INTRODUCTION

In the last 30 years the median size of a new, single-family home has increased from 1,535 square feet in 1975 to just under 2,400 square feet in 2013 (U.S. Census Bureau, 2014(1)). Over this same period of time, the average household size dropped from 2.94 persons/household to 2.54 persons/household, equating to an increase of 417 square feet per person per home. Over the same period of time and adjusted for inflation, median household income in the United States rose by approximately $5,500, from $46,453 to $51,939 (U.S. Census Bureau, n.d.). However, the median price of a new, single-family home rose from $170,130 in 1975 to $268,900 in 2013, an increase of about $98,000 (U.S. Census Bureau, 2014(2)).

These numbers represent a 58% rise in home cost but only a 12% increase in household income, leaving the majority of Americans with less “disposable” income to cover emergency costs or use in support of their local economies. Meanwhile, the costs of higher education, transportation, insurance, and medical care have also risen, leaving many individuals and families, particularly college graduates and working class families, wondering how they can possibly afford the American dream of a house on a piece of land.
Figure 1: The relationship between income and home price, clearly showing a decrease in affordability over time (the 2008 housing bubble is clearly visible) (Ritholtz, 2009).

To counter this trend in housing, some individuals are turning to tiny houses as an affordable, livable alternative. These homes are a fraction the size of a typical modern home and, as such, use far fewer raw materials, are much more environmentally friendly, consume far less greenspace, and allow their inhabitants a greater degree of financial freedom than they would otherwise be afforded. However, some cities have made living tiny impossible while enormous quantities of misinformation turn others away.

Opinions on the size of a tiny house vary from under 100 square feet (Langston, 2013; Kurutz, 2014; Pino, 2010) to 400 square feet (Pino 2010). The Small
House Society, founded in 2002 by a number of tiny house enthusiast and pioneers, has this to say on the matter,

People often ask what defines a small house. To our knowledge, there are no set guidelines to determine when a house is considered tiny or small. A space that might be considered small for a family of four would be large if only a single person were living in it. The goal is for each person to find the right size space that fits their life and comfort level.

There is a category of small homes which are under 500 square feet. A house of such small size might be referred to as a micro house, compact house, mini house, tiny house, small house, or little house. (About, n.d.)

Broadly speaking, any permanently inhabited structure containing less than 200 square feet per inhabitant can be considered a tiny house. Popular designs can be either single story or contain one or more loft spaces for sleeping.

In general, a tiny house should contain all of the same functionality as a traditional full-size home including, but not limited to, a kitchen, bathroom, living space, sleeping space, and storage. Many tiny houses go above and beyond these basic guidelines and offer separate workspaces, reading nooks, dining areas, and flexible outdoor space. Due to the nature of tiny homes, they are particularly well suited to singles and couples, whether they are young adults, empty nesters, or retirees. Given the high value of land in large cities, tiny houses are better suited to
towns and small cities where building upward is not a necessity but building further outward is not desirable. Figure 2 graphically demonstrates the difference in size between an “average” modern, single family home and two different tiny houses.

97 square foot “Zinn” model

284 square foot “Marmara” model

2,310 square foot “Traditional Brick Ranch” model (Floorplans.com, 2015)
Figure 2: Comparative size of the Zinn (97 square feet), Marmara (284), and Traditional Brick Ranch (2,310), respectively.
While the reasons people choose to live in tiny houses are as varied as the people themselves, the driving forces can be roughly grouped into three distinct categories: environmentalism, finances, and freedom. While there is obviously some overlap between these groupings, they are thoroughly distinguished from one another though the writings of those who have chosen to make a tiny house into a tiny home.

Sustainability is the most straightforward impetus for living in a tiny house. A home containing one tenth the floor area of a traditional home obviously consumes far fewer raw materials to construct and can comfortably sit on a much smaller piece of land while maintaining the same yard space. These small spaces take less energy to heat and cool and furthermore, many tiny house enthusiasts, for a variety of reasons, have chosen to live off the grid, using solar panels, wind turbines, and composting toilets to further reduce their impact on the environment. By either necessity or desire, many of these individuals also grow a sizeable percentage of their own food, reducing the impact of shipping industrially produced agricultural products around the globe (Gabriella, 2014).

The financial argument for going tiny is the driving force for many younger individuals and couples. With average student loan debt approaching $30,000 per graduating student and many individuals with over $100,000 in loan debt (Bidwell, 2014), it is not unrealistic for a young couple to be entirely incapable of affording the
$270,000 median new home; particularly as rising rent prices leave little spare income for accruing a down payment. Smaller lot sizes, fewer material costs, lower energy bills, lower property taxes, and lower maintenance costs are some of the biggest areas of savings (Steven, 2011), while the construction of a smaller home also allows for the use of higher quality materials and finishes, often findable from discounters as scrap material in sufficient quantities for a tiny house, serving to make the obtaining tiny house feel like an accomplishment just as the purchase of a large home would (Steven, 2011). An additional “perk” to living tiny; a tiny house does not physically allow for the accumulation of possessions, cutting down spending on the unnecessary items that have a way of piling up in a traditional home (Becker, n.d.). These factors also serve as additional environmentally friendly measures as the greatly reduced quantity of consumables within the house require fewer raw materials to create, less fuel to transport, and less energy to dispose of at the end of the product lifespan.

These financial benefits effectively translate into a high percentage of income being “disposable”, and thus available for hobbies, travel, dining, entertainment, and recreation. This freedom to spend is only half of the freedom granted by a tiny house, however. The other half comes from the very essence of living in a tiny space: the needs to maximize available space and the inability to have a room for every
desirable activity, effectively forcing residents to leave their homes and participate more fully in their community.

The simple reality is that, no matter how well utilized, a 200-400 square foot home does not allow the resident to have a gameroom, a home theater, a den, a study, a living room, a dining room, a spacious kitchen, an exercise room, or the spare bedrooms deemed “necessary” by many house hunters. These lacks drive tiny house residents into the community, supporting movie theaters, restaurants, libraries, and hotels when guests visit, in turn bolstering the local economy while aiding in the pursuit of an active social live and vibrant community.

While some see an undeniable appeal to living in tiny houses, the fact remains that they exist several standard deviations away from the median American single family home. With this in mind, there exist several barriers to obtaining and permanently inhabiting a tiny house. Outlined by Ryan Mitchell, founder and editor of the long-standing blog The Tiny Life: Tiny Houses, Tiny Living, the five greatest obstacles to tiny house living are: land, loans, laws, social pressure, and fear (Mitchell, 2012). Land refers to the relative scarcity and corresponding price of available land in urban environments and loans to both the difficulty of securing financing for the construction of non-traditional housing and the insurance of the completed structure after the fact. Social pressure reflects the assumption that success is represented by a large home and excess of material goods while the anxiety experienced when
attempting to counter these norms comprises the fear component of Mitchell’s argument. These four factors are easily understood by the average current or potential homeowner.

However, the law regarding tiny houses is often vague or missing and, where present, unnecessarily convoluted or disjointed. The average potential tiny house owner or builder likely lacks the understanding of municipal code and planning required to decipher the law, leading to a large amount of misinformation and outright ignoring of municipal laws.

Current perception of the legal standing of tiny houses is that they are illegal in the majority of the United States, most often due to zoning codes or building codes requiring minimum square footages (Janzen, 2011; Cerf, 2013; Macy, 2014). While some sources bloggers recommend simply talking to the local building/planning/zoning office, getting to know the people there, and calmly explaining the intention to build a tiny house and the justification for doing so, countless more offer “technically legal” solutions to the problem.

These quasi-legal, or blatantly illegal, in some cases, solutions range from the seemingly innocuous (“Move out of the city, many rural areas are unregulated” (Hillary, 2009)), to the brazenly illegal (“…don’t be obvious. Have your house be out of sight of the public and keep a low profile.” (Mitchell, 2012(2))). Without a doubt, the most common advice given to potential tiny housers is some variation of “build it
on wheels” (Cerf, 2013; Janzen, 2011; Langston, 2013; Macy, 2014; Mitchell, 2012(2); Mitchell, 2014). The logic behind such a sentiment being that, on wheels, the structure is technically a trailer/RV/camper/manufactured home and that building codes do not apply to it. While technically true, this solution is touted as a silver bullet of sorts, an instant way around the law. The reality is, of course, far more complex, as a variety of other laws, local, state, and federal, govern the construction and habitation of these structures.

In order to clarify the legality of tiny houses, it is necessary to understand the various pieces of the law governing each construction option. Other potential barriers to tiny housing follow these building codes. After illuminating the truth behind various tiny house myths and expounding upon the legal realities associated, case studies from five small American cities (population under 100,000), both as “suburbs” of larger cities as well as metropolitan area center in their own right, will demonstrate how tiny houses actually fit into the legal framework surrounding a city. Finishing the guide is an explanation of the recourse available should a tiny house be technically compliant and the city still denies a building permit.
WHEELED TINY HOUSES

The most often cited means of circumventing building and zoning codes, wheeled tiny houses can legally be separated into three distinct categories: trailers, RVs, and manufactured homes. A loaded trailer is a perfectly legal thing to “build” and own, but is in no situation permitted as a dwelling unit. With this in mind, RVs and manufactured homes are the two options available to potential tiny dwellers. To determine the precise legality of each option, it is necessary to first determine the definition of each option.

Figure 3: The Cinder Box, a wheeled model built by licensed RV manufacturer Shelter Wise. It contains approximately 300 square feet of space including the two lofts (Shelter Wise, n.d.)
As the definitive authority on the matter, the Recreational Vehicle Industry Association (RIVA) defines an RV as:

A vehicle designed as temporary living quarters for recreational camping, travel or seasonal use. RVs may have their own motor power (as in the case of motorhomes); may be mounted (as are truck campers); or towed by another vehicle (as are travel trailers and folding camping trailers). Not included in the RV definition are conversion vehicles, off-road vehicles and manufactured housing for long term residences (manufactured and modular housing). (RVIA, 2015)

This definition leaves little doubt that an RV is not suitable for long-term habitation. The Federal Emergency Management Authority (FEMA), agrees on the topic, using an identical definition.

With this in mind, even RVIA certified tiny house builders, of which there are several (Tiny House Community, 2015), provide qualifying statements about the use of these homes being restricted to RV parks, campgrounds, and short-term habitation. While street-legal and easily insurable/financeable, these tiny houses are still unfit for permanent habitation. In many cities, including each of the five included as case studies, camping is limited to two weeks or less, even on privately owned land. This is the point at which the aforementioned articles, among others, advocate
for flying under the radar and/or moving the house from yard to yard if reported, essentially bouncing back and forth within a neighborhood.

With no room for interpretation, the legal best-case scenario for an RVIA certified tiny house is incremental habitation or constant movement from campground to campground, hardly an ideal solution for what is intended to be a permanent home, replacing the large square footages typical of most new construction.

Unfortunately, the reality of the definition of a wheeled tiny house as a manufactured home is even more restrictive. Manufactured homes fall under the purview of the United States Department of Housing and Urban Development (HUD) and, as a result, is governed by the *Manufactured Home Construction and Safety Standards*
FOUNDATION BUILT TINY HOUSES

Ironically, given the myriad reports of building codes making tiny houses illegal, foundation built tiny houses are often perfectly compliant with residential building codes, or at least they would be if they were on foundations rather than trailers. The International Code Council creates and maintains a series of model codes, updated every three years, ready for adoption by any state or locality. As of February 2015, the International Building Code, governing multifamily housing and commercial buildings, was adopted on some level by all 50 U.S. states (ICC, 2015). At this same period, the International Residential Code was adopted on some level by 49 states, all excluding Wisconsin. Of these states, 32 have adopted the IRC as the official state code governing single and dual family housing. Broken down further, 12 states have adopted the 2012 edition while 9 use the 2009 edition. With the majority of U.S. states using this document in some respect, it is worth exploring what it has to say on the matter of minimum square footage standards.

There is very little difference between the two documents, most of it having to do with fire safety. There are, of course, numerous requirements with regards to the amount of window area needed, stair widths, means of egress, and HVAC systems. On the subjects of square footage, the IRC actually has very little to say. Every dwelling unit must have at least one habitable room (a room designated for living, sleeping, eating, cooking, or some combination of the above) of at least 120 square
feet. All other habitable rooms, excepting the kitchen, must be at least 70 square feet, though there is no requirement for additional rooms. No dimensions may be less than 7 linear feet, including vertically and again excepting kitchens. Aside from these basic requirements, the only other dimensional regulations are 6’8” clearance beneath shower fixtures and a minimum 30” by 30” shower facility (IRC, 2009; IRC, 2012).

Figure 4: A foundation-built tiny house in western Massachusetts designed and built by students from Vermont. It complies with every currently adopted version of the IRC (Sean, 2014).

Due, at least in part, to the growing popularity of tiny houses, the International Code Council made one small but very important change to the International Residential Code for the 2015 edition. Gone is the requirement for at least one 120
square foot room. The only remaining basic room restriction is the requirement for habitable rooms to be at least 70 square feet (Meyer, 2014). As each house requires at least one room to physically be a structure, this allows, in conjunction with the simple realities of requiring a bathroom, for the construction of a building as small as ~80-85 square feet, miniscule even by the standards of tiny houses.

While the room size restrictions are anything but restrictive in modern building codes, there exist a handful of other requirements that may have an impact on the appeal of tiny housing, from an environmental viewpoint if not a dimensional one. For example, all bathrooms must contain a toilet, sink, and shower/tub and all kitchens must contain a sink. This requirement is perfectly normal and straightforward. However, each of these fixtures must be connected to an approved water supply, be plumbed for both hot and cold water (excepting toilets), and have drainage connected to an approved sewage disposal system. These requirements effectively make the capture of rainwater for home use and the use of greywater for non-consumptive uses against the law as there is no way to use/collect the water in question (IRC, 2009; IRC, 2012). Environmental issues aside, there are no prohibitive barriers to tiny housing explicitly or implicitly stated in the International Residential Codes used by the majority of American states.
OTHER POTENTIAL BARRIERS

While building codes have nothing against tiny houses, there are a number of other possible impediments to building tiny. These include such concrete barriers as minimum building sizes and density restrictions but also stretch beyond the physical constraints to the practical ones, namely, minimum lot sizes. Other barriers exist that merely limit the sustainability and environmentally friendly nature of tiny houses, such as restrictions on wind or solar power or the requirement to be connected to city water and sewer within city limits (note that the IRC stipulates only an approved water source, giving the municipality the authority to determine whether or not such measures as composting toilets, grey water capture, or rainwater capture for residential use are permissible).

Clarity of zoning ordinances serves as a barrier in some cases. Portland, ME, a city of ~65,000, has a zoning ordinance stretching 881 pages (City of Portland, ME Code of Ordinances (2015). This is not the entire city code, simply the zoning portion. The code has been updated on a rolling basis since its adoption in 1976 and contains forty years of edits, adjustments, and additions. As such, the ordinance is verbose, inconsistent, and incredibly difficult to decipher, even for a trained professional. The problem has become so severe that the city is currently hiring a zoning administrator to assist in a complete rewrite of the code to improve clarity and conciseness (American Planning Association Massachusetts Chapter, 2015). In the
even that an ordinance becomes so extremely convoluted that a city is forced to hire an additional employee to render it understandable to the planning department, what hope is there for a potential resident to decipher that code on his/her own time prior to constructing a home?

A more direct obstacle is the ability of cities to incorporate minimum home sizes directly into their municipal codes, greatly complicating the process and reducing the likelihood of receiving the necessary permits as it would require the potential builder/owner to obtain at least one variance, a process subject to public review. For example, the City of Muncie, IN stipulates in Articles XIII-XVII of its comprehensive zoning ordinance that no residential dwelling can contain fewer than 720 square feet of habitable space. Some zones go even further, requiring as much as 960 square feet of habitable space to be permitted. Indeed, even multi family housing mandates a minimum of 400 square feet, well under the average efficiency/studio apartment size required in many municipalities (City of Muncie, IN Comprehensive Zoning Ordinance, n.d.).

Accepting that part of the appeal of tiny housing is the added density in small urban areas and the freedom, both financial and psychological, associated with the greatly reduced upkeep required on a smaller space, large minimum lot sizes also serve as a barrier to tiny houses. For example, while the City of Burlington, VT has enacted a 6,000 square foot minimum lot size in their low-density residential zone,
the City of Noblesville, IN has created a much larger minimum. The R1 district in Noblesville enforces a 3-acre minimum for lots not connected to municipal sewer systems, dropping that minimum to 30,000 square feet if connected, not to mention a 2,400 square foot minimum home size. R2 reduces these requirements to 1-acre or 15,000 square feet and the highest density districts require a minimum of 6,000 square feet, in line with lo- density areas in a number of other cities (Noblesville, IN Unified Development Ordinance, 2013).

While building codes are the most often cited barrier to building tiny, they are in many ways the least restrictive and least responsible for the issues many builders encounter. Unfortunately, while building codes are frequently adopted on a state or county level, there is no shortcut to understanding local zoning codes, as each jurisdiction is free to create its own code. The clearest option is to consult with the local planning office to determine the precise codes governing the minimum building size in the area.
CASE STUDIES

To better understand the impact that these combined factors have on building permanently habitable tiny houses, it is helpful to look at the aggregate effect of various ordinances and building codes. To accomplish this, 5 cities across the nation were selected, representing a variety of building codes, from the ICC and otherwise, densities, populations, relative sizes within metropolitan areas, population trends, education levels, income levels, housing prices, median ages, and geopolitical regions. Cities of approximately 40,000-80,000 were selected to represent “average” American cities with respect to the length and complexity of zoning regulations, as most states are not home to a city the size of Chicago or Boston but every state in the United States has at least one city within this range. These case studies will explore the requirements set forth by the individual cities and states with regards to building codes, minimum residence and lot sizes, density restrictions, manageability of land, and additional “bonus” options set forth by the various municipalities.
ASHEVILLE, NORTH CAROLINA

Asheville is the principal city of the Asheville Metropolitan Statistical Area, population 425,000. The city had a 2013 population of 87,250, an increase of 26.6% since 2000, and a density of 2,132 people per square mile. The average age of residents is 38 years, slightly higher than the North Carolina average of 37. Median income is $42,500, slightly lower than the $45,000 North Carolina median, and median home value is $194,000, well above the $150,000 for the state has a whole. 44% of residents 25 and older hold at least a bachelor’s degree and, presumable, have some degree of debt associated with it. These factors contribute to make housing affordability among young professionals and low-income groups a major concern (City-Data.com, 2015(1)).

While the State of North Carolina has adopted the 2009 IRC as its official state residential code (ICC, 2015), the City of Asheville does furnish its own mandated minimum square footages for residences. Section 4-10 Minimum Standards of the Asheville, NC Code of Ordinances Part 3a requires each residence contain at least 150 square feet for the first inhabitant and 100 additional feet for each additional inhabitant. Furthermore, the code adds that bedrooms sleeping one person must be at least 70 square feet with an additional 50 square feet added for every additional person sleeping in the room. There is no requirement listed for other allocations of the square footage, though the 2009 IRC does require one habitable room of 120
square feet. In theory this room could also contain the sleep space, in the manner of an efficiency/studio apartment, making the minimum build size approximately 140 square feet, expanded to 260 square feet for a couple assuming that no overlapping of uses is allowed. While not in line with the traditionally accepted meaning of “tiny”, this is, nonetheless, a very small house.

The Asheville zoning ordinance, located in section 7, article 8 of the city code, is slightly more complex. Three strictly single-family residential districts exist, titled simply low, medium, and high density. These districts outline minimum lot sizes between 20,000 square feet (low-density) and 5,000 square feet (high-density). While still quite large by many standards, particularly those of a tiny house, 5,000 square feet is a much smaller minimum than the cities previously mentioned. The zoning becomes more creative beyond this point, with sections 7-8-23 (Urban Village District), 7-8-25 (Urban Residential District), and 7-8-26 (Urban Place District) outlining mixed use districts allowing single-family detached homes at very high densities.

Urban Village districts are planned unit developments, requiring a minimum of 5 acres of land but stipulating no minimum lot size or maximum density. This would allow a developer to subdivide land to a very manageable size for tiny houses, but is somewhat cumbersome given the requirement to submit a master plan for the development prior to approval. The Urban Residential District is a more flexible option. This district requires no master plan as it is not a planned unit development.
and stipulates a minimum lot size of just 1,800 square feet, easily manageable for a
tiny house owner. While density is limited to 35 units per acre (multi-family housing is
also permitted), this is increasable to 70 units per acre should at least 20% of the lots
be set aside for affordable housing. The least friendly of the three options to tiny
houses, Urban Place Districts are intended to multi-family developments but allow
detached single-family homes. While minimum lot size is set at 10,000 square feet, a
note is included that this can be waived if the proposed development furthers the
goals of the district. No absolute minimum is set beyond that point. With density set
at 64 units per acre, the city may be amenable to very small lots for tiny houses

Keeping these zoning options and the Asheville-specific portions of the
building code in mind, the densest development possible without special approval or
any loose interpretation of the law is the construction of 260 square foot tiny homes
on 1,800 square foot lots in the Urban Residential District for a total density of 24.2
dwelling units per acre for solely detached single-family housing, well under the 35
unit per acre maximum. This housing distribution also allows for a sizable but
manageable yard, garden space, or accessory buildings that may be desirable to tiny
house owners. When taken in conjunction with the relatively high ratio of housing
price to income, tiny houses, or at least small houses, form a viable option for
Asheville residents.
BURLINGTON, VERMONT

Burlington is the principal city of the Burlington-South Burlington Metropolitan Statistical Area, population 213,700. The city had a 2013 population of 42,300, up 8.7% since 2000, at a density of 4,003 people per square mile. The average age of residents is 26.5 years, much lower than the Vermont average of 46. Median income is $43,000, substantially lower than the $53,000 Vermont median, and median home value is $260,000, versus $217,000 for the state as a whole. 46.5% of residents 25 and older hold at least a bachelor’s degree. The combination of low median household income, high median home price, and lack of available rental housing make housing affordability a major problem and key concern for the city planning office (City-Data.com, 2015(2)).

Unlike the states home to the other studied cities, Vermont does not use the IRC as its residential building code (ICC, 2015). Instead, Vermont has created the Vermont Fire and Building Safety Code, adopted by Burlington in Section 8-2 of the City Ordinances (Burlington Code of Ordinances, 2015). The Vermont Fire and Building Safety Code (VTFBSC) establishes the 2012 International Building Code as the baseline to which all multifamily housing must adhere and lists extensive fire and safety measures, including electricity, plumbing, egress, and fire suppression standards (Vermont Department of Public Safety Division of Fire Safety, 2012).
Conspicuously absent in this code is any mention of minimum square footage or room dimensions for single-family housing.

Zoning in Burlington further makes the city’s case for the title of tiny house friendliest city. While the zoning code is highly restrictive at first glance, only allowing detached single-family homes in two of the three residential zones, the low-density residential and medium-density residential zones (Burlington Comprehensive Development Ordinance, 2014). Further digging reveals that while the low-density district has a minimum lot size of 6,000 square feet, the medium-density district has no minimum lot size.

Instead, it relies on the rear/side setback (5 feet/20 feet, respectively) and frontage (30 feet) requirements to determine the minimum size permitted and implementing a maximum density of 20 units per acre (though this is increasable to 40 units per acre using bonus credits awarded for affordable housing restrictions). Effectively, this allows for the building of tiny houses on lots between 1,100 and 2,200 square feet without any issue (Burlington CDO, 2014). These lots provide sufficient yard for the basic outdoor activities associated with homeownership while being quickly and cheaply maintained.

The allowance and governance of accessory dwelling units is where the City of Burlington sets itself apart from other cities. The table located in Appendix A of the BCDO, which defines permitted uses, clearly states that the same districts permitting
single-family homes permit accessory dwelling units. Section 5.4.5(a) specifies that these accessory dwelling units must be clearly subordinate to the main structure, efficiency or one bedroom apartment style, contain full provisions for independent living (specifically including cooking and bathing facilities), and house no more than two adults. Additionally, these accessory dwelling units do not contribute to the permitted density in any given district, allowing the true density to effectively double the maximum permitted by the district. The only potentially limiting factors are that the accessory dwelling unit cannot contain more than 30% of the total lot floor area and must adhere to all relevant setback and maximum lot coverage requirements.

All accessory dwelling units must be approved by the City of Burlington. Section 5.4.5(c) Specifies that in order to obtain approval, the primary structure must be inhabited by the owners of the property. However, it goes on to state that,

For purposes of this section, owner occupancy means that, after the creation of the accessory unit all individuals listed on the deed for the property must reside in the primary unit or in the accessory unit. If either the primary unit or the accessory unit is no longer owner occupied as a primary residence, the approval for the accessory dwelling unit is void and the kitchen of the accessory dwelling unit must be removed within 90 days with the entirety of the property being occupied as a single unit (BCDO, 2014).
This means that while the owners are required to occupy the primary dwelling to obtain permitting for the construction of an accessory dwelling, they are then able to inhabit the accessory dwelling unit while maintaining owner occupancy status. When taken in conjunction with the lack of restriction on minimum residence and lot sizes, as well as high density allowances, this accessory dwelling unit system easily makes Burlington, Vermont an unusually friendly city to tiny house enthusiasts.
Kalamazoo is the principal city of the Kalamazoo-Portage Metropolitan Statistical Area, population 326,500. The city had a 2013 population of 75,500, down 2.1% since 2000, and a density of 3,061 people per square mile. The average age of residents is 26 years, lower than the Michigan average of 39. Median income is $32,000, lower than the $47,000 Michigan median, and median home value is $91,000 versus $116,000 for the state as a whole. 33% of residents 25 and older hold at least a bachelor’s degree and, presumable, have some degree of debt associated with it (City-Data.com, 2015(3)).

As covered in the review of building codes governing tiny houses and reinforced in the Kalamazoo City Code, Michigan has adopted the 2009 IRC as the state building code (ICC, 2015) governing single and dual family homes. Again, given the restrictions set forth in this code, the smallest home permissible is approximately 135 square feet, making the building code no real barrier to tiny housing. Outlined in a table at the beginning of Chapter 5 of the Kalamazoo Code, Kalamazoo is home to three single-family residential zones, RS-4,-5, and -7. These zones decrease in minimum size from 10,000 to 6,250 square feet. There is no stipulated minimum square footage for residential structures.

Assuming a 250 square foot tiny house, the maximum lot coverage afforded by a tiny house is 4% in the densest district, leaving 96% of the lot, at minimum, as yard.
While some potential owners may view this as a positive, it undeniably would require a large amount of time to maintain. While Kalamazoo has a low median income, the median home price is low enough and zoning laws are restrictive enough that the cost benefit of building a tiny house is likely not worth the lost time in added property maintenance and the density increase offered by tiny housing cannot be taken advantage of. Nonetheless, it is entirely conceivable to build a tiny house within the city limits given there is no minimum coverage requirement (Kalamazoo Code, 2005).
KENNEWICK, WASHINGTON

Kennewick is the largest of the three primary cities in the Tri-Cities Metropolitan Statistical Area (the other being Pasco and Richland), population 253,500. The city had a 2013 population of 76,750, an explosive increase of 40.4% since 2000. City density is 3,347 people per square mile. The average age of residents is 32.5 years, only slightly lower than the Washington average of 37. Median income is $51,000, lower than the $57,500 Washington Only 22.4% of residents 25 and older hold at least a bachelor’s degree and housing affordability is not a major concern in the city (City-Data.com, 2015(4)).

As stated in the ICC Code Adoption Chart (2015), Washington has adopted the 2012 International Residential Code, a fact reflected in the Zoning Ordinance of the City of Kennewick, Washington (2007). Chapter 18 of the ordinance contains a table outlining permitted uses in the four primary residential districts- suburban, low-density, medium-density, and high-density. These four districts all permit, unconditionally, single family residential homes as well as accessory dwelling units. While the minimum lot sizes dictated in this ordinance are not as fluid as those in effect in Burlington, they are quite reasonable, requiring only 10,500 square feet in the lowest density suburban district and 4,000 square feet in both the medium and high-density residential zones. Maximum density in the medium-density zone, set at 13 units per acre, is reflected by this value while the high-density district doubles the
density as it is intended primarily for multi-family housing (Zoning Ordinance of the City of Kennewick, 2007).

Though the City of Kennewick does allow accessory dwelling units, the rules governing them are not as tiny house friendly as the equivalent regulations in Burlington. While the accessory dwelling unit is limited to a slightly larger 40% of the total floor area of the property, section 18.12.020 of the zoning ordinance clearly states a minimum lot area of 10,000 square feet is required for the construction of an accessory dwelling unit, an increase absent from the equivalent Burlington regulations. The net effect of the City of Kennewick regulations on accessory dwelling units actually results in a loss of density overall from the construction of standalone tiny homes as primary dwellings. Beyond these requirements, ADU regulations in Kennewick are roughly equal to those in Burlington, requiring only that the property owner inhabit one of the units for at least six months every calendar year and that the owner cannot rent out that unit the remainder of the year.
PAWTUCKET, RHODE ISLAND

Pawtucket is a part of the City of Providence, RI metropolitan area (MSA population 1,600,000) that is itself a part of the larger Boston Combined Statistical Area (CSA population 8,000,000). The city had a 2013 population of 71,500, down 2.4% since 2000, and a density of 8,147 people per square mile. The average age of residents is 37.6 years, roughly equal to the Rhode Island average of 39 years. Median income is $43,500, much lower than the $54,500 Rhode Island median, and median home value is $169,000 versus $234,500 for the state has a whole. Only 18.5% of residents over 25 have a college degree and housing affordability is not a major concern in the city (City-Data.com, 2015(5)).

Unlike the other case studies, Pawtucket is not the principal city in a metropolitan area but rather serves a subservient role. Additionally, it has the least approachable zoning regulations, splitting the laws governing construction size, lot size, frontage requirements, setback requirements, and permitted uses into widely separated sections of the Code of the City of Pawtucket, RI. This somewhat disjointed approach makes determining the precise number of residential zones and associated minimums difficult to decipher and would likely act as a deterrent to most individuals unfamiliar with reading municipal code.

Digging in to the code, there are four primary residential zones designated for single-family homes. They require minimum lot sizes ranging from 10,000 to 5,000
square feet, numbers fairly normal for cities this size. While not particularly unusual, these lot sizes do not permit a great degree of density. Though density restrictions are not stated outright, the minimum lot size requirements effectively limit density to 8 units per acre for single-family homes. Additionally, the City of Pawtucket does not permit accessory dwelling units (Code of the City of Pawtucket, 1996).

The State of Rhode Island has adopted the 2012 IRC as the state code governing building practices for single and dual family homes. While this code establishes minimum standards for dwelling size, the City of Pawtucket has established its own, much larger minimum sizes. Code §247-91 outlines the unusual structure of the Pawtucket minimum size regulations. Rather than establishing a minimum size per room as the International Code Council has done, though obviously held to that standard given the IRC adoption status of Rhode Island, Pawtucket has adopted a minimum square footage standard per person. The code requires a minimum of 160 square feet for the first person, an additional 100 square feet each for the next two people, an additional 75 square feet for each of the next three, and 50 square feet for each additional person thereafter.

Happily, there exists an admittedly complicated solution to what appears to be a minimum square footage requirement that eliminates truly tiny housing.

...except that any dwelling unit which is occupied by two (2) or more occupants and which contains a room not intended to be used primarily for cooking or
sleeping but which is properly designed and equipped or especially furnished with either an efficiency closet or wall-type kitchen unit or kitchenette or bed furniture properly designed for daytime storage or other daytime uses so as to be usable for a combination of regular living and efficiency cooking or regular living and efficiency sleeping space may contain one hundred (100) square feet less floor space than would otherwise be required (Code of the City of Pawtucket, 1996 (§247-91)).

While it technically applies to any living situation in which a living space is designed to serve multiple purposes, the impact is most profound on housing for two people, allowing them to inhabit the same number of square feet required for one person by the code. Provided the individuals in question have no opposition to the 5,000 square foot minimum lot size, or are willing and able to obtain a variance, it is perfectly permissible to live in a tiny house in the City of Pawtucket.
LEGAL RE COURSE

Should a potential tiny house dweller propose a tiny house in compliance with all relevant city codes and be denied a building permit, the owner does have means of legal recourse. There exists a great deal of precedent determining that the issuance of building permits is an administrative or ministerial function of the planning department (Albemarle County, 2014). The 2006 Pennsylvania Legislator’s Municipal Handbook defines a ministerial act as

…one that a public officer is required to perform under a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority.4

Basically, if all discretionary precursors to an official act have been completed, and all that remains to be done is the act itself, courts may compel a municipal official to perform such action. As such, it cannot be used judicially to determine what does or does not align with the “spirit of the law” nor legislatively to alter the existing municipal law (Pennsylvania General Assembly, 2006, Page 81).

Put plainly, an administrative or ministerial function is a function which the governing body is legally obligated to perform provided the requisite criteria have been met. For example, if a proposed construction is entirely in compliance with local building and zoning codes, a building permit must be issued or the official in question has
executed an administrative function in a legislative manner, an act in clear violation of the law (Pace University, n.d.).

The 501(c)3 1000 Friends of Oregon publishes a handbook for navigating the situations in which a property owner can and should challenge decisions made by governing bodies, including the abuse of administrative power. It diffuses potentially explosive situations by acting under the assumption that no ill will was intended and encouraging petitioners to use every available means of solving the situation before pursing litigation (1000 Friends, 2009). While ostensibly targeted at Oregon residents, much of the advice given is applicable nationwide given the United State’s common body of judicial history via the Supreme Court of the United States.

The strong tradition of individual property rights present in the United States combined with the definition of permit issuance as a ministerial function of government gives a tiny house hopeful strong legal standing in the event he/she has been denied the right to build. When taken in conjunction with the relatively flexible requirements set forth in the International Residential Code, there is no reason for a potential tiny house owner to settle for something larger than they want or to truly act in violation of the law by constructing a wheeled home and moving from yard to yard when they are discovered.
LESSONS LEARNED

As evidenced by the HUD code, the IRC, and a number of local building and zoning codes, there are actually very few legal barriers to the construction and permanent habitation of tiny houses in the United States. Furthermore, the overwhelming majority of illegal tiny houses are only illegal because the builders and owners have failed to heed the relevant codes, many of which are actually quite clear, or consult their local planning departments to initiate an open and friendly dialogue, instead opting to follow the “expert advice” of internet bloggers who have built their own homes, often in clear violation of the same laws they encourage others to ignore. While some municipalities certainly have room for improvement, the construction of tiny houses is largely limited only by social convention, not by law.

In 1952 the American Society of Planning Officials, forerunner to the modern American Planning Association (APA), published Report No. 37, heavily criticizing the establishment of minimum lot, room, and building sizes. In this document, they attacked ordinances requiring more than half an acre of land per family, ridiculed those requiring homes to be no smaller than one thousand square feet, and dismembered those attempting to establish minimum home values. While attempts to create minimum home values were deemed exclusionary and elitist and struck down by courts, minimum lot, room, and home sizes remained.
The earliest of the cited ordinances mandating minimum room counts and sizes, and through them effective minimum home sizes, came from no other city than Portland, Oregon, modern bastion of progressive planning and early pioneer of quasi-legal tiny houses. When debating the legal future of modern tiny housing, it is important to remember that the tiny houses of today are no different than traditional houses of decades and centuries past. Their popularity in modern American culture is not the invention of something new, but rather a return to a more reasonable and sustainable way of life, comparable to that practiced for much of the nation’s history. There is nothing stopping cities across the nation from reorienting their housing in a more modern, sustainable direction.
REFERENCES


