II.

<sup>55</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5 at 37.

<sup>56</sup> *Id.*

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

<sup>58</sup> Sharon Lee, *The Case for Building Tiny House Villages During the Pandemic*, SHELTERFORCE (May 28, 2020), [https://shelterforce.org/2020/05/28/the-case-for-building-tiny-house-villages-during-the-pandemic/?gclid=CJwKCAiAsaOBBhA4EiwAo0\\_AnJ7uzBNVqg49\\_Q-uvMrbnOOo4MzkARgUCLdiNzsQEpkwBpYZk-Gu1BoC08IQAvD-BwE](https://shelterforce.org/2020/05/28/the-case-for-building-tiny-house-villages-during-the-pandemic/?gclid=CJwKCAiAsaOBBhA4EiwAo0_AnJ7uzBNVqg49_Q-uvMrbnOOo4MzkARgUCLdiNzsQEpkwBpYZk-Gu1BoC08IQAvD-BwE) [<https://perma.cc/8GQZ-2868>].

<sup>59</sup> National Association of Realtors, *Top Economic and Housing Experts Predict Post-Pandemic Rebound with Continued Job Growth, Stable Interest Rates in 2021*, (December 10, 2020), <https://www.nar.realtor/newsroom/top-economic-and-housing-experts-predict-post-pandemic-rebound-with-continued-job-growth-stable> [<https://perma.cc/3JY3-TT5F>].

2020 due to Covid-19.<sup>60</sup> If all of those home owners fall into foreclosure at the end of their respective forbearance plans, it will represent a historically significant number of foreclosures.

During the last housing crisis, “between 2006 and 2014, more than 9.3 million Americans either lost their homes to foreclosure or else gave up their homes to the bank outright.”<sup>61</sup> Therefore, 6.3 million foreclosures in one year would represent a housing crisis of significant proportions. Recognizing this, President Biden extended the federal foreclosure moratorium and mortgage forbearance protections at least three times through the end of October 3, 2021.<sup>62</sup> Despite some reasons for optimism, a housing crisis may be likely once federal, state, and local eviction moratoria, mortgage foreclosure moratoria, and mortgage forbearance protections expire. This is particularly true if the economy does not substantially improve, and the supply of affordable housing does not increase.

## II. GOVERNMENT COVID-19 SOLUTIONS AND THE PROBLEM OF SUPPLY

This section outlines the federal efforts taken, thus far, to avert a housing crisis in the wake of Covid-19. These actions undeniably have mitigated mass American eviction and foreclosure crises.<sup>63</sup> Yet, they will not substantially increase the supply of affordable and habitable housing for homeless, displaced, very low-income, and low-income households. These measures may protect already housed Americans’ security of tenure;<sup>64</sup> but they will not protect the many Americans who face eviction, foreclosure, displacement, or chronic homelessness due to legal loopholes, massive unemployment, and other economic or health crises. The federal government’s focus on eviction moratoria, rental assistance, and mortgage forbearance, rather than rental and mortgage forgiveness and landlord financial support,<sup>65</sup> will not fully pro-

<sup>60</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5, at 4.

<sup>61</sup> CHRISTOPHER K. ODINET, *FORECLOSED: MORTGAGE SERVICING AND THE HIDDEN ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA* 38 (2019).

<sup>62</sup> Daniel Payne, *Biden extends foreclosure moratorium and mortgage forbearance through June*, POLITICO (February 16, 2021 7:21am EST), <https://www.politico.com/news/2021/02/16/foreclosure-moratorium-mortgage-forgiveness-extension-469111> [<https://perma.cc/6EY5-2LNZ>]; Adam Liptak and Glenn Thrush, *Supreme Court Ends Biden’s Eviction Moratorium*, N.Y. TIMES, September 1, 2021, <https://www.nytimes.com/2021/08/26/us/eviction-moratorium-ends.html> [<https://perma.cc/8FRS-4AVL>] (explaining that the U.S. Supreme Court held on Thursday, August 26, 2021 that the CDC had exceeded its authority in extending the federal eviction moratorium without Congressional action, and therefore, the national eviction moratorium ended on August 26, 2021).

<sup>63</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., *supra* note 5, at 37–38.

<sup>64</sup> Security of tenure is a term defined by the U.N. Committee on Economic, Social and Cultural Rights as “protections against illegal and forced evictions, harassment and other threats to housing security.” Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 253 (2015).

<sup>65</sup> Rep. Ilhan Omar proposed a bill that would provide rent cancellation and mortgage forgiveness (meaning renters and mortgage holders would not have to pay at all during the

tect Americans on the cusp of eviction or displacement. These measures also will not quickly and substantially add to the affordable and habitable housing stock.

The first action that Congress took to quell a potential housing crisis due to Covid-19 was enacting the CARES Act on March 27, 2020.<sup>66</sup> The CARES Act provided approximately six trillion dollars of direct and indirect relief to Americans suffering housing instability due to the Covid-19 pandemic.<sup>67</sup> The Act provided mortgage forbearance, which means suspending, but not extinguishing mortgagees' obligations to pay, for those who qualified for it and sought it, for up to 360 days beginning from the date of the Act.<sup>68</sup> It also contained an eviction moratorium that expired on July 25, 2020.<sup>69</sup> On September 4, 2020, then President Trump, through the Centers for Disease Control and Prevention (CDC), enacted another federal eviction moratorium until December 31, 2020, for certain households who could not pay their rent and faced eviction due to a Covid-19 related hardship.<sup>70</sup>

The Trump moratorium, however, did not apply to all renters or owners in the U.S.; households had to apply for the moratorium; it did not provide financial assistance to landlords whose tenants cannot pay rent due to a Covid-19 hardship; and it did not mandate rent or mortgage forgiveness.<sup>71</sup> As a result, Trump's eviction moratorium only delayed a tsunami of evictions until December 31, 2020.<sup>72</sup> Congress then enacted the Covid-19 Economic Relief Bill, and former President Trump did sign the bill on December 27,

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duration of the Covid-19 crisis) to all residential renters and homeowners who cannot pay their respective rents and mortgages due to Covid-19. The bill would also provide financial relief to landlords to replace the cancelled rents. This bill has not been adopted by the House or the Senate, but it illustrates the differences between mortgage forbearance and mortgage forgiveness and rental assistance and rent forgiveness. Under forbearance and assistance plans, payments do not have to be made until the forbearance period is over, but the obligations continue to accrue. Mortgage forgiveness cancels or extinguishes the payments during the forgiveness period. *See generally* Zach Friedman, *Ilhan Omar: Cancel Rent and Mortgage Payments*, FORBES (Dec. 4, 2020 1:06 PM), <https://www.forbes.com/sites/zackfriedman/2020/12/04/ilhan-omar-cancel-rent-and-mortgages/?sh=51c32a3f19f7> [https://perma.cc/U7TZ-NA82].

<sup>66</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. No. 116-136, 134 Stat. 281. *See* National Low-Income Housing Association, *Congressional Leaders Agree to Coronavirus Response Package with Funding for Homelessness and Housing*, (Mar. 25, 2020), <https://nlihc.org/resource/congressional-leaders-agree-coronavirus-response-package-funding-homelessness-and-housing> [https://perma.cc/FHZ5-VF5J].

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Temporary Halt in Residential Evictions to Prevent Further Spread of Covid-19, 86 Fed. Reg. 8020 (Feb. 3, 2021).

<sup>70</sup> *Id.*

<sup>71</sup> *See* Thomas Wade, *The CARES Act and Housing Assistance: A User's Guide*, AM. ACTION F. (May 8, 2020), <https://www.americanactionforum.org/insight/the-cares-act-and-housing-assistance-a-users-guide/> [https://perma.cc/9829-WBD7].

<sup>72</sup> Annie Gowen, *Thousands have been evicted in the pandemic. Housing experts say Trump's new ban is a temporary fix.*, WASH. POST (Sept. 3, 2020) [https://www.washingtonpost.com/national/thousands-were-evicted-during-the-pandemic-housing-advocates-say-trumps-new-ban-is-a-temporary-fix/2020/09/03/f0f9bd2e-e5a2-11ea-970a-64c73a1c2392\\_story.html](https://www.washingtonpost.com/national/thousands-were-evicted-during-the-pandemic-housing-advocates-say-trumps-new-ban-is-a-temporary-fix/2020/09/03/f0f9bd2e-e5a2-11ea-970a-64c73a1c2392_story.html) [https://perma.cc/D2B4-BWXC].

2020.<sup>73</sup> It extended the eviction moratorium until January 31, 2021; lengthened the time within which states must spend CARES Act funds to December 31, 2021; and provided \$25 billion for emergency rental assistance that is allocated to states and localities.<sup>74</sup> Congress also enacted a \$1.4 trillion government spending plan that enables agency functions to continue through September 2021.<sup>75</sup> Finally, after President Biden took office, the Centers for Disease Control (CDC), extended the federal eviction moratorium until March 31, 2021.<sup>76</sup>

[T]he Federal Housing Finance Agency (FHFA) [also] instructed Fannie Mae and Freddie Mac to suspend foreclosures for at least 60 days from mid-March 2020, later extending the moratorium three times through March 31, 2021.<sup>77</sup> The FHFA also extended mortgage forbearance protections for “qualifying multifamily property owners through March 31, 2021.”<sup>78</sup> The Federal Housing Administration (FHA),<sup>79</sup> U.S. Department of Veterans Affairs,<sup>80</sup> and U.S. Department of Agriculture<sup>81</sup> also enacted and extended moratoriums through mid-2021. These federal actions offer foreclosure protection to approximately 70 percent of single-family homeowners with mortgages.<sup>82</sup> As mentioned earlier, President Biden also recently extended mortgage protections through June 2021, and again until October 3,

<sup>73</sup> Consolidated Appropriations Act, 2021, div. M–N, Pub. L. No. 116–260, 134 Stat. 1182, 1909–2148. See Chris Arnold, *COVID-19 Relief Bill Could Stave Off Historic Wave of Evictions*, NAT’L PUB. RADIO (Dec. 4, 2020 6:15 AM), <https://www.npr.org/2020/12/24/949668850/covid-19-relief-bill-could-stave-off-historic-wave-of-evictions> [https://perma.cc/4F66-YTU5].

<sup>74</sup> See Arnold, *supra* note 73.

<sup>75</sup> *Covid-19 Economic Relief Bill*, NAT’L CONF. OF STATE LEGISLATURES (Jan. 4, 2021), <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx> [https://perma.cc/G6LU-U8QU].

<sup>76</sup> Temporary Halt in Residential Evictions to Prevent Further Spread of Covid-19, 86 Fed. Reg. 8020 (Feb. 3, 2021).

<sup>77</sup> *FHFA Extends Foreclosure and REO Eviction Moratoriums*, FED. HOUS. FIN. AGENCY (Dec. 2, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums-12022020.aspx> [https://perma.cc/37FM-66XV].

<sup>78</sup> *FHFA Extends COVID-19 Multifamily Forbearance through Mar. 31, 2021*, FED. HOUS. FIN. AGENCY (December 23, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Multifamily-Forbearance-through-March-31-2021.aspx> [https://perma.cc/XE86-M5VW].

<sup>79</sup> *FHA Extends Options for Single Family Borrowers Financially Impacted By COVID-19*, DEP’T OF HOUS. & URB. DEV. (Dec. 21, 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_20\\_214](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_214) [https://perma.cc/YP7F-JR28].

<sup>80</sup> *Guidance for VA home loan borrowers during COVID-19*, U.S. DEP’T OF VETERANS AFFS. (Feb. 23, 2021), <https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp> [https://perma.cc/8VCM-W98E].

<sup>81</sup> Erin McDuff, *USDA Extends Foreclosure and Eviction Moratorium, Relief Options for Single Family Housing Direct and Guaranteed Loan Borrowers*, RURAL DEVELOPMENT U.S. DEPARTMENT OF AGRICULTURE (Dec. 28, 2020) <https://www.rd.usda.gov/newsroom/news-release/usda-extends-foreclosure-and-eviction-moratorium-relief-options-single-family> [https://perma.cc/2G7F-SAWA].

<sup>82</sup> JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIVERSITY, *supra* note 5, at 22.

2021, but the U.S. Supreme Court ended the CDC's federal eviction moratorium on August 26, 2021.<sup>83</sup>

While these efforts, plus low rates, strong prices, and a slow economic recovery post pandemic may help avert a foreclosure crisis as large as the housing crisis in 2008, these protections do not extend to all homeowners.<sup>84</sup> Owners of manufactured homes were excluded from the CARES Act's forbearance protections because their properties are considered personal property, and approximately "14.6 million owners with privately backed mortgages were not covered by federal forbearance plans and foreclosure moratoriums."<sup>85</sup> Barring any new legislation by Congress or new federal executive orders, all past due rents and mortgage payments of people who have not renegotiated with their respective landlords or lenders will likely become due in mid-2021 or 2022.<sup>86</sup>

### III. TINY HOMES VILLAGES: A SOLUTION TO HOUSING INSECURITY?

Tiny homes villages, although not without challenges of implementation, can quickly, comprehensively, and cost-effectively add to the supply of affordable housing, particularly in the wake of Covid-19.<sup>87</sup> Municipalities and states can use tiny homes villages to provide rapid and adequate shelter for individuals displaced, due to legal loopholes and lax enforcement of eviction moratoria and forbearance plans.<sup>88</sup> Natural disasters that often lead to temporary or long-term housing displacement have also become a more common feature of American life.<sup>89</sup> Tiny homes villages can provide swift temporary shelter for persons displaced in the wake of a natural disaster,<sup>90</sup> such as wildfires,<sup>91</sup> hurricanes,<sup>92</sup> floods,<sup>93</sup> and snowstorms.<sup>94</sup>

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<sup>83</sup> See *supra* note 62.

<sup>84</sup> *Id.* at 23.

<sup>85</sup> *Id.*

<sup>86</sup> Panfil, *supra* note 2.

<sup>87</sup> See Lee, *supra* note 58.

<sup>88</sup> See *id.*

<sup>89</sup> See UN OFF. FOR DISASTER RISK REDUCTION & CTR. FOR RSCH. ON THE EPIDEMIOLOGY OF DISASTERS, HUM. COST OF DISASTERS: AN OVERVIEW OF THE LAST 20 YEARS 6 (2020) [<https://perma.cc/5KSG-ZAFA>]. ("While better recording and reporting may partly explain some of the increase in events, much of it is due to a significant rise in the number of climate-related disasters. Between 2000 and 2019, there were 510,837 deaths and 3.9 billion people affected by 6,681 climate-related disasters. This compares with 3,656 climate-related events which accounted for 995,330 deaths (47% due to drought/ famine) and 3.2 billion affected in the period 1980-1999. The number of people affected by disasters, including injuries and disruption of livelihoods, especially in agriculture, and the associated economic damage are growing in contrast to the decrease in mortality.")

<sup>90</sup> Rachel Farrell & Stacy Fernandez, *Displacement After Disasters: When There's No Place to Call Home*, NEWS 21 (Aug. 22, 2019), <https://nondoc.com/2019/08/22/displacement-after-disasters-when-theres-no-place-to-call-home/> [<https://perma.cc/NZQ5-7C6T>].

<sup>91</sup> Laura Sommer, *Rebuilding After a Wildfire? Most States Don't Require Fire-Resistant Materials*, NAT'L PUB. RADIO (Nov. 25, 2020), <https://www.npr.org/2020/11/25/936685629/rebuilding-after-a-wildfire-most-states-dont-require-fire-resistant-materials> [<https://perma.cc/TM3A-ME2B>].

Tiny homes villages are also effective during public health crises and in the wake of natural disasters and economic disruptions precisely because they can provide shelter from the elements, can be easily furnished, and in some instances the units have heat, water, and other utilities.<sup>95</sup> Residents receive their own units, with four walls and a door, which they can design according to their preferences, and in which they can isolate from others during a pandemic or other crises.<sup>96</sup> The villages also provide communal interactions and work opportunities, and if administered under public health guidelines in a pandemic, these activities can help residents restore some of the dignity and positive community they may have lost while on the streets or in times of crisis.<sup>97</sup> The next Section provides examples of two types of tiny homes villages: permanent tiny homes villages that provide permanent or long-term housing for formerly homeless residents; and temporary tiny homes villages that provide transitional housing for homeless people who can stay in the village up to two years.<sup>98</sup>

### A. Permanent Tiny Homes Villages

A few tiny homes villages for homeless people are designed to be permanent housing for formerly homeless people. Community First! Village in Austin, Texas has developed the most extensive permanent tiny homes village for chronically homeless people in the U.S.<sup>99</sup> Community First! Village is run by a non-profit, Mobile Loaves & Fishes, that obtained a huge swath of land (27 acres) outside of Austin, TX, and near a Capital Metro stop, on

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<sup>92</sup> Doyle Rice, *Record Shattering 2020 Atlantic Hurricane Season Officially Comes to an End*, USA TODAY (Nov. 30, 2020) <https://www.usatoday.com/story/news/nation/2020/11/30/hurricane-season-ends-after-record-30-named-storms-12-us-landfalls/6438375002/> [<https://perma.cc/YM6C-FBCW>].

<sup>93</sup> Lauren Medina & David Armstrong, *New Census Housing Unit Estimates Use FEMA Data to Capture Impact of Disasters in Every State*, U.S. CENSUS BUREAU (May 21, 2020), <https://www.census.gov/library/stories/2020/05/how-disasters-affect-the-nations-housing.html> [<https://perma.cc/R7QW-53E6>].

<sup>94</sup> *More Than 2 Million Texans Without Power Due To Rolling Outages From Historic Winter Storm*, KERA NEWS (Mar. 1, 2021) <https://www.keranews.org/news/2021-02-10/frigid-weather-hits-north-texas-this-week-and-homeless-shelters-work-to-get-people-inside> [<https://perma.cc/S5K7-ZMZX>].

<sup>95</sup> Mobile Loaves & Fishes, *Community First! Village Video Tour*, FACEBOOK (Sept. 22, 2020), <https://www.facebook.com/CommunityFirstVillage/videos/319780292449905/> [<https://perma.cc/F6HF-GVT9>].

<sup>96</sup> See Lee, *supra* note 58.

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

<sup>98</sup> See FAQ, DIGNITY VILLAGE, <https://dignityvillage.org/faq/> [<https://perma.cc/7YMU-4H79>].

<sup>99</sup> See e.g., Megan Kimble, *Austin's Fix for Homelessness: Tiny Houses, and Lots of Neighbors*, CITYLAB (Nov. 12, 2018), <https://www.bloomberg.com/news/articles/2018-11-12/austin-s-community-first-village-tackles-homelessness> [<https://perma.cc/S4Y7-UHA5>] (explaining the average Community First! Village resident previously lived on the streets for 10 years); MOBILE LOAVES & FISHES, *supra* 95.

which to locate the village.<sup>100</sup> Community First Village has brought the tiny homes village model for unhoused people to scale. It is now a large, 51-acre community pledged to complete 530 units to help approximately 1,000 or more people coming out of chronic homelessness.<sup>101</sup> Community First! Village serves as a model of how to scale-up the villages to serve larger numbers of people. The village also demonstrates how public and private collaborations, including homeless people, nonprofit partners and funders, the business and artisan communities, limited city and county government, and volunteers from the city and state can add to the supply of affordable housing and advance human flourishing.<sup>102</sup>

The village uses a traditional rental model where residents rent different types of units, such as tiny homes on foundations and RVs, at approximately \$1.00 per square foot.<sup>103</sup> Because most units are smaller than 400 square feet, the rents are between 220 and 440 dollars per month, more affordable than what is available in the Austin, TX private market.<sup>104</sup> In Phase I of the development, Community First! Village completed 230 micro units or RVs, some of which accommodate more than one person or families.<sup>105</sup> Phase I contains “100 RV/Mobile homes, 130 micro homes, 5 laundry/restroom/shower facilities, 5 outdoor kitchens, a community art house, community cinema, community concessions and catering, Community First! Car Care, Community Forge, Community Inn, Community Market, Genesis Gardens Organic Farm, Goodness Press Screen Printing, Memorial Garden and Prayer Labyrinth, Topfer Family Health Resource Center, walking trails, and a wood-working shop.”<sup>106</sup> Phase II of Community First! Village, which is in development, will add 310 additional micro units, 7 new outdoor kitchens, 7 new laundry facilities, an entrepreneurial hub, as well as a hydroponics facility.<sup>107</sup>

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<sup>100</sup> Community First! Village, MOBILE LOAVES & FISHES, <https://mlf.org/community-first/> [<https://perma.cc/B2HV-G37P>].

<sup>101</sup> *Id.*

<sup>102</sup> Fox 7 Austin Digital Team, *Downtown Austin Alliance Makes Fourth Grant Payment to Community First! Village*, FOX 7 AUSTIN (Nov. 18, 2020) <https://www.fox7austin.com/news/downtown-austin-alliance-makes-fourth-grant-payment-to-community-first-village> [<https://perma.cc/8JHR-ECJA>] (nothing that Mobile Loaves & Fishes receives multiple sources of funding, including donations from the Downtown Austin Alliance, a Public Improvement District, which allocates \$200,000 thousand dollars a year to the project as part of a 10-year, \$2 million dollar grant).

<sup>103</sup> Alexander, *supra* note 14, at 433.

<sup>104</sup> David Leffler, *Community First! Village Celebrates Its Fifth Anniversary*, AUSTIN MONTHLY (Jan. 2021), <https://www.austinmonthly.com/community-first-village-celebrates-its-fifth-anniversary/> [<https://perma.cc/X5N7-DVZK>].

<sup>105</sup> *Id.*

<sup>106</sup> MOBILE LOAVES & FISHES, *supra* note 95.

<sup>107</sup> *Id.* See also Mobile Loaves & Fishes, *supra* note 95; *The What and Why of Hydroponic Farming*, VERTICLEROOTS (Mar. 3, 2020), <https://www.verticalroots.com/the-what-and-why-of-hydroponic-farming/> [<https://perma.cc/9PLC-CGMS>] (explaining that hydroponics farming is a way to grow crops without soil in nutrient-rich water).





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**Community First! Village**  
A place to call home.



FIGURE 2<sup>108</sup>

The Village not only provides formerly homeless residents with shelter; it also gives them access to a litany of services and activities to enhance their

<sup>108</sup> Mobile Loaves & Fishes; *A Place to Call Home* (Jan. 2019), <https://mlf.org/wp-content/uploads/2019/01/mobile-loaves-fishes-community-first-map-2019.jpg> [<https://perma.cc/7ME6-MU2U>].

human flourishing, such as “case workers, mental and physical health practitioners, a sprawling garden and grocery store, and even a Capital Metro stop that runs from the campus to downtown.”<sup>109</sup> Residents also have on-site employment opportunities through work programs, chances to create and sell artisanal crafts, and job-training initiatives spearheaded by local businesses.<sup>110</sup> The village encourages, rather than requires, that residents participate in community preservation and collaboration.<sup>111</sup>

Community First! Village also seeks to enhance the social capital<sup>112</sup> of its residents, by providing opportunities for residents to interact with other housed members of the Austin community, thereby creating opportunities for residents to expand their social connections and networks beyond the residents and services of the community. The village enables formerly homeless residents to work in, and enjoy with other housed Austin residents, a community cinema, community concessions and catering operations, and its “missionals” program, which consists of men and women who are not formerly homeless, but who live in the village and partake in the village activities to form a closer bond with the formerly homeless residents.<sup>113</sup> During the Covid-19 pandemic, the Village’s outdoor community cinema hosted drive-in movie nights that many mainstream and housed Austinites frequented.<sup>114</sup> The cinema and other micro-enterprise efforts give residents opportunities to earn money while interacting with housed people in Austin, arguably expanding their human capital and social networks.

The Village also provides opportunities to enhance the political capital of its formerly homeless residents by connecting residents to voting opportunities—a privilege that is often unavailable to people who cannot identify a residence.<sup>115</sup> During the 2020 election, for example, Community First! Village became a voting location in Travis County.<sup>116</sup> Community First! Village also relies on an extensive network of volunteers and in-kind contributions to enhance the village and the services and opportunities it provides to residents.<sup>117</sup> For example, “it has also become ground zero for innovation, with local tech firm ICON creating six 3D-printed homes for the property

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<sup>109</sup> *Id.*

<sup>110</sup> Leffler, *supra* note 103.

<sup>111</sup> *Id.*

<sup>112</sup> Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 825 (2011) (“The term social capital connotes that social networks have value.”).

<sup>113</sup> Leffler, *supra* note 103.

<sup>114</sup> Community First Village (@CommunityFirstVillage), FACEBOOK (Sept. 17, 2020, 7:00 PM), <https://www.facebook.com/CommunityFirstVillage/posts/3431747493514164> [<https://perma.cc/P824-8ZZ3>].

<sup>115</sup> *Voters Experiencing Homelessness*, ELECTION PROT., <https://texasvoterprotection.org/voting-rights-for-individuals-experiencing-homelessness-in-texas/> [<https://perma.cc/N6CX-GV8L>].

<sup>116</sup> Community First Village (@CommunityFirstVillage), FACEBOOK (Nov. 3, 2020, 10:34 AM), <https://www.facebook.com/CommunityFirstVillage/posts/3569914913030754> [<https://perma.cc/NE7F-DL8R>].

<sup>117</sup> *Partnerships*, MOBILE LOAVES & FISHES, <https://mlf.org/us/partnerships/> [<https://perma.cc/Z2EA-GSST>].

...<sup>118</sup> The Village shows how a tiny homes village community can be designed to foster community, opportunity, and human flourishing for formerly homeless people, who may need connections with others.<sup>119</sup>

During the Covid-19 pandemic, Community First! Village's property management team and non-profit owner, Mobile Loaves & Fishes, developed a Covid-19 Response that encouraged all residents to adopt the public health guidelines of the CDC, the City of Austin, and the State of Texas.<sup>120</sup> When one resident developed Covid-19, other residents were able to self-isolate in their respective tiny homes or RV units, and because there are food service and medical facilities on site, all affected or potentially exposed residents received food, testing, and other services.<sup>121</sup> The extensive health facilities and services that the Village provides to its residents were also useful in encouraging residents to maintain their health, follow CDC protocols, and mitigate the spread of Covid-19.<sup>122</sup> When the Covid-19 vaccines and booster shots become widely available, the health care services onsite should enable residents of the village to easily and safely obtain the vaccine at the village, if they are willing.

Other large-scale communities of rental tiny homes villages for homeless people and very low-income people are also in development in Tallahassee, Florida and in Oahu, Hawaii, and other locations.<sup>123</sup> These early examples show how stakeholders in localities across the country can use tiny home villages to provide, low-cost, affordable, rapid, flexible, habitable, and environmentally sustainable housing alternatives to ameliorate homelessness. As more Americans who are not chronically homeless face housing insecurity, due to the economic disruptions of Covid-19, natural disasters, or housing affordability crises, tiny homes villages may be a quick, affordable, and environmentally sustainable way to provide displaced and dispossessed people with shelter that connects them to opportunity.

OM Village, a small village in Madison, Wisconsin, is an example of the first permanent tiny home village community that uses a stewardship model instead of a traditional rental model.<sup>124</sup> Stewardship is a term the author coined for a property or housing tenure that gives stewards rights to exclusive use of the tiny home, rights to exclude others from the unit, and shared use of the common areas, in exchange for the commitment that the steward will participate in the management, decision-making, and maintenance of the tiny home village.<sup>125</sup> OM Village admits residents for free, and

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

<sup>119</sup> Alexander, *supra* note 14.

<sup>120</sup> *Community First! Village Covid-19 Response Update*, MOBILE LOAVES & FISHES, <https://mlf.org/covid-19-response-update-from-community-first-village/> [<https://perma.cc/L26U-L89W>].

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

<sup>122</sup> *Id.* See also *Goodness Empowering Community*, MOBILE LOAVES & FISHES (2020), <https://mlf.org/goodness-empowering-community/> [<https://perma.cc/E8YY-HUKM>].

<sup>123</sup> Alexander, *supra* note 14, at 438–41.

<sup>124</sup> *Id.* at 408–09.

<sup>125</sup> *Id.* at 398–423.

uses a stewardship model in which active participation, decision-making, and sweat equity in the village compensates for the tiny home.<sup>126</sup>

Stewardship can help formerly homeless people advance their self-sufficiency and human flourishing through participation in community management and decision-making, and sweat equity service to the community.<sup>127</sup> Examples of sweat equity projects are designing and building your tiny home, building the tiny homes of others, and working in the onsite community gardens or artisan projects.<sup>128</sup> In exchange for this sweat equity and community self-management, stewards receive the right to remain in the tiny home and the right to exclude others from the unit.<sup>129</sup> Stewardship means that residents do not have to pay traditional expensive rents to access housing. In some instances, stewards have to pay a nominal membership fee, but their primary consideration<sup>130</sup> for the unit is abiding by the community rules, participation in community self-governance and management, and sweat equity to enhance the village.<sup>131</sup> Residents can stay in the village permanently, as long as they abide by the community rules and participate in self-management and service to the community.<sup>132</sup>

OM village is small, with only 5 units, but OM Build, the village's non-profit sponsor, now plans to expand to 9 tiny homes on one site; and on another recently purchased site OM Build will utilize 28 Conestoga style huts for the winter that are scheduled to be replaced in June of 2021 with 28 permanent tiny homes.<sup>133</sup> OM Village is a planned unit development financed primarily through volunteer donations.<sup>134</sup> OM Village shows how tiny homes villages for homeless people can utilize a stewardship model, rather than a rental or ownership model in a long-term, permanent tiny homes village.

The final examples of permanent tiny homes villages include a few villages that use ownership models, rather than a stewardship or rental model. Square One Villages is a nonprofit founded in 2012 that has produced a

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<sup>126</sup> Brendakonkel, *How Can I Get A Tiny Home?*, OCCUPY MADISON – TINY HOUSES & MORE! (Oct. 10, 2020), <https://occupymadisoninc.com/2020/10/10/how-can-i-get-a-tiny-home/> [<https://perma.cc/T344-5VX7>].

<sup>127</sup> *Id.*

<sup>128</sup> Alexander, *supra* note 14.

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

<sup>130</sup> Consideration is “[t]he cause, motive, price, or impelling influence which induces a contracting party to enter into a contract.” BLACK’S LAW DICTIONARY (6th ed. 1990).

<sup>131</sup> Alexander, *supra* note 14.

<sup>132</sup> *Id.* at 411.

<sup>133</sup> “Occupy Madison building Tiny Homes with and for people without homes. We launched the OM Build shop on June 9th, 2013, purchased a property in 2014 and built a village at OM Village, 304 N. Third, Madison, WI 53704. That village currently has 5 residents but will have 9 once we build the community room and kitchen. We have also purchased 1901 Aberg Ave and will have 28 conestoga style huts there to get people off the street for the winter of 2020-2021. The building will house restrooms, showers, laundry and a kitchen. We will be rezoning the property and building a village similar to the one at 304 N 3rd Street after June 2021 and will replace the huts with tiny homes creating a permanent village.” OM Build - OM Village Tiny Homes: Occupy Madison, Inc, *About*, FACEBOOK, <https://www.facebook.com/OMBuild/> [<https://perma.cc/83YR-N2W4>].

<sup>134</sup> Alexander, *supra* note 14, at 409–10.

number of tiny homes villages.<sup>135</sup> Square One Villages developed Opportunity Village in 2013, a transitional tiny home community for homeless people mentioned in Part III Section B below.<sup>136</sup> Square One Villages is also developing what it terms the “the village model,” which creates resident-owned, tiny home, shared equity homeownership opportunities for very low-income people.<sup>137</sup> The village model combines a community land trust (CLT) legal structure with a housing cooperative model for very low-income people.<sup>138</sup> A CLT legal structure separates ownership of the land from the ownership of the improvement on the land.<sup>139</sup> A mission-driven non-profit organization will own the land underneath the tiny homes.<sup>140</sup> The resident will own the tiny home on the CLT-owned land through a housing coop.<sup>141</sup> Square One Village’s use of a CLT structure with a limited equity housing cooperative reduces the cost of housing, since the cost and appreciation of the land is not included in the price of the home. The village also demonstrates how tiny homes village communities can be structured to advance an affordable ownership model.<sup>142</sup>

Emerald Village in Eugene, Oregon is Square One Villages’ CLT and limited-equity housing cooperative village. It consists of 22 tiny homes on foundations that range from 160-280 square feet.<sup>143</sup> The land on which the tiny homes sit is owned by Square One Villages, through the CLT model.<sup>144</sup> Residents of Emerald Village become part of a housing cooperative.<sup>145</sup> The tiny homes’ respective monthly charges range from \$250.00 to \$300.00 dollars per unit.<sup>146</sup> “As part of this payment, each household will also accumulate a \$1500 share, paid in increments over the course of 30 months,” “enabling them to create a modest asset that can be cashed out if and when they choose to move-out.”<sup>147</sup> Square One Village leases the land under the tiny home to the cooperative home owner through a long-term ground lease, which provides use requirements and resale restrictions, enabling Square

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<sup>135</sup> *About SquareOne*, SQUARE ONE VILLAGES, <https://www.squareonevillages.org/about-us> [https://perma.cc/Y23D-PDWJ].

<sup>136</sup> *OpportUNITY Village, Eugene*, SQUARE ONE VILLAGES, <https://www.squareonevillages.org/opportunity> [https://perma.cc/L5CP-8GJK].

<sup>137</sup> *Overview*, THE VILLAGE MODEL, <https://www.villagemodel.org/overview> [https://perma.cc/8XD8-GKP7].

<sup>138</sup> *Id.*

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

<sup>140</sup> *Emerald Village Eugene – Fact Sheet*, SQUARE ONE VILLAGES, [https://docs.wixstatic.com/ugd/bd125b\\_f81ce553ab8b4a0c810e3b991bd063bf.pdf](https://docs.wixstatic.com/ugd/bd125b_f81ce553ab8b4a0c810e3b991bd063bf.pdf) [https://perma.cc/245W-2357].

<sup>141</sup> *Id.*

<sup>142</sup> John A. Lovett, *Community Land Trusts: Institutionalizing the Human Flourishing Theory of Property*, 29 CORNELL J.L. & PUB. POL’Y 621, 628 (2020).

<sup>143</sup> *Emerald Village Eugene – Fact Sheet*, *supra* note 138.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *The ReachOUT House*, URBAN RESEARCH + PRACTICE, <https://blogs.uoregon.edu/drdeaton/in-the-moment/> [https://perma.cc/URA-LUYZ].

One Villages to retain ownership of the land and the unit in perpetuity, so it can remain an affordable coop each time a resident leaves.<sup>148</sup>

Square One Village's use of a CLT structure with a limited equity housing cooperative reduces the cost of home ownership, since the cost of land and resale prices are restricted.<sup>149</sup> The CLT and housing cooperative legal structure also limits the profit motive in the ownership transaction. Square One Villages acts as a steward<sup>150</sup> over the land ensuring that the owners of the improvements on the land do not let the land or the unit fall into disrepair. It stewards the land to make sure it can always be used to serve low-income aspiring homeowners.<sup>151</sup>

Emerald Village also demonstrates how tiny homes village communities can be structured to use an ownership model to enhance the human flourishing of very-low-income residents, or residents facing eviction, foreclosure, or housing insecurity.<sup>152</sup> As with other tiny homes communities, residents have to sign and abide by a community agreement and community rules.<sup>153</sup> Yet, by making the residents owners in a cooperative, whereby they develop a limited equity interest in the tiny home unit, the Village can provide opportunities for the residents to build wealth; it also further incentivizes the residents' productive participation in the community because they receive an economic asset, as well as social benefits for their positive participation in the community. The residents of Emerald Village also can participate in sustainable and productive activities such as helping to build the tiny homes of others and participating in sustainable agriculture, activities that help them develop skills and enter into productive relationships with others.<sup>154</sup>

Square One Villages views Emerald Village as a permanent home ownership alternative to which some of the residents in its transitional tiny homes communities can eventually move.<sup>155</sup> Currently, Square One has at least four similar permanent and self-governing limited equity cooperative tiny homes village communities in development.<sup>156</sup> The approach of Square One Villages demonstrates how public-private partnerships can develop a range of tiny homes village options that enable formerly homeless residents, and residents facing housing insecurity, to move from short-term tiny homes, to rental tiny homes villages, eventually to ownership.

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<sup>148</sup> Emerald Village Eugene, SQUARE ONE VILLAGES, <https://www.squareonevillages.org/emeraldousing> [https://perma.cc/FHH8-S6B7].

<sup>149</sup> Lovett, *supra* note 141, at 628.

<sup>150</sup> Here the article is using the standard dictionary definition of steward here as in someone who takes care of something. *Steward*, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/us/dictionary/american/steward> [https://perma.cc/P9T7-4XBB].

<sup>151</sup> Lovett, *supra* note 142, at 625–38.

<sup>152</sup> SQUARE ONE VILLAGES, *supra* note 140.

<sup>153</sup> *Id.*

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

<sup>155</sup> *Id.*

<sup>156</sup> SQUARE ONE VILLAGES, <https://www.squareonevillages.org/> [https://perma.cc/U97G-57RZ].

Finally, Tiny Homes Detroit is a permanent tiny homes village in Detroit, Michigan that uses a rent-to-own model to expand access to affordable housing and promote home ownership.<sup>157</sup> Tiny Homes Detroit is a project of the non-profit, Cass Community Social Services (CCSS); the village will provide 25 tiny homes that range between 250 to 400 square feet.<sup>158</sup> Each home will be on its own lot that is roughly 30 x 100 feet on a foundation with a front porch or rear deck to increase the living space.<sup>159</sup> At first, residents will rent the units in a rent-to-own relationship for approximately \$1.00 per square foot.<sup>160</sup> Any resident who remains in the tiny home for seven years can own the tiny home and the land on which it sits.<sup>161</sup> All prospective residents will be low-income including formerly homeless people, senior citizens, college students, and some Cass employees.<sup>162</sup> These villages are all examples of how public and private partnerships can use permanent housing models to provide housing for unhoused or displaced people.

### B. Transitional Tiny Homes Villages

Other municipalities and non-profits develop tiny home villages as transitional housing (staying only for a maximum of two years) for homeless people.<sup>163</sup> Many of these villages use the stewardship model, even in the context of short-term housing, to advance self-sufficiency and to provide formerly homeless people with more than just shelter.<sup>164</sup> These communities show that municipalities, through public and private partnerships that include homeless people in decision-making processes, can design tiny homes villages to create rapid, affordable, and habitable housing, that also advances their human flourishing. As early as 2001, Portland's tent city, Camp Dignity, became Dignity Village, one of the first municipally sanctioned transitional tiny homes communities for up to 60 homeless people on city-owned land.<sup>165</sup> Dignity Village does not receive direct money from the city, but it does lease the land from the city.<sup>166</sup>

Dignity Village was the first example of the stewardship model used in a transitional tiny homes village. Each villager has a different employment, income, and benefits circumstance; therefore, once the village admits a resident, it will work to help the resident transition to more permanent housing,

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<sup>157</sup> *Tiny Homes Detroit*, CASS CMTY. SOC. SERVS., <https://casscommunity.org/tinyhomes/> [<https://perma.cc/YN4A-A9AH>].

<sup>158</sup> *Id.*

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

<sup>160</sup> C&B Scene, *These Tiny Homes Are Making a Big Difference - Live in the D*, YOUTUBE (Dec. 13, 2017), <https://www.youtube.com/watch?v=DY1uVTHwhqI> [<https://perma.cc/QQT8-B3KU>].

<sup>161</sup> CASS CMTY. SOC. SERVS., *supra* note 157.

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

<sup>163</sup> Alexander, *supra* note 14, at 419.

<sup>164</sup> *Id.* at 398–408.

<sup>165</sup> Heben, *supra* note 14, at 47.

<sup>166</sup> *Id.* at 133.

and provide sweat equity or work opportunities to help each resident meet their membership fees.<sup>167</sup> Dignity Village was also one of the first villages to encourage homeless people to use do-it-yourself techniques to develop their homes in collaboration with volunteer architects, lawyers, and homeless advocates.<sup>168</sup> The tiny homes are approximately 120 square feet each; and the shared common buildings have plumbing and electricity.<sup>169</sup> Each resident has a “small private structure, each with a unique story and style, made from recycled/reused materials.”<sup>170</sup> They have gas heat and some have solar electricity.<sup>171</sup>

Dignity Village demonstrates how tiny homes can be designed and structured into a transitional communal village model with shared common resources and minimal case-management services at a relatively low cost.<sup>172</sup> Dignity Village provides the following shared amenities: “a shower, open-air kitchen sink with running water, 4 portable toilets, 2 offices, greenhouse, garden beds, winter shelter for guests, outdoor common spaces, security shack at the gate, computer lab, donations center, several production areas for operating small businesses, the Commons room (large hall for meetings, meals, movies/tv, social functions, and indoor cooking area), garbage/recycling service, mail service, a shared phone, and wifi.”<sup>173</sup> The village follows sustainable building practices and uses, and provides limited work opportunities for the formerly homeless residents.<sup>174</sup>

As in the case of permanent tiny homes villages, Dignity Village also provides its residents both privacy and community, as each tiny home gives its resident, or residents, a safe, private, habitable, and affordable place to “lock the door,” as well as the opportunity to share common resources and experiences with similarly situated people.<sup>175</sup> Dignity Village was quickly followed by other examples, such as Opportunity Village in Eugene, Oregon, and Quixote Village in Olympia, Washington in 2013 and Beloved Community Village in Denver, Colorado.<sup>176</sup> The median length of stay for each villager is 1.7 years.<sup>177</sup> The village sponsors made the project legal by taking advantage of a law “from the Great Depression era which granted the City permission to set up shanty towns.”<sup>178</sup>

Seattle, Washington, a high-cost city with a growing homeless problem, has developed the most extensive city-sanctioned network of transitional tiny homes villages for homeless people (9 villages in total) that all use

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<sup>167</sup> *Id.*

<sup>168</sup> Alexander, *supra* note 14.

<sup>169</sup> Alexander, *supra* note 14, at 419.

<sup>170</sup> DIGNITY VILLAGE, *supra* note 98.

<sup>171</sup> *Id.*

<sup>172</sup> *See id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> Alexander, *supra* note 14, at 418.

<sup>177</sup> Dignity Village, *supra* note 98.

<sup>178</sup> *Id.*



a transitional stewardship model.<sup>179</sup> The Low-Income Housing Institute is a non-profit that provides case management services and real estate services to each of the sites, which are owned and run by different non-profits, churches, and some by the city of Seattle.<sup>180</sup> These transitional tiny homes villages can prepare formerly homeless residents for more permanent long-term affordable housing.<sup>181</sup> The Low-Income Housing Institute (LIHI) “owns and/or manages over 2,200 housing units at 60 sites in six counties throughout the Puget Sound region. Eighty percent of LIHI housing is reserved for households earning less than 30 percent of the area median household income.”<sup>182</sup> LIHI provides case management services to formerly homeless tiny homes village residents that enables some residents to transition into LIHI’s more permanent supportive housing.<sup>183</sup>

A 2017 study of Seattle’s transitional tiny homes villages found that thirteen percent of the villagers went into transitional housing, and thirteen percent went to a place not fit for human habitation.<sup>184</sup> More adult residents from Seattle’s transitional tiny homes villages transitioned to permanent supportive housing or permanent housing than those residents of shelters.<sup>185</sup> More recently, Seattle’s Mayor Durkan praised the transitional tiny homes village projects calling them, “probably the most successful shelter we have to get people into long-term housing, and it has become some of the most sought-after shelter for some people experiencing homelessness.”<sup>186</sup>

During the recent Covid-19 pandemic, the City of Seattle also focused on using hotels and hotel rooms as temporary shelter for homeless people.<sup>187</sup> “[I]n December 2020, HSD expects to have access to approximately 300 temporary shelter units located at leased hotel properties and 125 units of new enhanced shelter spaces.”<sup>188</sup> While hotel rooms can be a good temporary solution to the public health crisis that unsheltered homeless people face during the Covid-19 pandemic, they are not a permanent long-term solution; hotels will eventually return to business as usual, and the supply of

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<sup>179</sup> City of Seattle, *City-Permitted Villages*, HOMELESSNESS RESPONSE, <https://www.seattle.gov/homelessness/city-permitted-villages> [https://perma.cc/6FLS-TQU3].

<sup>180</sup> *See id.*

<sup>181</sup> Aaron Long, *Tiny Houses Big Future*, YOUTUBE (Nov. 1, 2016), <https://www.youtube.com/watch?v=OEEdKozxmg3w> [https://perma.cc/Q4CQ-JX8V].

<sup>182</sup> *About*, LOW INCOME HOUSING INSTITUTE, <https://lihi.org/about/> [https://perma.cc/G25X-DL74].

<sup>183</sup> Long, *supra* note 181.

<sup>184</sup> City of Seattle, *Permitted Encampment Evaluation* 8 (2017), <http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/2017%20Permitted%20Encampment%20Evaluation.pdf> [https://perma.cc/5XSZ-NARV].

<sup>185</sup> *Id.*

<sup>186</sup> Lee, *supra* note 58.

<sup>187</sup> Micheal Taylor-Judd, *HSD Announces Investments in Single Adult Shelter Surge Hotel Buildings & RRH Supportive Services*, SEATTLE.GOV-HUMAN INTERESTS BLOG (Nov. 10, 2020), <https://humaninterests.seattle.gov/2020/11/10/hsd-announces-investments-in-single-adult-shelter-surge-services/> [https://perma.cc/X53H-VB5Z].

<sup>188</sup> *Id.*

adequate shelter that advances human flourishing for unhoused people will decrease.<sup>189</sup>

Seattle's experiences with using tiny home villages as transitional housing for homeless people has proved useful during Covid-19, and strengthens the case for using transitional tiny homes village communities as alternatives to shelters and hotels for homeless people during Covid-19 and other crises.<sup>190</sup> As described above, there is evidence that traditional shelters in which homeless individuals and families sleep in open barracks without walls separating individuals heightens the likelihood of transmission of Covid-19.<sup>191</sup> Specifically, Seattle found in April of 2020 "that 112 homeless people and staff working in homeless shelters were infected with Covid-19, and that two homeless people had died."<sup>192</sup> Similar outcomes were found at the Multi-Service Center South shelter in San Francisco, where "96 people and 10 staff tested positive—this was the largest outbreak in a single shelter nationally."<sup>193</sup> On April 23, officials shut down the Division Circle Navigation Center in San Francisco's Mission District after two people tested positive, and the rest of its residents were moved to hotels."<sup>194</sup>

The Seattle case study demonstrates that tiny homes villages are an effective public health solution for some homeless people during Covid-19. In the 12 tiny homes villages that the LIHI operates throughout Seattle, Tacoma, and Olympia, Washington, they have found that tiny homes provide better social distancing options than shelters because each tiny home is separately insulated and is "8 feet by 12 feet and the houses are spaced 5 feet apart. A person living in a tiny house is automatically sleeping more than 6 feet from another person, plus they are separated by two walls and two doors."<sup>195</sup> In tiny homes strangers are not breathing the same air.<sup>196</sup> Unlike in hotels or multifamily buildings, the tiny homes do not open out into an enclosed corridor; they open to the outside, letting fresh air in and avoiding dissemination of the air in each tiny home into an enclosed space.<sup>197</sup> These

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<sup>189</sup> See Lee, *supra* note 58 ("In early April, King County rented the Red Lion Hotel, located in the city of Renton (just south of Seattle), to de-intensify Seattle's largest homeless shelter. The lease was for 90 days. The initial response from the mayor of Renton was a demand that the county remove the 200 homeless people immediately at the end of the lease. Renton officials stated that the hotel is not zoned as a shelter and that the county should ensure that homeless individuals not remain in Renton but return to their original shelters in Seattle or find other options.").

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* See also Vivian Ho, *It Could Have Been Averted: How 92 Residents at a San Francisco Homeless Shelter Got Covid-19*, GUARDIAN (Apr. 15, 2020 6:10 A.M.), <https://www.theguardian.com/us-news/2020/apr/15/san-francisco-homeless-coronavirus-msc-shelter> [<https://perma.cc/LG23-5EUZ>].

<sup>194</sup> See Lee, *supra* note 58.

<sup>195</sup> Lee, *supra* note 58.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

features make tiny homes preferable to shelters, or even hotels, during a pandemic.<sup>198</sup>

The villages' non-profit property managers have also been able to effectively implement public health and safety measures in the facilities' respective shared spaces.<sup>199</sup> "The villages have shared hygiene facilities, including bathrooms, showers, washers and dryers, and cleaning supplies that allow residents to follow recommended Covid-19 hygiene protocols. A community kitchen with refrigerators, freezers, pantry, microwave, cooktops, hot water, and meal deliveries are also available to residents."<sup>200</sup> As of May 12, 2020, LIHI tested hundreds of homeless people that came through their tiny homes villages and "no one was found positive, according to the public health nurses who reported the test results to staff."<sup>201</sup> LIHI's internal analyses also show that the villages' on-site case managers are able to move residents from the transitional villages into permanent housing "at a rate that has outperformed traditional shelters."<sup>202</sup>

Seattle funds nine of the twelve transitional tiny homes villages that LIHI runs, and Seattle's average cost for a person in a tiny home is \$38 dollars per day "compared with \$56 for an enhanced shelter bed, and \$130 or more for a night's stay in a hotel."<sup>203</sup> Most of the tiny homes in Seattle's transitional tiny home villages are built by volunteers, eliminating labor costs, and the costs of materials per home are only \$2,500.<sup>204</sup> If the village needs to hire to build they hire small contractors and the costs of construction are "\$5,500 each, including labor and materials."<sup>205</sup> The shared facilities are often also constructed by volunteers and electrical and plumbing is done by licensed contractors.<sup>206</sup>

LIHI can set up tiny homes villages "ranging in size from 14 to 50 tiny houses for \$150,000 to \$700,000, depending on infrastructure costs and site conditions."<sup>207</sup> "Over the past few years, with the support of thousands of volunteers, 400 insulated and heated tiny houses have been built across the Puget Sound region, helping more than 1,000 people annually."<sup>208</sup> In response to the Covid-19 pandemic, LIHI significantly reduced the time it takes to construct and develop these transitional tiny homes communities from three months to approximately four weeks.<sup>209</sup>

These examples show that municipalities can use transitional tiny homes village and stewardship models to provide rapid temporary housing to

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

those experiencing housing insecurity due to a crisis. If in the wake of the economic fallout from the Covid-19 pandemic Americans find themselves evicted, foreclosed upon, or without their homes due to natural disasters, they may find shelter and solace in transitional tiny homes communities. Localities can use the same self-governance, community participation, usage, and conduct rules that tiny home villages for homeless people utilize in the stewardship model, for people who are facing displacement due to a foreclosure, an eviction, or a natural disaster. While tiny homes villages can also serve as permanent supportive housing for some homeless people, and affordable housing for others, the transitional tiny homes villages demonstrate how municipalities can quickly and cheaply produce transitional, temporary housing that adds to the affordable housing supply and advances the human flourishing of residents, particularly during times of crisis.

#### IV. THE CHALLENGES OF IMPLEMENTATION

##### A. *Legalizing Tiny Homes Villages*

Villages that consist of tiny homes for the general public, or specifically tiny homes for unhoused people, are difficult to create and implement because tiny homes, and tiny homes villages, are not legal in every state or local jurisdiction.<sup>210</sup> Tiny homes construction and village development are regulated by three sources of local laws: building codes, housing codes, and zoning codes.<sup>211</sup> States also have standard building, manufacturing, and residential codes that apply to all municipalities and unincorporated census designated places (CDPs)<sup>212</sup> within the state; these state standards also govern tiny homes construction and village development in each respective locality.<sup>213</sup> Local governments also have their own, sometimes more permissive housing, building residential, and land use codes that also apply to tiny home village development in those respective localities.<sup>214</sup>

There are also national manufacturing, building, energy and utility standards with which tiny homes and tiny homes villages must comply.<sup>215</sup> Some states and localities have adopted international model building, residential, and manufacturing standards that can streamline and facilitate the

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<sup>210</sup> Ciara Turner, *It Takes a Village: Designating Tiny Homes as Transitional Housing Campgrounds*, 50 U. MICH. J.L. REFORM 931, 941–46 (2017).

<sup>211</sup> *Id.* at 935.

<sup>212</sup> Robert E. Lang & Dawn Dhavale, *Reluctant Cities? Exploring Big Unincorporated Census Designated Places*, in GERALD E. FRUG, RICHARD T. FORD & DAVID J. BARRON, *LOCAL GOVERNMENT LAW: CASES AND MATERIALS* 365–367 (6th ed. 2015) (explaining that CDPs is a census derived category to describe urban development areas that range from less 100 to over 100,000 residents and fall outside the boundaries of incorporated cities. This term was designed to replace the former term unincorporated places).

<sup>213</sup> Turner, *supra* note 211, at 941.

<sup>214</sup> *Id.*

<sup>215</sup> *Manufactured Home Construction and Safety Standards*, U.S. DEP'T OF HOUS. & URB. DEV. <https://www.hud.gov/hudprograms/mhcss> [<https://perma.cc/CD3Y-99S4>].

creation of tiny homes.<sup>216</sup> Finally, there are multiple sources of federal, state, local, and private financing to fund tiny homes village development. Currently, there is a patchwork of permissive and restrictive state and local zoning regulations; some that legalize tiny homes, others that create unique zoning categories for tiny homes villages for homeless people; and others that outlaw tiny homes as unpermitted dwellings or land uses.<sup>217</sup>

States and localities should legalize tiny homes and tiny homes villages, as alternative sources of housing that can mitigate housing insecurity. States and localities must adopt housing, building, utility, and green building standards that provide guidance as to the proper development of tiny homes and tiny homes villages to ensure that these villages are habitable, humane, resilient and do not revisit the problematic “shanty towns,” of old.<sup>218</sup> The federal government, through HUD and other agencies, should develop a national database of projects that represent best practices in tiny homes village implementation as part of an effort to provide guidance for states and localities and develop a national housing policy.<sup>219</sup> The examples described below illustrate successful ordinances, state laws, and best practices in various states and localities that, if adopted, can legitimize and support the development of tiny homes village alternatives nationwide.

The International Building Code (IBC) provides international standards for safe and resilient building design and it applies in all fifty states, the District of Columbia, U.S. Virgin Islands, Guam, and Puerto Rico.<sup>220</sup> Building codes include topics such as minimum floor area requirements, building heights, mechanical and plumbing requirements and other categories that are relevant to tiny homes villages.<sup>221</sup> More importantly, the International Residential Code (IRC) establishes minimum standards for one- or two-family dwellings and townhomes and it defines a dwelling.<sup>222</sup> Only Wisconsin has not adopted a version of the IRC.<sup>223</sup>

<sup>216</sup> Turner, *supra* note 211, at 934.

<sup>217</sup> See Molli McGee, *Tiny House Laws in the United States; States That Allow Tiny Houses*, TINY HOUSE SOCIETY (Dec. 13, 2018), <https://www.tinysociety.co/articles/tiny-house-laws-united-states/> [<https://perma.cc/HU3A-E7K7>].

<sup>218</sup> See Helen R. Kanovsky, *HUD General Counsel Reflects on the Department's Fifty-Year History*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 7, 7–8 (2015) (“After the crash in 1929, homeownership rates fell to 44 percent. Unemployment rates spiked to 25 percent, giving rise to shanty towns or “Hoovervilles” across the country. One of the largest of these shanty towns was in New York’s Central Park; other large establishments sprung up in Washington, D.C., Seattle, and St. Louis. These towns were constructed of cardboard boxes; some were even just holes in the ground with makeshift roofs.”); *see also* PAUL KRUGMAN & ROBIN WELLS, *ECONOMICS* 569 (2d ed. 2009).

<sup>219</sup> HUD rules regarding building and safety standards for RVs and manufactured homes clarify which recreational vehicles qualify for an exemption from HUD’s Manufactured Home Construction and Safety Standards and Manufactured Home Procedural and Enforcement regulations. Yet, it has not developed a comprehensive position on tiny homes villages for homeless people or for affordable housing. *See Manufactured Home Procedural and Enforcement Regulations*, 24 C.F.R. § 3282 (2018).

<sup>220</sup> Turner, *supra* note 210, at 935.

<sup>221</sup> INTERNATIONAL RESIDENTIAL CODE §R101 (Int’l Code Council 2018).

<sup>222</sup> *Id.*

<sup>223</sup> Turner, *supra* note 210, at 935.

The 2018 International Residential Code, Appendix Q, provided, for the first time, a definition of a tiny home, as “a dwelling that is 400 square feet (37m<sup>2</sup>) or less in floor area excluding *lofts*.”<sup>224</sup> Each local jurisdiction or state has to adopt Appendix Q, in order for a tiny home to be legal, as most building codes do not permit dwellings less than 400 square feet.<sup>225</sup> A few of the states and cities that have market-rate tiny homes and tiny homes villages for homeless people have also adopted Appendix Q, some with amendments and additions.<sup>226</sup> Some states, localities, and jurisdictions have also amended their zoning codes to permit Accessory Dwelling Units (ADUs), that enable home owners to have a small backyard residence for elderly parents, children, or others in need of housing.<sup>227</sup> ADU ordinances legalize backyard “granny flats” or tiny homes on foundations on existing home properties, but they do not define “tiny homes” or create unique zoning categories for tiny homes villages.<sup>228</sup> Tiny homes qualify as ADUs in some jurisdictions, but ADU regulation alone does not legalize tiny homes villages.<sup>229</sup>

Zoning codes can permit tiny homes and tiny homes villages as permissible land uses. Localities within Oregon, Washington, and California have created local zoning designations for different types of tiny homes arrangements, including “transitional home camps” that sanction and legalize tiny homes villages for unhoused people, as an emergency response to increasing homelessness in those cities.<sup>230</sup> Oregon has adopted IRC Appendix Q with amendments, and has created additional categories of legislation that regulates tiny homes.<sup>231</sup> Oregon state law categorizes tiny homes into three major categories: permanent, temporary and transitional.<sup>232</sup> The Oregon Residential Specialty Code (ORSC) also applies to permanent tiny homes; and permits tiny homes built according to the ORSC in any residential or commercial zone that permits single-family dwellings.<sup>233</sup> ORSC tiny homes

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<sup>224</sup> INTERNATIONAL RESIDENTIAL CODE, APP. Q § 102.1 (Int’l Code Council 2018).

<sup>225</sup> *Id.*

<sup>226</sup> *Tiny House Appendix Q*, TINY HOUSE BUILD, <https://tinyhousebuild.com/code/> [https://perma.cc/GYP5-JP93].

<sup>227</sup> Infranca, *supra* note 28, at 54.

<sup>228</sup> See Alexander, *supra* note 14, at 453. For example, in May 2017, the City of Atlanta amended its zoning laws to permit accessory dwelling units or a tiny house that shares the building lot of another already existing home. The maximum square footage for the lot would remain the same, but it could be shared between an ADU and an existing home, as long as the ADU or tiny home is not more than 750 square feet. The ordinance also eliminated the ban on kitchens in the ADUs or tiny homes. On November 25, 2017, the Georgia Department of Community Affairs also adopted the GA Tiny House Appendix S that applies to tiny houses used as single dwelling units. “Appendix ‘S’ approved a reduction in the minimum habitable room size for all residential structures from 120 to 70 square feet. The Appendix only applies to tiny houses on permanent foundations that are 400 square feet or less, and does not include wheel-based structures, which are still considered Recreational Vehicles in GA.” Each city or locality has to adopt the GA Appendix S, but these legal changes to the zoning and building codes permitting tiny homes helps to spur a growing industry. See Douglas, *supra* note 15.

<sup>229</sup> Infranca, *supra* note 28, at 71.

<sup>230</sup> Turner, *supra* note 210, at 938–40.

<sup>231</sup> See generally State of Oregon Legis. and Pol’y Rsch. Off., *supra* note 29.

<sup>232</sup> *Id.* at 2.

<sup>233</sup> *Id.*

“may be subject to other zoning standards, including minimum size requirements.”<sup>234</sup>

Oregon state law categorizes Dignity Village as a “transitional housing” camp.<sup>235</sup> The law enables municipalities within the state to establish transitional housing camps for people who “lack permanent shelter and cannot be placed in other low-income housing.”<sup>236</sup> The municipalities establish and regulate transitional camps, but “[a]ny shared water, toilet, shower, laundry, or cooking facilities are regulated under the state standards for recreation parks. The 2017 Oregon Transitional Housing Standard contains suggested construction standards for municipalities to consider when establishing requirements for a transitional housing camp.”<sup>237</sup> However, this standard has no regulatory impact until it is adopted at the municipal level.<sup>238</sup> Oregon’s permissive tiny homes regulation has enabled nonprofit organizations interested in promoting tiny home living to expand upon the tiny homes village for homeless people model to provide more affordable homeownership and rental opportunities.<sup>239</sup>

Washington has also more recently adopted Appendix Q, and permitted and defined “tiny homes,” paving the way for more tiny homes to be built legally in the state.<sup>240</sup> Long before this action at the state level, many cities within Washington state such as Seattle, Tacoma, and Olympia, moved to devise ordinances which permitted tiny homes villages for homeless people as “transitional campgrounds,” in response to the emergency rise in homelessness in those cities.<sup>241</sup> These local ordinances enabled cities, counties, and non-profit groups to develop the transitional tiny homes villages for homeless people described above.<sup>242</sup> More recently, in February of 2020, Seattle passed an ordinance<sup>243</sup> that renewed the permits for transitional campgrounds created in 2015 that were set to expire in March of 2020.<sup>244</sup> This step paved the way for up to forty new tiny homes villages for homeless people in Seattle.<sup>245</sup> This ordinance is another example of how municipalities in states with permissive regulation that legalizes tiny homes can expand upon the state regulation to develop ordinances that permit transitional tiny homes villages for unhoused people in response to a shelter crisis.

<sup>234</sup> *Id.* at 5.

<sup>235</sup> Turner, *supra* note 210, at 938.

<sup>236</sup> *Id.*

<sup>237</sup> State of Oregon Legis. and Pol’y Rsch. Off., *supra* note 29, at 4.

<sup>238</sup> *Id.*

<sup>239</sup> See *The Village Model*, SQUARE ONE VILLAGES, <https://www.squareonevillages.org/> [<https://perma.cc/8J76-BDXY>].

<sup>240</sup> 2019 Wash. Legis. Serv. Ch. 352 (S.S.B. 5383) (WEST).

<sup>241</sup> See Lee, *supra* note 58.

<sup>242</sup> See Part III, Section 2 *supra*.

<sup>243</sup> Seattle, Washington, Municipal Ordinance 126042 (2020).

<sup>244</sup> King5 Staff, *Up to 40 tiny house villages allowed in Seattle after council approval*, KING 5 (Feb. 19, 2020), <https://www.king5.com/article/news/local/homeless/tiny-house-village-ordinance-passes/281-bb459da4-5d4e-4945-8992-4bf610d40c04> [<https://perma.cc/5NWZ-S2L6>].

<sup>245</sup> *Id.*

Finally, California has also legalized six categories or classes of tiny homes.<sup>246</sup> Under California law, a tiny home must comply with the building codes and design standards that pertain to each of the six categories.<sup>247</sup> California also permits accessory dwelling units (ADUs) and defines ADUs as tiny homes.<sup>248</sup> Many cities within California have also embraced the tiny homes concept as a way to mitigate significant homelessness and increase affordable housing. San Jose, a Silicon Valley city in California, has long faced a growing homelessness problem.<sup>249</sup> In 2017, in the midst of a homelessness crisis, the City of San Jose appealed to the state of California to let it bypass restrictive state building codes to build tiny homes villages for homeless people.<sup>250</sup> The law was sponsored by Assemblywoman Nora Campos, D-San Jose, as Assembly Bill 2176, and was signed by then Gov. Jerry Brown on Sept. 27, 2016; the legislation sunsets in 2022.<sup>251</sup> The law requires each city to declare a “shelter crisis” and to use city-owned or city-leased land as sites for the tiny homes.<sup>252</sup>

San Jose used the law to create its Bridge Housing Program (BHP) which opened its first village on city owned land in January of 2020.<sup>253</sup> BHP residents live in individual tiny homes units and share amenities, such as kitchens, pantries, and laundry facilities.<sup>254</sup> The Emergency Sleeping Units (ESUs) in the completed BHP project are 80 square feet, with two larger units for residents with disabilities, and each unit was built by Habitat for Humanity volunteers at a cost of approximately \$6,500 per unit.<sup>255</sup> The BHP Program is for homeless people in Santa Clara County’s Rapid Rehousing System, meaning participants receive case workers and housing vouchers to help them transition to affordable housing permanent housing.<sup>256</sup>

The flexibility the state law exemption provided to San Jose, and their experience with the BPH program, also proved valuable during the Covid-19 pandemic; San Jose converted some of its unused BHP units and pledged to spend an additional \$17 million dollars on approximately 500 new prefab

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<sup>246</sup> LEVINI, *supra* note 11, at 29.

<sup>247</sup> *Id.* at 31.

<sup>248</sup> See Infranca, *supra* note 28.

<sup>249</sup> See Elaine Walker, *San Jose Assembly Bill 2176 waives state building code for tiny houses for the homeless*, AM. TINY HOUSE ASS’N (Oct. 9, 2016), <https://americantinyhouseassociation.org/san-jose-assembly-bill-2176-waives-state-building-code-for-tiny-houses-for-the-homeless/> [<https://perma.cc/BY3T-FH8S>].

<sup>250</sup> See *id.*

<sup>251</sup> Ramona Giwargis, *San Jose: New Law Would Make City First to Allow “Tiny Homes” For Homeless*, MERCURY NEWS (Oct. 8, 2016), <https://www.mercurynews.com/2016/10/07/san-jose-new-law-would-make-city-first-to-allow-tiny-homes-for-homeless/> [<https://perma.cc/5N4K-R8F5>].

<sup>252</sup> See *id.*

<sup>253</sup> See *Bridge Housing Communities*, CITY OF SAN JOSE, <https://www.sanjoseca.gov/your-government/departments/housing/ending-homelessness/bridge-housing-communities> [<https://perma.cc/6YK4-54ZY>].

<sup>254</sup> *Id.*

<sup>255</sup> Matt Hickman, *San Jose Debuts Tiny House Community for the Homeless*, ARCHITECT’S NEWSPAPER (Mar. 4, 2020), <https://www.archpaper.com/2020/03/san-jose-debuts-tiny-house-community-for-the-homeless/> [<https://perma.cc/B933-BW86>].

<sup>256</sup> CITY OF SAN JOSE, *supra* note 253.



tiny homes, to house homeless people infected or vulnerable to complications from Covid-19 during the pandemic.<sup>257</sup> California Governor Gavin Newsom also relaxed environmental regulations for the project, so the city could complete projects within a few weeks.<sup>258</sup> San Jose then created its Emergency Interim Housing (EIH) program and is building three emergency tiny homes villages, that will be used during the pandemic to house medically vulnerable unhoused people.<sup>259</sup> Each village will have 20 units that are 80 square feet each and are also built by Habitat for Humanity volunteers. After the pandemic, residents in the EIH program housing will be incorporated into the BPH program.<sup>260</sup>

States should develop model codes/ordinances that provide examples of building code changes, zoning amendments, and land use permissions that will be needed to foster tiny homes villages as housing alternatives post-pandemic. These examples show that a permissive legal infrastructure is needed in order for markets to be able to respond efficiently to the housing crises that may be before us in 2021 and beyond. Each state and locality must also identify developers, non-profits, investors, and social enterprises that invest in the rapid development of these communities. Finally, the federal government could develop handbooks that outline best practices and model codes that each state and local jurisdiction should follow to foster the rapid, sustainable, and equitable development of tiny homes communities nationwide in the wake of the Covid-19 pandemic.

### B. NIMBYism

Another formidable challenge to the implementation of tiny homes villages is communities' Not-In-My-Backyard (NIMBY) resistance to siting and locating these villages within their respective borders.<sup>261</sup> Community resistance to the siting of tiny homes villages remains as significant as the siting challenges most affordable housing and low-income housing projects face.<sup>262</sup> Recently, an effort by the Chico Housing Action Team (CHAT) to develop a tiny homes village in Chico, California, was thwarted by a lawsuit from a local businessman.<sup>263</sup> Simplicity Village was planned as tiny home housing for 46 seniors; yet a local business owner filed a lawsuit against the

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<sup>257</sup> See Mary Meisenzahi, *San Jose Is Building Hundreds of Tiny Homes for The Homeless to Help Protect Them From the Coronavirus*, BUS. INSIDER (Apr. 9, 2020), <https://www.businessinsider.com/silicon-valley-city-building-tiny-homes-homeless-coronavirus-2020-4> [https://perma.cc/V6VU-KWJY].

<sup>258</sup> See *id.*

<sup>259</sup> CITY OF SAN JOSE, *supra* note 253.

<sup>260</sup> *Id.*

<sup>261</sup> See Tim Iglesias, *Managing Local Opposition to Affordable Housing: A New Approach to NIMBY*, 12 J. AFFORDABLE HOUS. & CMTY. DEV. L. 78, 79 (2002).

<sup>262</sup> *Id.* ("The development of affordable housing and services for low—and moderate-income households has been plagued by local opposition.")

<sup>263</sup> See Natalie Hanson, *CHAT rescinds request to build Simplicity Village*, ENTERPRISE-REC. (Mar. 24, 2020), <https://www.chicoer.com/2020/03/24/chat-rescinds-request-to-build-simplicity-village/> [https://perma.cc/9D2U-ULT8].

City of Chico, “seeking to block the project on grounds that the city’s approval for it was legally invalid.”<sup>264</sup> In order to avoid costly litigation, CHAT terminated its occupancy of the site and withdrew its request to build Simplicity Village at that location.<sup>265</sup> CHAT maintains that it “remains deeply committed to a tiny homes village or some other low-cost alternative housing model at another location.”<sup>266</sup>

Seattle has also faced opposition to the siting of some of its transitional tiny homes villages.<sup>267</sup> In 2018, a conservative think tank, the Freedom Foundation, on behalf of local residents, sued the city of Seattle over the city’s approval and siting of a tiny homes village in the South Lake Union area.<sup>268</sup> The suit alleged that the city violated its own laws by failing to conduct an adequate environmental review, neglecting community outreach and input, as well as violating the limits in the city’s ordinance on the number of transitional villages permitted in the city.<sup>269</sup> The surrounding community’s opposition was also based upon the city’s experimental Licton Springs Village, the city’s only low-barrier village that permitted residents to use drugs on site.<sup>270</sup> Due to repeated police calls and neighborhood opposition, the city and LIHI closed the Licton Springs Village.<sup>271</sup> None of Seattle’s other tiny homes villages explicitly permitted drug use.<sup>272</sup>

Despite the lawsuit, the city and the Low-Income Housing Institute were able to proceed with the development at Lake Union.<sup>273</sup> More recently, in April of 2020, the Seattle Department of Human Services announced that it was expanding the village by 20 tiny homes, based upon Seattle Mayor Jenny Durkan’s expanded emergency powers to house homeless individuals during the Covid-19 pandemic.<sup>274</sup> Notably, San Jose was also able to expand its development of tiny homes villages, due to the governor’s and mayor’s expanded emergency powers to house individuals during the Covid-19 pandemic.<sup>275</sup> Yet, these NIMBY struggles underscore that most of the successful

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<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *A Dream of a Tiny Home Village: Proposals for Low-Cost Housing Options for Seniors in Chico*, CHICO HOUS. ACTION TEAM, <https://www.chicohousingactionteam.net/tiny-house-village-proposals> [https://perma.cc/RW48-MJRY].

<sup>267</sup> See Sarah Wu, *Lawsuit Filed Over New Tiny-House Homeless Village in Seattle’s South Lake Union Neighborhood*, SEATTLE TIMES (July 2, 2018), <https://www.seattletimes.com/seattle-news/homeless/lawsuit-filed-as-tensions-flare-over-new-seattle-tiny-house-homeless-village/> [https://perma.cc/3JGW-GXWW].

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> See Anne Dennon, *Licton Springs Village Is Closing. How Successful Was It?*, SEATTLE MET (Mar. 7, 2019), <https://www.seattlemet.com/news-and-city-life/2019/03/licton-springs-village-is-closing-but-it-was-a-tiny-house-success-story> [https://perma.cc/F9BX-X82U].

<sup>272</sup> See *id.*

<sup>273</sup> See Homeless Response, *Update: Lake Union Village expansion complete*, HOMELESSNESS RESPONSE BLOG-SEATTLE.GOV (Apr. 15, 2020), <https://homelessness.seattle.gov/update-lake-union-village-expansion-complete/> [https://perma.cc/X8RS-NWNB].

<sup>274</sup> *Id.*

<sup>275</sup> See Meisenzahi, *supra* note 257.

transitional villages analyzed in this Article are located on state, city or county-owned land, enabling governments to locate villages even in the face of some neighborhood opposition.

The permanent tiny homes villages described in Part III also initially faced NIMBY resistance. OM Village in Madison, WI was able to press forward despite NIMBY resistance; area residents only began to embrace the village after the project was built and surrounding residents observed how the village helped homeless people gain shelter and develop productive habits.<sup>276</sup> Similarly, when Community First! Village initially tried to locate in downtown Austin, the Austin business community opposed the project. Only when the village organizers found land outside of Austin, in a remote area, and then brought the project to fruition, did the city officials Austin embrace and praise the project.<sup>277</sup> These permanent villages were not authorized by ordinances or state law. Community First! Village's land was purchased by the non-profit Mobile Loaves & Fishes without government help; and the land was outside the boundaries of Austin, TX enabling the village to avoid the more restrictive zoning regulations of Austin.<sup>278</sup> Community First! Village is a planned unit development. OM Village is also a planned unit development and the non-profit also owns the land on which the village sits.<sup>279</sup>

These examples show that if there is sufficient public land, municipalities can use tiny home villages as a way to fulfill their emerging common law obligations to house unsheltered homeless people as quickly as possible. Recently the City of Boise, Idaho settled a lawsuit in which the city was sued for enforcing a camping ordinance that outlawed homeless individuals sleeping in public.<sup>280</sup> The settlement provides that Boise cannot arrest homeless individuals for sleeping outside when no other shelter is available.<sup>281</sup>

The settlement was partly precipitated by a 9th U.S. Circuit Court of Appeals decision in September of 2018 against the city of Boise which held that cities violate the 8th Amendment's cruel and unusual punishment provision when they arrest people for sleeping on the street if there are no other shelter alternatives.<sup>282</sup> Boise appealed to the U.S. Supreme Court, but the Court denied cert.<sup>283</sup> "The settlement will cost Boise about \$1.8 million, in-

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<sup>276</sup> See Lisa Speckhard Pasque, *Occupy Madison Tiny Homes Village Looks to Expand*, MADISON.COM (Aug. 21, 2017), [http://host.madison.com/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/article\\_76697ab3-e175-59bb-8e59-dda685c7b684.html](http://host.madison.com/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/article_76697ab3-e175-59bb-8e59-dda685c7b684.html) [<https://perma.cc/467B-843J>].

<sup>277</sup> See Kimble, *supra* note 99.

<sup>278</sup> Alexander, *supra* note 14 at 433.

<sup>279</sup> *Id.*

<sup>280</sup> Hayley Harding, *Boise will settle controversial homeless camping lawsuit, change city code*, LOS ANGELES TIMES (Feb. 8, 2021), <https://www.latimes.com/world-nation/story/2021-02-08/boise-will-settle-controversial-homeless-camping-lawsuit-change-city-code> [<https://perma.cc/L2YU-C9JF>].

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*; see also *Martin v. City of Boise*, 902 F.3d 1031, 1048 (2018).

<sup>283</sup> Press Release, Crys Letona, Supreme Court Lets *Martin v. Boise* Stand: Homeless Persons Cannot Be Punished for Sleeping in Absence of Alternatives, NAT'L HOMELESS L.

cluding \$1.3 million to create overnight shelters or rehabilitate existing shelter spaces . . . .”<sup>284</sup> The settlement puts pressure on the city to find adequate shelter for the homeless, especially during the emergency of Covid-19. The 9th Circuit ruling covers cities within Idaho and “California, Oregon, Washington, Montana, Nevada, Arizona, Alaska and Hawaii.”<sup>285</sup> Notably, many of these states have also experienced increases in homelessness and tiny homes villages for unhoused people have become common in cities in these states.<sup>286</sup> These states, and localities within them, should use tiny homes villages as a way of fulfilling their obligations to create shelter for the unhoused, and as a way of resisting NIMBYism, if possible. When local communities resist siting, the cities can appeal to the emergency nature of the situation, then, as in the case of Community First! Village and OM Village, when the villages demonstrate that they can be a productive alternative to people sleeping on the streets or under bridges and highways, NIMBY resistance may wane.

### C. Diversity and Segregation in Tiny Homes Villages

Covid-19 also unveiled and compounded the flaws and distributional inequities of the American system of housing provision. Race and class dynamics led to disparate homeownership gains in 2019—“[w]hile the homeownership rate for white households rose to 73.3 percent in 2019, that for Black households held flat at 42.8 percent, widening the gap between the rates to 30.6 percentage points, the largest since 1983, and reflecting the legacy of decades of discriminatory policies and inequitable access to homeownership.”<sup>287</sup> The pandemic further exacerbated these gaps in 2020. “Just 7 percent of white homeowners were behind on mortgage payments in late September, but the share was nearly two-and-a-half times higher among Hispanic (18 percent) and Black (17 percent) owners, and nearly twice as high among Asian owners (12 percent).”<sup>288</sup> These racial disparities are particularly acute at the lowest income levels, as the shares of lowest-income households behind on their mortgages was “nearly a third of Hispanic, a quarter of Black, and a fifth of Asian homeowners.”<sup>289</sup>

The racial disparities that plague the U.S. homeownership market also permeate U.S. rental markets. “Last year, a larger share of Black and Latino renters had difficulty paying rent than white households.”<sup>290</sup> Additionally,

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CTR. (Dec. 16, 2019), <https://nlchp.org/supreme-court-martin-v-boise/> [<https://perma.cc/UE8T-DSHM>].

<sup>284</sup> Harding, *supra* note 280.

<sup>285</sup> *Id.*

<sup>286</sup> See Alexander, *supra* note 14, at 387.

<sup>287</sup> JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *supra* note 4, at 2.

<sup>288</sup> JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *supra* note 5, at 3.

<sup>289</sup> *Id.*

<sup>290</sup> Solomon Greene & Alanna McCargo, *New Data Suggest COVID-19 is Widening Housing Disparities by Race and Income*, URB. INST.: URB. WIRE (May 29, 2020), <https://www.urban.org/urban-wire/new-data-suggest-covid-19-widening-housing-disparities-race-and-income> [<https://perma.cc/RG96-2TVU>].

“We know from the data that the severity and duration of distress may be longer for households of color, and programs should consider the need for additional time for recovery.”<sup>291</sup> Studies also show that “the eviction/foreclosure rates for all respondents doubled in August, mainly driven by Black and Hispanic households reporting higher evictions/foreclosures than white households. . . . While the jump in eviction risk among Black households is certainly alarming, Hispanic respondents maintain the highest vulnerability to eviction among the three groups . . . .”<sup>292</sup>

The residential segregation between white communities and communities of color is not only the result of residential choices, but of present and historical patterns of discriminatory housing laws and practices and the inadequate supply of affordable housing.<sup>293</sup> Covid-19’s pernicious effects on communities of color are the result of high degrees of residential segregation due to discriminatory housing policies, as well as the inadequate supply of housing in communities of opportunity.<sup>294</sup> As a result, large numbers of low- and moderate-income people of color live in high-poverty neighborhoods with large numbers of essential workers, inadequate health care, and insufficient viable housing opportunities that connect residents to opportunity.<sup>295</sup>

As with the racial disparities in homeownership and renting, people of color are also disproportionately at risk of becoming homeless,<sup>296</sup> likely due to present and historic discrimination and structural racism. “[Forty] percent of people experiencing homelessness in 2019 were Black, 22 percent were Hispanic, 3 percent were American Indian or Alaska Native, and just 48 percent were white.”<sup>297</sup> Relative to their percentages in the overall U.S. population, therefore, Blacks and Hispanics were disproportionately homeless in 2019.<sup>298</sup> Available data in 2020 continues and exacerbates these trends, as people of color constitute a disproportionate percentage of the homeless population compared to their percentage of the overall U.S. population.<sup>299</sup>

Tiny homes villages have not substantially ameliorated these disparities. Tiny homes communities often develop organically through collaborations between homeless people, volunteers, non-profit organizations and the city; however, the collaborators and participants are not always diverse, and therefore these communities do not always advance fair housing. For example, a 2017 study of Seattle, Washington’s transitional tiny homes villages revealed that 57% of the homeless people served were white, 19% were Black or Afri-

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<sup>291</sup> *Id.*

<sup>292</sup> Yung Chun & Michal Grinstein-Weiss, *Housing Inequality Gets Worse as the COVID-19 Pandemic Is Prolonged*, BROOKINGS: UP FRONT (Dec. 18, 2020), [brookings.edu/blog/up-front/2020/12/18/housing-inequality-gets-worse-as-the-covid-19-pandemic-is-prolonged/](https://brookings.edu/blog/up-front/2020/12/18/housing-inequality-gets-worse-as-the-covid-19-pandemic-is-prolonged/) [<https://perma.cc/LW29-6YCC>].

<sup>293</sup> JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *supra* note 5, at 5–6.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.* at 36–37.

<sup>297</sup> *Id.* at 37.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

can-American, and 10% identified as mixed race.<sup>300</sup> The number of Blacks or African-Americans served, for example, was notably low compared to their percentages in the homeless population and their participation in other homeless services programs.<sup>301</sup> In response to these disparities, the city of Seattle and LIHI opened a new village focused on the needs of homeless African Americans, Native Americans, and Alaska Natives and also doubled the size of an existing village which operates on a housing first model.<sup>302</sup> Community First! Village is more diverse, however, it is an exception because of its location in Austin, a diverse place, but also because of its size and diverse accommodations, as well as how it obtains residents.<sup>303</sup> This data suggests that when localities are planning villages of tiny homes, they have to be intentional about affirmatively furthering fair housing at these sites, in order for the tiny homes projects to combat systemic racism and to equitably distribute tiny homes opportunities.

### CONCLUSION

Tiny homes villages are a way for local communities in the U.S. to add to the temporary and permanent housing supply during times of growing housing insecurity. Tiny homes villages are not for every unhoused person or every household facing housing insecurity, but they should be added to the list of possible solutions to ameliorate unsheltered homelessness, the trauma of eviction and foreclosure, and other forms of housing displacement and instability. As this Article shows, tiny homes villages have been developing in an ad hoc manner through public and private collaborations at local levels with little federal guidance or support.

The federal government will need to play a facilitative role in helping tiny homes villages to become part of a national housing agenda. The federal government must support the creation of tiny homes villages at the local level, if tiny homes villages are to become a form of housing that mitigates housing insecurity; and restores privacy, dignity, community and human flourishing to households in crisis. The federal government, through HUD, should develop crowd sourced databases of best practices and case studies to provide examples of how to surmount implementation challenges at the local level. Tiny homes communities also need to be developed in a habitable and sustainable way, so HUD should develop building design and utility standards that apply to tiny homes. Additionally, sustainable and habitable building measures can, in some instances, increase costs in locations where

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<sup>300</sup> Seattle Department of Human Services, Permitted Encampment Evaluation 5 (2017), <http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/Final%202017%20Permitted%20Encampment%20Evaluation.pdf> [<https://perma.cc/6AC7-WY5P>]

<sup>301</sup> *Id.*

<sup>302</sup> Lee, *supra* note 58.

<sup>303</sup> MOBILE LOAVES & FISHES, *supra* note 95.

land and development costs are high.<sup>304</sup> Therefore, the federal government should provide funding to help mitigate these cost barriers.

HUD should also work with universities and policy analysts to study and analyze tiny homes villages' respective outcomes compared to other homelessness prevention measures and relocation assistance. HUD should view tiny homes, and tiny homes villages, as a way to help states and localities implement the federal government's homelessness services programs such as Housing First,<sup>305</sup> McKinney/Vento Homeless Assistance Act,<sup>306</sup> or Continuum of Care (CoC) programs.<sup>307</sup> Through these efforts, the federal government can also simplify how states and localities utilize the funds they are receiving through Congress and the federal government's Covid-19 relief efforts.

Recently, President Biden announced his efforts to restore the nation's previous commitment to furthering diverse and inclusive communities, and eradicating racial discrimination and structural racism in housing markets.<sup>308</sup> President Biden tasked HUD with assessing the effects of the former Trump Administration's repeal of HUD's Affirmatively Furthering Fair Housing, Disparate Impact, and Discriminatory Effects rules.<sup>309</sup> As the federal government develops these rules, it can identify tiny homes villages as another housing program that should strive to affirmatively further fair housing, and avoid discriminatory impacts and effects in implementation. HUD could provide guidance and identify best practices in outreach to help states and localities promote diversity and inclusion, and thwart discrimination, in tiny homes villages.

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<sup>304</sup> Doug Smith, *\$130,000 for an 8-foot-by-8-foot shed? That's what L.A. is paying in a bid to house the homeless*, L.A. TIMES (Dec. 12, 2020, 5:51 P.M.), <https://www.latimes.com/california/story/2020-12-12/los-angeles-tiny-homes-homeless> [<https://perma.cc/JBG6-5DKY>]; See also Kristin Dickerson, *Tiny Homes for Dallas' Chronically Homeless*, NBCDFW (June 15, 2018, 3:59 P.M.), <https://www.nbcdfw.com/news/local/tiny-homes-for-dallas-chronically-homeless/236950/> [<https://perma.cc/R92Q-7HJG>].

<sup>305</sup> See *Housing First in Permanent Supportive Housing Brief*, U.S. DEP'T OF HOUS. & URB. DEV. (July 2014), <https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf> [<https://perma.cc/7DMF-SM63>]; see also Nestor M. Davidson, "Housing First" for the Chronically Homeless: Challenges of a New Service Model, J. AFFORDABLE HOUS. & CMTY. DEV. L. 125, 125 (2006) ("Housing First, as its name suggests, offers homeless individuals the chance to move directly from the streets to independent housing.").

<sup>306</sup> *Stewart B. McKinney Homeless Assistance Act*, Pub. L. No. 100-77, 101 Stat. 482 (1987).

<sup>307</sup> The Continuum of Care program provides funding to promote a community wide commitment to ending homelessness through funding to nonprofits and state and local governments. See U.S. Dep't of Hous. & Urb. Dev., *Continuum of Care (CoC) Program*, HUD EXCH., <https://www.hudexchange.info/programs/coc/> [<https://perma.cc/Q9JM-GZ7E>].

<sup>308</sup> Memorandum from President Joseph R. Biden on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/> [[perma.cc/5L5W-PZPH](https://perma.cc/5L5W-PZPH)].

<sup>309</sup> *Id.*

Finally, one of the biggest challenges for tiny homes projects to effectively serve as an antidote to growing housing insecurity is to bring the projects to scale to serve large numbers of people. This challenge will be difficult to surmount in dense urban cities with little available and affordable land and space, extensive zoning and land use rules, and NIMBY resistance. Yet, this Article provides examples, such as Community First! Village and Seattle's non-transitional tiny homes villages, as examples of how to bring these projects to scale to serve more people. The federal government, through HUD, could provide a typology of projects and identify best practices, and regulatory guidance to help more projects scale-up. Tiny homes villages, alone, will not solve Americas' housing supply problems. Yet, in a cost-effective manner that restores dignity, control, and opportunity to people in crisis, tiny homes villages can make a big difference to households facing housing insecurity and provide the dispossessed a place to call home.