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## Micro-housing: Seattle's Contradictory Approach to Affordable, Sustainable Housing

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# Micro-housing: Seattle’s Contradictory Approach to Affordable, Sustainable Housing

*Nick Quijas<sup>†</sup>*

## TABLE OF CONTENTS

I. INTRODUCTION.....	36
II. THE NEED FOR SUSTAINABLE, AFFORDABLE HOUSING.....	38
A. The Housing Affordability Crisis.....	38
B. Sprawl and Its Unsustainable Effects.....	39
C. Government Commitment to Sustainable & Affordable Housing.....	42
III. MICRO-HOUSING: WHAT IS IT AND WHY BUILD IT?.....	45
A. The Benefits of Micro-housing.....	46
B. The Growth of Micro-housing in Seattle.....	48
IV. MAKING MICRO-HOUSING DEVELOPMENT IMPRACTICABLE IN SEATTLE.....	50
A. The Design Review Process.....	51
B. Making Micro-housing Economically Infeasible.....	52
C. The End of Affordable Micro-housing.....	56
V. MAKING MICRO-HOUSING A VIABLE OPTION AGAIN.....	56
A. The City’s Current Conflict.....	57
B. How to Fix the Micro-housing Problem.....	58
C. Micro-housing as a Microcosm.....	61
VI. CONCLUSION.....	62

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<sup>†</sup> Nick will graduate from Seattle University School of Law in May 2018, and served as the Editor-in-Chief of Seattle Journal of Environmental Law. Nick would like to thank his wife, Kayla, who moved half-way across the country and supported him through three years of law school.

## I. INTRODUCTION

As Seattle expands rapidly and experiences massive economic and population growth, we are confronted by the reality of more people chasing a limited supply of housing than ever before in our history. This, combined with a booming regional housing market, fewer and fewer federal and state funds dedicated to subsidized housing, and widening income inequalities locally, nationally and globally, have created – and will likely sustain – a housing affordability crisis unlike any Seattle has experienced since the Second World War.

...

An adequate, affordable supply of housing is the lifeblood of culturally rich, diverse, and livable urban centers. Without this, people who work here will be forced to move out of the city, with dire impacts not only on individual lives, but also on the region: more traffic congestion, increased environmental degradation, and fragmentation of communities.<sup>1</sup>

The executive summary of the Seattle Housing Affordability and Livability Agenda (“HALA”) Advisory Committee’s 2015 recommendations begin with what can only be described as a dire warning to the mayor and city council of the need for affordable housing within Seattle. The consequences if they fail to heed this warning? People will leave the city, expanding outward in a manner that will degrade the environment and fragment communities.<sup>2</sup> Put more simply, the HALA advisory committee warned that failure to create affordable housing will result in sprawl. Seattle is not the only city where this is a problem either. Cities across the country are, and have been, facing affordability crises for decades, and while suburban sprawl may not have begun as a result of a lack of affordable housing, there is little argument against the proposition that the lack of affordability has exacerbated the problems of sprawl.

People must have a place to live, and if they cannot afford one within a city, they will inevitably look elsewhere. So, communities sprawl outward, consuming land, devastating ecosystems, and creating a manner of living that is reliant on unsustainable forms of transportation. The alternative to this is to create affordable, sustainable housing in dense urban communities that allows people to walk, bike, or take public transit,

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<sup>1</sup> CITY OF SEATTLE HALA ADVISORY, *Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council* 3 (July 13, 2015).

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

rather than allowing for unchecked growth into otherwise undeveloped or rural areas. This was a solution outlined in Washington State's Growth Management Act ("GMA"), which mandates that growth primarily take place within designated urban environments,<sup>3</sup> and Seattle's 2015 Comprehensive Plan, which embraced the GMA and outlined goals and policies for encouraging and facilitating growth.<sup>4</sup>

Micro-apartments are a sustainable and affordable housing option that allow for dense, urban growth, consistent with the mandates of the GMA and the goals of Seattle's 2015 Comprehensive Plan. However, despite the benefits of this housing option, and booming development and interest in it in previous years, development of new micro-housing projects in Seattle has been frustrated through a series of new housing regulations and interpretations of the existing land use laws. These decisions have drawn out timeframes for development, raised costs, and generally made it infeasible to build micro-housing that can be marketed at a reasonable price. Given both the city and state's purported commitments to growth that is both affordable and sustainable, the hindrances currently freezing the development of micro-housing must be overcome. This can be achieved through modifying restrictive zoning regulations, reassessing the need for design review in some new projects, and revising the city's minimum parking requirements in areas with frequent transit service.

This article will discuss the need for affordable and sustainable housing in both Seattle and throughout the country, and will argue that micro-housing can help to achieve that goal if the city would simply allow it to do so. Part II will discuss the various social and environmental factors that underlie the need for affordable and sustainable growth, as well as the purported commitments to such growth at all levels of government. Part III will outline the ways in which micro-housing can be a valuable option for both affordable and sustainable housing, and how its value in these areas led to an explosion in growth of micro-housing in Seattle. Part IV will explain the existing regulations, new ordinances, and rulings that made affordable micro-housing development infeasible in Seattle. Finally, Part V proposes actions that the city council can, and should, take to once again make affordable micro-housing a viable option in Seattle. It will also posit that the same policies that demand a fix to how the city regulates micro-housing also demand that the city free up other types of overregulated, nontraditional housing that could provide

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<sup>3</sup> Wash. Rev. Code §36.70A.110(1)(2017).

<sup>4</sup> CITY OF SEATTLE, *Comprehensive Plan: Managing Growth to Become an Equitable City 2015-2035* (Nov. 2016).

more sustainable and affordable options for development than the existing housing stock.

## II. THE NEED FOR SUSTAINABLE, AFFORDABLE HOUSING

This section will lay out the need for sustainable and affordable housing and some of the obstacles to it. I will first discuss the housing affordability crisis in Seattle, and will then turn to the various impacts of sprawl. Finally, I will provide an overview of how the city, state, and federal governments have all acknowledged, and sometimes mandated, the need for sustainable and affordable housing.

### A. *The Housing Affordability Crisis*

As the HALA committee stated, Seattle is facing a housing affordability crisis the likes of which it has not seen in decades.<sup>5</sup> For a variety of reasons, not the least of which is the explosion of the tech sector within the city, Seattle's population has been booming, with an estimated increase of 80,000 people between 2010 and 2016.<sup>6</sup> Add to this a growing trend of both domestic and international investors buying up property, and the city seems unable to build housing fast enough to keep up with the demand, driving prices higher than many can afford.<sup>7</sup>

A general standard in considering the affordability of rental housing is that a household should spend less than thirty percent of its income on housing.<sup>8</sup> However, in 2013, forty-seven percent of renters in Seattle paid more than thirty-percent toward housing, and the median gross rent as a percentage of household income is over twenty-nine percent.<sup>9</sup> Those looking to own a home in Seattle won't fare any better than renters. A general rule for home ownership to be considered affordable is that the home should cost less than two and a half times the household's annual income.<sup>10</sup> Given that the median 2015 home price in Seattle was \$585,000, the average household looking for affordable homeownership would need an annual income of at least \$234,000.<sup>11</sup> Less than ten per-

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<sup>5</sup> Seattle HALA Advisory Committee, *supra* note 1.

<sup>6</sup> Seattle Office of Planning and Community Engagement, ABOUT SEATTLE-POPULATION, <https://perma.cc/DP3T-FYK7>.

<sup>7</sup> *Chinese pour \$110bn into US real estate, says study*, THE GUARDIAN (May 15, 2016), <https://perma.cc/8ZFQ-AQDZ>; Seattle HALA Advisory Committee, *supra* note 1.

<sup>8</sup> Mike Maciag, *Housing Affordability Burden for U.S. Cities*, GOVERNING: THE STATES AND LOCALITIES (Dec. 19, 2013), <https://perma.cc/MJQ3-SYZM>.

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

<sup>10</sup> *Buying a Home: Buyer's Guide*, CNN MONEY (June 10, 2015), <https://perma.cc/5S9R-NBDZ>.

<sup>11</sup> Cary Moon & Charles Mudede, *Hot Money and Seattle's Growing Housing Crisis: Part One*, THE STRANGER (April 20, 2017), <https://perma.cc/V3E6-YVZ9>.

cent of Seattle residents met that income benchmark in 2015.<sup>12</sup> It is worth noting that this trend is not confined to Seattle, as nationwide the number of people paying more than thirty percent of their income has increased from twenty-nine percent to forty-nine percent since 1960.<sup>13</sup> Further, the number of people paying more than half of their income toward housing more than tripled since 1970.<sup>14</sup>

What does this actually mean for people? There are multiple consequences that can be expected to occur when a city fails to provide affordable housing, and one of the easiest to anticipate can be seen in another crisis Seattle is facing—homelessness. On November 2, 2015, Mayor Ed Murray signed a Proclamation of Civil Emergency arising from the homelessness crisis in Seattle and King County, where an estimated 10,047 people were experiencing homelessness.<sup>15</sup> In that proclamation, Mayor Murray attributed the homelessness crisis, in part, to the increasing rental prices and overall lack of affordability in the region.<sup>16</sup> He pointed out that studies within the city and county showed that every \$100 increase in monthly rent corresponded with a fifteen percent increase in urban homelessness, and that from 2007 to 2015 there had been a twenty percent increase of low-income households paying more than fifty percent of their monthly income toward rent.<sup>17</sup> Given the findings of these studies, and the rising rental and home prices in Seattle, it is probably of little surprise that a one-night count in January 2016 found that the number of unsheltered people in King County increased by nineteen percent between 2015 and 2016.<sup>18</sup>

There is an alternative route that many individuals pursue, sometimes involuntarily, to avoid a lack of affordable housing. They move outward from urban centers in search of cheaper housing, thus contributing to sprawl and its many damaging effects.<sup>19</sup>

### *B. Sprawl and Its Unsustainable Effects*

Sprawl is generally characterized by: (1) low-density residential development; (2) rigid and large-scale separation of homes, shops, and

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<sup>12</sup> *Id.*

<sup>13</sup> WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 7 (Sept. 26, 2016).

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

<sup>15</sup> Edward Murray, MAYORAL PROCLAMATION OF CIVIL EMERGENCY 2 (Nov. 2, 2015).

<sup>16</sup> *Id.* at 1-2.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> Seattle/King County Coalition on Homelessness, *2016 Results*, ONE NIGHT COUNT (January 29, 2016), <https://perma.cc/2NBP-UZZ8> (noting that this is assumed to be an undercount due imprecise nature of the count).

<sup>19</sup> White House, *supra* note 13, at 9 (discussing how displacement from rising market rents often disproportionately affects low-income communities of color).

workplaces; (3) a lack of distinct, thriving activity centers, such as strong downtowns or suburban town centers; and (4) a network of roads marked by very large block size and poor pedestrian access from one place to another.<sup>20</sup> Such low-density sprawl leads to increased consumption of land, as was shown in one study that found that the development of land in the United States increased by nearly 300 percent in the second half of the Twentieth Century, and that each successive decade in that time period saw accelerated development.<sup>21</sup> The effects of this sprawl development are diverse and far-reaching, affecting transportation, energy consumption, health, and ecosystems vital to imperiled species.<sup>22</sup>

One of the more obvious ways that sprawl development affects people is the limitations it places on transportation choices, and the resulting pollution. As housing and services become more spread out and less dense, travel by personal vehicles often becomes the only feasible means to travel anywhere.<sup>23</sup> Busy arterial roads make alternative modes of travel, such as walking or biking, unsafe, and people generally do not have easy opportunities to take transit for their daily routine.<sup>24</sup> In fact, a study by urban planning researchers and public health researchers showed that, in 2000, only two percent of residents in the country's most sprawling metro areas commuted by bus or train.<sup>25</sup> This study only focuses on metro areas, and doesn't fully capture all of the people who live outside of urban and incorporated areas, which was found to be around thirty-seven percent of the U.S. population in 2015.<sup>26</sup>

Given that thirty-seven percent of the population live outside dense urban areas, and even in some of the urban areas only two percent of the population use public transit, it is unsurprising that roughly twenty-six percent of America's green-house gas emissions come from transportation, and the largest sources within that category are passenger cars and light duty trucks (SUV's, pickup trucks, and minivans).<sup>27</sup> Those two sources alone account for half of transportation-related greenhouse gases,

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<sup>20</sup> Reid Ewing, John Kostyack, Don Chen, Bruce Stein & Michelle Ernst, ENDANGERED BY SPRAWL: HOW RUNAWAY DEVELOPMENT THREATENS AMERICA'S WILDLIFE 7 (2005).

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

<sup>22</sup> United States Geological Survey, *What are imperiled species?*, <https://perma.cc/E6Z2-ZACJ> (defining "imperiled species" as "populations of animals and plants that are in decline and may be in danger of extinction").

<sup>23</sup> Barbara McCann & Reid Ewing, MEASURING THE HEALTH EFFECTS OF SPRAWL: A NATIONAL ANALYSIS OF PHYSICAL ACTIVITY, OBESITY, AND CHRONIC DISEASE 1-2 (Sep. 2003)

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> UNITED STATES CENSUS BUREAU, *U.S. Cities are Home to 62.7 Percent of the U.S. Population, but Comprise Just 3.5 Percent of Land Area* (March 4, 2015) <https://perma.cc/6K9A-BXFQ>.

<sup>27</sup> U.S. EPA, SOURCES OF GREENHOUSE GAS EMISSIONS, <https://perma.cc/GW4K-NM6Q>.

or about thirteen percent of total emissions.<sup>28</sup> When looking at this alongside the EPA's findings that greenhouse gases "endanger both the public health and the public welfare of current and future generations,"<sup>29</sup> it seems apparent that that state and local governments should be working to discourage sprawl development that generally necessitates personal vehicle use for daily activities.

Transportation is neither the only area affected by sprawl housing, nor is it the only one with a significant impact in terms of greenhouse gas emissions. Sprawl housing inevitably leads to more detached homes being built, which are generally larger and less energy efficient than their multi-family counterparts. Twelve percent of greenhouse gas emissions in 2014 came from commercial and residential use of fossil fuels, with combustion used for heating and cooking accounting for eighty-one percent of that total.<sup>30</sup> This constitutes an eleven percent increase from 1990,<sup>31</sup> a number that may seem small at first, but is alarming given that it excludes emissions resulting from electrical use, which accounts for thirty percent of all greenhouse gas emissions.<sup>32</sup> That rise becomes even more worrisome when considering that it comes about in spite of advances in efficiency for space heating and cooling, which together constitute forty-nine percent of residential energy use<sup>33</sup> So why are the energy demands and the greenhouse gas emissions from residential settings still so high despite the improvements in efficiency? There are a variety of possible reasons, but among them are the large increase in the number of homes, as well as the large increases in home size.<sup>34</sup> These could both be offset, at least to some degree, by more efficient, and generally smaller, multi-family housing.<sup>35</sup>

Low-density housing also has a significant impact on the ecosystems that must be torn down, paved over, and developed in order to accommodate the communities. A study of thirty-five metro areas, com-

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<sup>28</sup> *Id.*

<sup>29</sup> Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 40 Fed. Reg. §66496 (2009).

<sup>30</sup> U.S. EPA, *supra* note 27.

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

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

<sup>33</sup> Bill McNary & Chip Berry, *How Americans are Using Energy in Homes Today* 1-206 (2012).

<sup>34</sup> *Id.* at 1-211-212.

<sup>35</sup> See U.S. Energy Information Administration, *Apartments in buildings with 5 or more units use less energy than other home types* (June 18, 2013) <https://perma.cc/5AHT-ARSB> (Finding that households in apartment buildings with five or more units use about half as much energy as other types of homes, which is partially explained by smaller living spaces); see also Mark Obrinsky & Caitlin Walter, *Energy Efficiency in Multifamily Rental Homes: An Analysis of Residential Energy Consumption Data* (2016).



bined statistical areas, and the U.S. census data for 2003 found that thirty-one of the thirty-five areas studied were expanding faster than their respective populations.<sup>36</sup> This means that the average population densities were declining and more developed land was required per person.<sup>37</sup> This is made only more concerning by the fact that both national and local studies suggested that the pace of low-density sprawl development was accelerating.<sup>38</sup> The destruction of natural habitats by development is seen as one of the fastest growing threats to wild species, including many imperiled species.<sup>39</sup> Approximately sixty percent of the nation's imperiled species can be found living within metropolitan areas, and thirty-one percent are found exclusively within these areas.<sup>40</sup> Moreover, twenty-nine percent of all known imperiled species are located within thirty-five of the fastest growing metro areas, and thirteen percent of those species are restricted to those areas.<sup>41</sup> Of those imperiled species, 287 live within thirty-seven counties that are projected to lose at least half of their green space between 2000 and 2025.<sup>42</sup> All of this suggests that the future of many imperiled species in the United States will be affected by urban growth patterns, and may not survive if low-density development continues to be the norm.<sup>43</sup>

Finally, one last set of consequences of low-density development which are outside the scope of this article, but are worth mentioning, are the health effects. There is little argument that Americans are "too sedentary and weigh too much," and there is plenty of evidence that diseases associated with inactivity are on the rise.<sup>44</sup> There are many reasons for this, and low-density housing may be one of them, as noted by a collaborative study between urban planning researchers and public health researchers, which found a direct correlation between lower density development and the prevalence of obesity and chronic disease.<sup>45</sup>

### *C. Government Commitment to Sustainable & Affordable Housing*

The state of Washington recognized in 1990 that "uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands,

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<sup>36</sup> Ewing, Kostyack, Chen, Stein & Ernst, *supra* note 20.

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

<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Id.* at 1.

<sup>40</sup> *Id.* at 13.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.* at 13.

<sup>44</sup> McCann & Ewing, *supra* note 23 at 1.

<sup>45</sup> *Id.* at 20-21.

pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.”<sup>46</sup> The legislature sought to combat these threats with the GMA, a piece of legislation that sought, among other things, to reduce low-density development and encourage multimodal transportation options and the availability of affordable housing.<sup>47</sup> This statute set out growth mandates that must be followed by counties that exceed specified population thresholds, and that can be voluntarily adopted by less populous counties.<sup>48</sup> Both the participating counties and the cities within them must adopt comprehensive land use plans that, among other things, outline policies and regulations pertaining to urban growth.<sup>49</sup> The GMA mandates that each city within a participating county “must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth...” and that these urban growth areas “shall permit urban growth” and “a range of urban densities and uses.”<sup>50</sup> It also states that “urban growth should be located first in areas already characterized by urban growth that have adequate existing public facilities and service capacities to serve such development.”<sup>51</sup> In other words, the cities must allow for density and should focus on ensuring that growth occurs in already dense areas, rather than spreading outward.

The City of Seattle’s most recent proposed Comprehensive Plan (“Comprehensive Plan”) adopts and expands upon the GMA’s growth and density mandates. Recognizing that the city’s population is quickly increasing, and demand for housing is increasing in a corresponding manner, the Comprehensive Plan sets an ambitious goal of having 70,000 new housing units by 2035.<sup>52</sup> Along with simply setting out to build more housing, the Comprehensive Plan sets a policy of allowing and promoting “innovative and nontraditional housing design and construction types to accommodate residential growth.”<sup>53</sup> The Comprehensive Plan also acknowledges that Seattle needs a variety of housing types to address high housing costs that are making it difficult for even middle-income households to afford living in the city.<sup>54</sup> To address this issue, it sets a goal of achieving a “mix of housing types that provide opportunity

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<sup>46</sup> Wash. Rev. Code §36.70A.010 (2017).

<sup>47</sup> Wash. Rev. Code §36.70A.020 (2017).

<sup>48</sup> Wash. Rev. Code §36.70A.040 (2017).

<sup>49</sup> *Id.*; See Wash. Rev. Code §36.70A.030(2017) (explaining that urban growth means development that is not rural or for mining).

<sup>50</sup> Wash. Rev. Code §36.70A.110(2) (2017).

<sup>51</sup> Wash. Rev. Code §36.70A.110(3) (2017).

<sup>52</sup> CITY OF SEATTLE, *supra* note 4, at 28.

<sup>53</sup> *Id.* at 99.

<sup>54</sup> *Id.* at 100.

and choice throughout Seattle” for “a variety of household sizes, types, and incomes,” and seeks to achieve this through various policies such as identifying and implementing strategies, including around development standards and design guidelines, to “accommodate an array of housing designs.”<sup>55</sup> Finally, the Comprehensive Plan sets a goal of developing housing that is “healthy, safe, and environmentally sustainable,” by encouraging innovation in design and construction that conserve resources, reduce greenhouse gas emissions, and otherwise limit environmental and health impacts, and by exploring ways to “reduce housing-development costs.”<sup>56</sup>

While Seattle’s municipal code contains some land use provisions that may run counter to these sustainability and affordability goals, and which will be discussed later in this article, there are also a number of provisions and stated purposes that align with the goals and policies outlined in the Comprehensive Plan. In fact, the city’s land use code states, first and foremost, that its purpose is “to protect public health, safety and general welfare through a set of regulations and procedures for the use of land which are consistent with and implement the City’s Comprehensive Plan.”<sup>57</sup> It goes on to state that the provisions are, among other things, designed to “conserve the natural environment” and “achieve an efficient use of land without major disruption of the natural environment...”<sup>58</sup> This purpose is reflected in the City’s environmental policies, such as those that seek to minimize or prevent adverse air quality from air pollution,<sup>59</sup> encourage and facilitate energy conservation,<sup>60</sup> and make it the “City’s policy to minimize or prevent the loss of wildlife habitat and other vegetation” which have substantial value and gives high priority to “preservation and protection of special habitat types.”<sup>61</sup>

Last, but certainly not least, the executive branch of the Federal Government has acknowledged the need for affordable housing, and has taken what steps it can to encourage states and local communities to facilitate such housing. In September of 2016, The White House released a *Housing Development Toolkit* (“Toolkit”) that outlined policy reasons for encouraging affordable growth, described some of the barriers to affordable growth, and proposed approaches to dismantling those barriers and facilitating growth.<sup>62</sup> The Toolkit points out that locally constructed bar-

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 101.

<sup>57</sup> SEATTLE, WASH., CODE §23.02.020(A) (2017).

<sup>58</sup> *Id.*

<sup>59</sup> SEATTLE, WASH., CODE §25.05.675(A) (2017).

<sup>60</sup> SEATTLE, WASH., CODE §25.05.675(E) (2017).

<sup>61</sup> SEATTLE, WASH., CODE §25.05.675(N)(2)(A) (2017).

<sup>62</sup> WHITE HOUSE, *supra* note 13, at 2-3.

riers to new housing development include “laws plainly designed to exclude multifamily or affordable housing,” such as zoning restrictions, off-street parking requirements, and “unnecessarily slow permitting processes,” which accumulate to reduce the ability of “housing markets to respond to growing demand.”<sup>63</sup> The Toolkit goes on to point out that barriers to development in areas where populations are growing are “exacerbating the housing affordability crisis,”<sup>64</sup> and causing workers to seek affordable housing far from job centers, leading to long commutes that “negatively impact the environment through increased gas emissions.”<sup>65</sup> In contrast to this, housing regulations that allow supply to respond “elastically to demand” protect both home values and affordability, optimize transportation system use, reduce commute times, and increase the use of public transit, biking, and walking.<sup>66</sup>

Affordable housing and sustainable housing are, to some degree, interrelated, and both are needed to stem some of the crises affecting both the public and the environment. Continued lack of affordability will lead to continued sprawl outward from urban areas. That sprawl, in turn, will continue to necessitate, or at least encourage, environmentally damaging transportation options and inefficient housing options, as well as the destruction of habitats vital to imperiled species. The need to limit sprawl and encourage affordable urban growth is clear, and has been acknowledged at all levels of the government.<sup>67</sup>

### III. MICRO-HOUSING: WHAT IS IT AND WHY BUILD IT?

This section will take a closer look at micro-housing itself. I will first outline some of the benefits of this housing option, focusing primarily on how micro-housing can be a tool for achieving goals of affordability and sustainability. I will then turn to a discussion of the explosion in micro-housing development in Seattle that began in 2009, including how developers worked within, and sometimes around, the land use regulations to allow for that explosive growth.

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<sup>63</sup> *Id.* at 2.

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.* at 2.

<sup>66</sup> *Id.* at 3.

<sup>67</sup> See generally UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, AGENDA 21, RIO DECLARATION, FOREST PRINCIPLES, United Nations (1992) (recognizing the damaging effects of unsustainable growth patterns around the world and setting international goals for more sustainable development).

*A. The Benefits of Micro-housing*

There is no set definition of what constitutes “micro-housing;” however, for the purposes of this article, it can be thought of as a smaller-than-average housing option that generally comes in one of two options: congregate-style housing, and small efficiency dwelling units (“SEDU”).<sup>68</sup> Congregate-style micro-housing consists of multiple small rooms, generally in the range of 140 to 200 square feet, which have a sleeping space, a private bathroom, and sometimes a small kitchenette, as well as communal space for cooking and other amenities that are shared with the whole building or specific other units.<sup>69</sup> SEDUs, on the other hand, are slightly undersized studio apartments with a complete kitchen that, in Seattle, must be at least 220 square feet.<sup>70</sup>

These micro-apartments lend themselves to dense urban living in an innovative way that even the City of Seattle has said conforms with its Comprehensive Plan. In a 2014 memo to the chair of the Planning Land Use and Sustainability (PLUS) Committee, the Seattle Department of Planning and Development (“DPD”) stated that “micro-housing and congregate residences production is consistent with adopted Comprehensive Plan Goals and Policies.”<sup>71</sup> The memo went on to elaborate that the goals micro-housing conformed with were those “related to land use, climate action, affordable housing, equity and transportation.”<sup>72</sup> As far as affordability, DPD found that micro-housing development provides small units with substantially lower costs than traditional studio apartments, with average rents for micro-apartments at \$660 in comparison with the average \$1,367 rent for traditional studios.<sup>73</sup> This forty-eight percent reduction in cost, in addition to simply being lower and more affordable, would allow more people to qualify for rental assistance programs that often put an affordability cap on how much participants can spend on rent.<sup>74</sup> DPD also found that the micro-housing developments were being located in areas with access to transit, that automobile parking was uncommon for the projects, and that the reported use of transit and biking for commuting were higher in micro-housing developments than city

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<sup>68</sup> David Neiman, *How Seattle Killed Micro-Housing*, SIGHTLINE INSTITUTE (Sept. 6, 2016), <https://perma.cc/QJW7-FBY7>.

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

<sup>70</sup> *Id.*; Seattle Building Code §1208.4.

<sup>71</sup> Memorandum from Mike Podowski, DPD Land Use Policy Manager, Geoff Wentlandt, DPD Senior Planner to Councilmember Mike O’Brien, Chair of Planning Land Use and Sustainability (PLUS) Committee, at 2 (May 15, 2014).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

averages.<sup>75</sup> All of this led DPD to recommend that the city “continue to support micro-housing and congregate residences as housing options in Seattle.”<sup>76</sup>

DPD found that micro-housing lends itself to increased use of transit, which matches studies that have looked at how density itself affects commuting behavior. A 2014 study by Smart Growth America analyzed development in 193 metropolitan areas with at least 200,000 people, and assigned density scores to those areas based on development density, land use mix, activity centering, and street accessibility.<sup>77</sup> The study found that people living in denser areas walk more and take transportation more often.<sup>78</sup> For every ten percent increase in a city’s density score, the researchers found a corresponding 3.9 percent increase in walking and an 11.5 percent increase in transit use.<sup>79</sup> DPD’s study of micro-housing use in Seattle aligned with these findings.

These increases in walking, public transit, and biking lead to less congestion on roads and an overall reduction in greenhouse gas emissions,<sup>80</sup> one of the many goals outlined in Seattle’s environmental policies.<sup>81</sup> Greenhouse gas emissions might be expected to be mitigated even further simply due to the smaller size of micro-apartments. Since forty-nine percent of residential energy use goes toward heating and cooling living space,<sup>82</sup> it can easily be inferred that smaller living spaces in micro-apartments will cut down on that energy use, an inference supported by the finding that increasing home size was offsetting advances in energy efficiency.<sup>83</sup>

Smart Growth’s study also addressed affordability as it relates to density, and its findings further support DPD’s own statements regarding micro-housing. The study did acknowledge that, overall, housing costs in denser areas are higher, with every ten percent increase in density score having a 1.1 percent increase in housing costs relative to income.<sup>84</sup> However, that same ten percent increase in density leads to a 3.5 percent decrease in transportation costs relative to income, creating a net gain in household budgets as density increases.<sup>85</sup> This means that, even accounting for increasing housing prices, if people in dense cities take advantage

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<sup>75</sup> *Id.* at 2-3.

<sup>76</sup> *Id.* at 3.

<sup>77</sup> Reid Ewing & Shima Hamidi, MEASURING SPRAWL 2014 2 (2014).

<sup>78</sup> *Id.* at 10.

<sup>79</sup> *Id.*

<sup>80</sup> WHITE HOUSE, *supra* note 13, at 10.

<sup>81</sup> SEATTLE, WASH. CODE §25.05.675(A) (2017).

<sup>82</sup> McNary & Berry, *supra* note 33.

<sup>83</sup> *Id.* at 1-211.

<sup>84</sup> Ewing & Hamidi, *supra* note 79, at 9.

<sup>85</sup> *Id.* at 10.

of the availability of transit, walking, and biking, it is entirely possible for them to spend less on combined housing and transportation than if they lived in a low-density area. Add to that micro-housing's lower-than-average prices and the resulting availability of housing subsidies, and it is clear that micro-apartments are a valuable option for affordable housing.

### *B. The Growth of Micro-housing in Seattle*

Given the affordability of micro-apartments and their appeal to environmentally minded individuals, those seeking smaller living spaces, or people who enjoy communal living, it is likely not a coincidence that they became so popular in Seattle, a city known for an environmentally conscious population.<sup>86</sup> The first congregate-style "apodment" development opened in 2009,<sup>87</sup> and by 2013 fifty micro-housing developments had been built, some with as many as sixty-four units.<sup>88</sup> Development continued to explode from there, with more than 1,800 micro-apartments built in 2013 alone, constituting almost twenty-five percent of all dwellings built in the city that year.<sup>89</sup>

This development was able to proceed quickly not just due to demand, but also because savvy developers found loopholes in the land use provisions that allowed them to circumvent a burdensome design review process.<sup>90</sup> The design review process itself will be discussed more in-depth later in this article; however, it is of note here to mention that one of the triggers for it can be the number of "dwelling units" in a development.<sup>91</sup> To stay under these thresholds, developers would group the individual apartments, which were arranged around a communal space, into single "dwelling units."<sup>92</sup> However, this itself raised another problem, as the Seattle land use code designated housing with nine or more individuals as "congregate housing" and subjected it to automatic design

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<sup>86</sup> Elizabeth Svoboda, *America's Top 50 Green Cities*, POPULAR SCIENCE (Feb. 8, 2008), <https://perma.cc/VA6P-3DL9>.

<sup>87</sup> Susan Kelleher, *Seattle's micro-housing boom offers an affordable alternative*, THE SEATTLE TIMES (Mar. 7, 2015) <https://perma.cc/5Y8U-J6MT?type=image>.

<sup>88</sup> Lynn Thompson, *Critics of micro-apartments calling for a moratorium*, THE SEATTLE TIMES (April 25, 2013) <http://www.seattletimes.com/seattle-news/critics-of-micro-apartments-calling-for-a-moratorium/>

<sup>89</sup> Neiman, *supra* note 68.

<sup>90</sup> John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 STAN. L. & POL'Y REV 53, 78-79 (2014).

<sup>91</sup> SEATTLE, WASH., CODE §23.41.004 (2017).

<sup>92</sup> Infranca, *supra* note 90.

review.<sup>93</sup> Developers avoided this by simply ensuring that each of their “dwelling units” had eight or fewer apartments.<sup>94</sup>

In addition to taking advantage of the dwelling unit loophole, developers specifically sought land to develop that would not be subject to minimum parking requirements.<sup>95</sup> The Seattle municipal code requires that different types of housing have a minimum number of parking spaces, with multifamily residential developments required to have one space per dwelling unit or one space per every two SEDUs, and one space per every four sleeping rooms for congregate housing.<sup>96</sup> These minimum parking requirements are a problem for dense, affordable development, and sustainability in general for a variety of reasons, many of which are outside the scope of this article. What is relevant, though, is that minimum parking requirements drive up the cost of housing.<sup>97</sup> Parking spots take up space and, particularly in dense urban centers, space is money. The cost of the square footage of a parking space can vary from city to city depending on the cost of land<sup>98</sup> and, in the denser areas of Seattle, onsite parking costs about \$30,000 to \$60,000 per space depending on site conditions and whether the parking is above-ground or below-ground.<sup>99</sup> Developers are not likely to eat up that cost, and instead primarily recoup it by increasing housing prices.<sup>100</sup> On top of this increased development cost is the simple fact that those parking spots take up space that could often otherwise be used for residences, thus reducing the overall stock of housing.<sup>101</sup>

Seattle has measures in place to circumvent minimum parking requirements which developers, including those building micro-housing developments, can utilize to keep costs down on their projects. In multifamily zones the minimum parking requirement can be reduced by fifty percent if the project is located within 1,320 feet of a street with “frequent transit service,”<sup>102</sup> which the city had defined as having specific maximum intervals of service throughout the day and week.<sup>103</sup> In certain

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<sup>93</sup> *Id.* 79.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 80.

<sup>96</sup> SEATTLE, WASH. CODE §23.54.015 Table B(E),(I) (2017).

<sup>97</sup> Michael Lewyn, *What Would Coase Do? (About Parking Regulation)*, 22 *Fordham Envtl. Law Rev.* 89, 98 (Winter 2010).

<sup>98</sup> *Id.* at 97.

<sup>99</sup> Renee Staton, *No “Average” Transit*, THE URBANIST (March 9, 2015), <https://perma.cc/3PT3-H229>.

<sup>100</sup> Lewyn, *supra* note 97 at 97-98.

<sup>101</sup> *Id.* at 92-93.

<sup>102</sup> SEATTLE, WASH. CODE §23.54.020(F)(2)(a) (2017).

<sup>103</sup> SEATTLE, WASH. CODE §23.84A.038 (2017) “Transit service, frequent” (meaning “transit service headways in at least one direction of 15 minutes or less for at least 12 hours per day, 6



city center areas with similar “frequent transit service,” the minimum requirements can be circumvented altogether.<sup>104</sup> These same frequent transit areas are also exempt from state environmental reviews that can further draw out development and drive up costs.<sup>105</sup> These reductions are what developers seized on; they focused on building housing projects in areas of the city with frequent transit service in order to avoid the minimum parking requirements and environmental reviews.<sup>106</sup> In deciding where to build, developers relied on a rule from the DPD for calculating if there was “frequent transit” that allowed for consideration of multiple routes and averaging of headways throughout the day, a decision that would later become an issue.<sup>107</sup>

For the time, though, developers had found a way to greatly decrease costs by avoiding design review with strategic numbering of sleeping rooms and interpretations of what constituted a “dwelling unit,” and by developing in areas that, according to the DPD, would allow them to both reduce the amount of parking they had to provide and avoid a state environmental review. In addition to decreased costs that helped to drive demand, there were decreased timelines for development since they were able to avoid multiple otherwise time-consuming reviews, which allowed for the explosion in supply.<sup>108</sup>

#### IV. MAKING MICRO-HOUSING DEVELOPMENT IMPRACTICABLE IN SEATTLE

This section will cover the reasons why, after the explosion of micro-housing development in Seattle, these projects have become too burdensome and economically infeasible to build. First, I will discuss the restrictive design review process in Seattle’s land use code, which existed prior to the micro-housing boom, but could previously be circumvented by developers. Then, I will walk through the series of decisions made by the King County Superior Court, the Seattle Hearing Examiner, and the Seattle City Council that ensured that developers would be subject to restrictive land use provisions. Finally, I’ll give a brief overview of the effects of these decisions on the development of micro-housing in Seattle.

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days per week, and transit service headways of 30 minutes or less for at least 18 hours every day”).

<sup>104</sup> SEATTLE, WASH. CODE §23.54.015 Table B(M) (2017).

<sup>105</sup> SEATTLE, WASH. CODE §25.05.675(M)(2) (2017).

<sup>106</sup> *Infranca*, *supra* note 90.

<sup>107</sup> CITY OF SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT, DR 8-2011, PARKING REDUCTIONS BASED ON FREQUENT TRANSIT SERVICE (September 26, 2012).

<sup>108</sup> *Infranca*, *supra* note 90, at 79.

### A. The Design Review Process

Design review is a process whose stated objectives are to “Encourage better design and site planning to help ensure that new development enhances the character of the city and *sensitively fits into neighborhoods*, while allowing for diversity and creativity...to meet neighborhood objectives, and to provide for effective mitigations of a proposed project’s impact and influence on a neighborhood.”<sup>109</sup> (emphasis added). The design review process appears throughout the city’s land use policies despite, in many ways, appearing to stand in sharp contrast to many of the city’s stated affordability and sustainability goals. The Comprehensive Plan, for instance, does state a policy to “identify and implement strategies, including development standards and design guidelines.”<sup>110</sup> This policy is also given consideration in the environmental protection policies, which states the city’s policy “that proposed uses in development projects are reasonably compatible with surrounding uses” and are consistent with applicable regulations.<sup>111</sup>

What does design review actually entail though? If proposed developments exceed certain thresholds, generally in size or unit count,<sup>112</sup> they are reviewed by a Design Review Board consisting of city residents familiar with land use provisions and showing “sensitivity in understanding the effect of design decisions on neighborhoods and the development process.”<sup>113</sup> The Design Review Board solicits community input on design concerns, provides guidance to the development team and community, and recommends “specific conditions of approval” consistent with applicable design guidelines.<sup>114</sup> The process also entails public meetings and site visits to identify concerns with the project, the development of potential alternative plans to address those concerns, and a possibility that the developer will have to alter the proposed project where it is found to not meet design guidelines.<sup>115</sup> It is a long and expensive process with multiple steps that involve the entire community in deciding if a project should be built.<sup>116</sup>

Much of the design review process revolves around whether or not the proposed development will meet neighborhood design review guidelines. These guidelines, per the land use code, are specific to areas of the

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<sup>109</sup> SEATTLE, WASH., CODE §23.41.002 (A)-(B) (2017).

<sup>110</sup> CITY OF SEATTLE, *supra* note 4, at 97.

<sup>111</sup> SEATTLE, WASH. CODE §25.05.675(J)(2)(A) (2017).

<sup>112</sup> SEATTLE, WASH., CODE §23.41.004 (2017).

<sup>113</sup> SEATTLE, WASH., CODE §23.41.008(B) (2017).

<sup>114</sup> SEATTLE, WASH., CODE §23.41.008(A) (2017).

<sup>115</sup> SEATTLE, WASH., CODE §23.41.014 (2017).

<sup>116</sup> SEATTLE, WASH., CODE §22.900B.010(B) (2017) (setting the land use review fee at \$280 per hour).

city.<sup>117</sup> The guidelines focus on many aspects, from integrating transit, to ensuring an adequate amount of mature tree growth.<sup>118</sup> However, the primary focus is most often on ensuring that any proposed development is compatible with the neighborhood and that it preserves the existing attributes.<sup>119</sup> The policies that do not seem to make any appearance in the design guidelines are focuses on affordability or sustainability.

### *B. Making Micro-housing Economically Infeasible*

Much of the micro-housing development in Seattle was taking place in the Capitol Hill neighborhood, and in 2014 a group of residents in that neighborhood formed “The Harvard District Neighbors, LLC.” The group brought a lawsuit to challenge the dwelling unit loophole that developers had been utilizing to expedite micro-housing developments, and which was being used by 741 Harvard Avenue Est, LLC for a project near their homes.<sup>120</sup> In August of 2014, they argued before the King County Superior Court that the developer should not be allowed to group multiple apartments into a single dwelling unit to avoid going through design review, and should instead have to count each individual unit separately.<sup>121</sup>

The project in question had undergone a review with the DPD, which had initially found that the apartments each comprised separate “dwelling units,” particularly because they had full living amenities including “features necessary for food preparation, allowing them to function as separate dwelling units.”<sup>122</sup> The developer responded by removing microwaves and refrigerators that had been included in the previous design, but keeping the outlets and space where they’d been, and increasing the size of the communal kitchen.<sup>123</sup> However, DPD still found the apartments to be dwelling units because the communal space was not

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<sup>117</sup> SEATTLE, WASH., CODE §23.41.010(B) (2017).

<sup>118</sup> CITY OF SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT, CAPITOL HILL NEIGHBORHOOD DESIGN GUIDELINES viii (Adopted 2005)(Revised 2013).

<sup>119</sup> *See generally Id.* at iv-viii(stating that development must be “compatible with the existing or intended land use pattern” and focusing on “Preserving, enhancing and connecting Capitol Hill’s existing attributes” to “protect and augment” the neighborhood) ; *see also* CITY OF SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT, PIKE/PINE NEIGHBORHOOD DESIGN GUIDELINES iii (Adopted 2010)(Revised 2013)(stating that “a high neighborhood priority is to preserve the physical and social character of the corridor” and that “Inventive preservation of existing community attributes is the main criterion for all proposed new developments”).

<sup>120</sup> CaseyJaywork, *Meet the Harvard Ave Neighbors mounting a fight against micro-housing*, CAPITOL HILL SEATTLE BLOG (November 11, 2014) <https://perma.cc/R5U7-65YK>.

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

<sup>122</sup> *The Harvard District Neighbors, LLC. V 741 Harvard Avenue Est, LLC. Et Al*, No. 14-2-05319-3 SEA, at 2-3 (Aug. 13, 2014).

<sup>123</sup> *Id.*

large enough for all residents to use it “as a single household.”<sup>124</sup> The developer decreased the number of apartments to allow for a further increase in the communal kitchen space, which was also reorganized, and DPD finally found this to be sufficient for the combined dwelling unit count, as it allowed the group of units to function as a household.<sup>125</sup> The court held DPD’s final decision to be “clearly erroneous” on the grounds that the enlargement of the communal space, such as to be “sufficient to allow” full use of it, did not override DPD’s initial finding that each apartment was a dwelling unit because their designs “lend themselves to use as separate dwelling units.”<sup>126</sup> This determination of whether or not the apartments “lend themselves to use as separate dwelling units” was set as the standard upon which the dwelling unit question would be settled, and the housing project was held to be a forty-nine unit building, rather than an eight-unit building.<sup>127</sup> This meant it was subject to design review and development standards for a forty-nine unit building.<sup>128</sup>

The effect of the case was that developers knew if they attempted to group apartments into single dwelling units, then they would likely face the same outcome as the 741 Harvard Ave project, and would likely have to go through a costly, drawn-out design review.<sup>129</sup> These projects would be open to public comment and recommendations, and would have to follow neighborhood design guidelines governing their aesthetic value and conformity to neighborhood standards. Rather than move forward with congregate-style micro-apartments that would run into this costly review process, some developers switched over to building SEDUs instead.<sup>130</sup>

That was not the end of the city’s focus on the congregate-style micro-housing, as it had caught the public eye. Prior to the *Harvard District Neighbors* case, Mayor Murray had proposed legislation to the City Council that would better define and regulate micro-housing and would ensure it went through the design review process.<sup>131</sup> Mayor Murray also directed DPD to continue to monitor micro-housing, and to develop and propose additional measures that would limit such developments to areas of the city with high-density allowances.<sup>132</sup> Toward this end, DPD pro-

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 3.

<sup>126</sup> *Id.* at 3-4.

<sup>127</sup> *Id.* at 4.

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

<sup>129</sup> Neiman, *supra* note 68.

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

<sup>131</sup> Memorandum from Mike Podowski, DPD Land Use Policy Manager, Geoff Wentlandt, DPD Senior Planner to Councilmember Mike O’Brien, Chair of Planning Land Use and Sustainability (PLUS) Committee, at 1 (May 15, 2014) (on file with City of Seattle).

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

posed that the City Council pass legislation that would: (a) Define what is a “micro-housing unit”; (b) Prohibit micro-housing in single-family zones; (c) Create a design review threshold for micro-housing and congregate housing based on building size, not units; and (d) Create rules regarding shared kitchens and kitchen components in the living space.<sup>133</sup> The City Council did unanimously pass legislation,<sup>134</sup> but rather than follow DPD’s suggestions, the ordinance: (a) Codified the *Harvard District Neighbors* interpretation of how dwelling units are counted; (b) Changed zoning classifications in a way that barred development of micro-housing in areas zoned for neighborhood commercial centers and for low-rise multifamily buildings;<sup>135</sup> and (c) Established a minimum 220 square foot living space.<sup>136</sup>

As if enough had not been done to ensure micro-housing was no longer a viable housing option in Seattle, another judicial decision in December 2014 hampered many developers’ ability to obtain the much-coveted minimum parking reductions that had been previously available. On December 1, 2014, a city hearing examiner heard an appeal from Neighbor’s Encouraging Reasonable Development (“NERD”) in their push to require a developer of a micro-housing project to include more off-street parking in the project.<sup>137</sup> The developer had proposed a seven-story, 102-unit multifamily development with below-grade parking for fifty-nine vehicles.<sup>138</sup> DPD had raised concerns about parking availability and the possibility of consuming on-street spaces, particularly in light of another nearby proposed development that would have no off-street parking.<sup>139</sup> However, relying on DR 11-2012, DPD determined that the project was within distance of frequent transit such as to allow for parking reductions and avoid a review under the State Environmental Protection Act (“SEPA”) for parking mitigation.<sup>140</sup> NERD challenged both this decision as well as other aspects of the development.

The hearing examiner rejected DPD’s decision regarding parking and the rule it developed in DR 11-2012.<sup>141</sup> She held that the language of

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<sup>133</sup> *Id.* at 3.

<sup>134</sup> CITY OF SEATTLE, Ordinance 124608 (October 6, 2014); Josh Feit, *Mayor Murray Threatens to Veto*, SEATTLEMET (September 16, 2014).

<sup>135</sup> Neiman, *supra* note 68 (stating that these were the areas where micro-housing made the most economic sense).

<sup>136</sup> Feit, *supra* note 134.

<sup>137</sup> Sue A. Tanner, *In the Matter of the Appeal of Neighbors Encouraging Reasonable Development*, MUP-14-006 (DR, W); S-14-001 (Dec. 1, 2014)(on file with the Office of the City Clerk for City of Seattle).

<sup>138</sup> *Id.* at 2-3.

<sup>139</sup> *Id.* at 5 (find that DPD had issued a finding of probable “adverse impacts on parking”).

<sup>140</sup> *Id.* at 6.

<sup>141</sup> *Id.* at 14-15.

the “frequent transit” statute was clear and unambiguous such as to overcome any deference for the agency’s decision in creating the DR 11-2012 rule, and that the language of the statute contradicted DPD’s interpretation that allowed for averaging headways to determine frequent transit.<sup>142</sup> She further held that, if the City Council had wanted to allow for averaging of headways, they easily could have written that allowance into the statute.<sup>143</sup> She reversed DPD’s decision and remanded it back to the agency for an analysis of the proposed project’s parking impacts after application of “the Code’s definition of frequent transit service as it is written rather than averaging transit headways.”<sup>144</sup> As would be expected, the hearing examiner’s decision had consequences reaching beyond just the one development in the case. Developers were now on notice that areas they had calculated as having frequent transit no longer met that definition, and they would now have to meet minimum parking requirements for projects where they had planned on having half as much or none at all.<sup>145</sup> The decision caused multifamily housing projects that were already in the permitting process, which had relied on DR 11-2012 in cutting back on off-street parking, to be found to not qualify for the reduced parking projects.<sup>146</sup> Many of those projects were not, and will not, be built.<sup>147</sup>

The impact of this decision may be compounded even further by a more recent decision by the Seattle Hearing Examiner. That decision was *In the Matter of the Appeal of Livable Phinney*, where a developer sought to utilize the frequent transit exception using city bus schedules to show that the proposed project was in an area that met the definition of frequent transit.<sup>148</sup> A group of neighbors challenged the Department of Construction and Inspections’ (“DCI”) approval of the developer’s plans, claiming that, although the city bus schedules showed that the area should meet the frequent transit definition, the busses did not actually have the required headways to qualify for the exception.<sup>149</sup> This group of neighbors presented data it had gathered by actually measuring bus arrivals and departures in order to back its claim.<sup>150</sup> The hearing examiner, finding in favor of the neighbors, stated, “while analysis of bus schedules

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<sup>142</sup> *Id.* at 14.

<sup>143</sup> *Id.* at 15.

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

<sup>145</sup> Staton, *supra* note 99.

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

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

<sup>148</sup> Ryan Vancil, *In the Matter of the Appeal of Livable Phinney*, MUP-17-009 (DR, W); S-17-002, at 12 (July 24, 2017) (on file with the Office of the City Clerk for the City of Seattle).

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

<sup>150</sup> *Id.*

might be sufficient in most circumstances, when presented with reliable data showing that bus service does not meet the definition of frequent transit service...the Department cannot simply ignore such information.”<sup>151</sup> So, going forward, it appears that developers must be able to show that headways meet the frequent transit definition without relying on averages, and through actual measurement of headways in real-time, rather than relying on schedules.<sup>152</sup>

### C. *The End of Affordable Micro-housing*

The combined effect of all of these decisions – eliminating any avoidance of design review for micro-housing, instituting stricter zoning regulations that bar it from some of the areas where it makes the most sense, instituting larger minimum size requirements, and making it harder to avoid parking minimums and SEPA review – has been to make affordable micro-housing economically infeasible in Seattle.<sup>153</sup> In 2015 there were only two applications for congregate-style developments.<sup>154</sup> Even those smaller congregate-style units have increased in cost, when they are built at all, and are around \$954 per month.<sup>155</sup> Most developers have switched over to building SEDU’s, but even those can now have rents as high as \$1,400 per unit.<sup>156</sup> Even including the much more expensive SEDU’s, micro-housing production, if it can all even be called that, has dropped twenty-three percent.<sup>157</sup> All in all, the rising costs to build micro-housing is costing the city an estimated 829 affordable housing units per year in a time where the city faces a housing affordability crisis and has declared a civil emergency due to rates of homelessness.<sup>158</sup>

## V. MAKING MICRO-HOUSING A VIABLE OPTION AGAIN

This section will discuss why micro-housing should once again be made an affordable and economically viable housing option in Seattle, and how this can be accomplished. First, I will cover the ways in which

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<sup>151</sup> *Id.*

<sup>152</sup> *But see* Notice of Land Use Code Text Amendments Related to Neighborhood Parking Reforms (September 14, 2017), <https://perma.cc/X8MD-5TGW> (proposing legislation that would eliminate the frequent transit definition and would grant the Director of DCI authority to put the definition in a rule, which has also been proposed and would eliminate the problem created by the *Phinney Ridge* case).

<sup>153</sup> Neiman, *supra* note 68.

<sup>154</sup> Ethan Phelps-Goodman, *A Year After New Microhousing Rules Went Into Effect, Neither Side Should Be Happy With the Outcome* (February 16, 2016).

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

<sup>156</sup> Neiman, *supra* note 68 (stating that under the current rules, 90 percent of micro-housing is SEDU and 10 percent congregate-style).

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

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

the city's current treatment of micro-housing conflicts with its stated objectives in the Comprehensive Plan and the mandates of the GMA. Then, I will discuss ways in which the city could go about making micro-housing viable again. Finally, I will summarize how the issues revolving around micro-housing exist in regard to other types of nontraditional housing, and will assert that the City Council must also act to allow these housing options.

#### *A. The City's Current Conflict*

There is a clear conflict between the city's current treatment of micro-housing developments and the density mandates of the GMA and objectives laid out in the Comprehensive Plan. The GMA requires the city to allow for densities sufficient to permit projected growth,<sup>159</sup> and Seattle purports to accept that mandate by outlining density policies in the Comprehensive Plan such as to allow for construction of 70,000 units.<sup>160</sup> However, when faced with one of the densest housing options available, the city seems to have done everything in its power short of an outright ban to ensure that micro-housing would not be built. This conflict might be better explained if the city had stated a desire to construct 70,000 traditional housing units; however, it specifically promoted "innovative and nontraditional housing design and construction types," to accommodate growth.<sup>161</sup> Micro-housing appears to fit neatly into this stated policy. Finally, the city claims that it wants to develop housing that is "environmentally sustainable" and that it wants to explore ways to "reduce housing development costs."<sup>162</sup> However, when facing a housing option that, with its small size and ability to achieve high density, appears to be both environmentally sustainable and much more affordable than traditional housing, the city actually found ways to drastically increase, rather than decrease, the development costs. All things considered, there is a clear disconnect between what the City of Seattle says it wants and plans to do, and the actions it is actually taking.

The most prevalent barrier running against the Comprehensive Plan's goals is the design review process. A quick glance at the purpose of the design review process does not give any reason to think it runs against goals of growth, innovation, or affordability. It claims to be in place to "ensure that new development enhances the character of the city...while allowing for diversity and creativity," and to "provide flexibility in the application of development standards" and "improve com-

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<sup>159</sup> Wash. Rev. Code §36.70A.110 (2017).

<sup>160</sup> CITY OF SEATTLE, *supra* note 4, at 96.

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

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



munication and mutual understanding among developers, neighborhoods, and the city...throughout the development process.”<sup>163</sup> However, in practice, the design review process primarily acts to allow the neighbors of a project, and citizens sitting on the review board, to have a say in what is built.<sup>164</sup> These review boards and community meetings focus on preserving aesthetics and the “character” of the neighborhoods with no commitment to or focus on affordability, diversity, or density.<sup>165</sup> The design review process, purely as a concept of reviewing projects for conformity to land use code, may not be in conflict with the GMA and Comprehensive Plan. However, in practice, it inhibits growth and drives up prices in an attempt to ensure that the surrounding neighborhood has a chance to weigh in on what is being built, and this is completely averse to the GMA and the Comprehensive Plan.

### *B. How to Fix the Micro-housing Problem*

Just as there were a number of steps that the city took to make micro-housing infeasible as an affordable housing option, there are a number of steps it could, and should, take to lessen the burden on developers and reduce costs and timelines for projects. It is of particular note that many potential solutions have even been advocated by the White House in its Housing Development Toolkit.<sup>166</sup> The executive summary for that toolkit specifically acknowledges that much of cities’ inability to respond to growth is due to the accumulation of barriers “including zoning...land use regulations, and lengthy development approval processes,” and credits these barriers with exacerbating the housing affordability crisis.<sup>167</sup> It then lays out and encourages actions being taken by some states and local jurisdictions to promote “healthy, responsive, high-opportunity housing markets,” many of which will be incorporated into the suggestions for Seattle which follow.<sup>168</sup>

The design review process is ripe for change to allow for more expedited development with reduced costs. One way in which this can be done is through increasing “by-right development.”<sup>169</sup> By-right development is a policy where, so long as a proposed project fits existing zoning codes and land use regulations pertaining to the type and size of the development, it is allowed to be produced *by-right* without being subjected

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<sup>163</sup> SEATTLE, WASH., CODE §23.41.002(A)-(C) (2017).

<sup>164</sup> SEATTLE, WASH., CODE §23.41.008 (2017).

<sup>165</sup> See generally CITY OF SEATTLE DPD, *supra* note 118 at iv-viii.

<sup>166</sup> WHITE HOUSE, *supra* note 13.

<sup>167</sup> *Id.* at 2,8.

<sup>168</sup> *Id.* at 14.

<sup>169</sup> *Id.* (encouraging by-right development to reduce use of lengthy review processes that inhibit growth).

to extensive review and approval processes.<sup>170</sup> This allows developers to build without being subjected to the types of reviews, like Seattle’s design review, which limit development in a desire to control what is built and address community concerns.<sup>171</sup> The upside of bypassing these reviews is to decrease development time-frames and costs by freeing developers from having to seek waivers and variances.<sup>172</sup> This is particularly beneficial for developers wanting to build otherwise problematic project types like micro-apartments, group homes, and accessory dwelling units which often encounter resistance within community review boards.<sup>173</sup> It is of note that by-right development can be controlled, and does not have to be instituted in an all-or-nothing approach. Cities can, for instance, specifically allow for it in areas with less affordable housing, or where they are seeking to focus growth.<sup>174</sup> The Seattle City Council could pass legislation allowing for such by-right development in the areas designated for the densest urban growth, as this would do much more to help the city reach its goal of 70,000 housing units by 2035 than alternative proposals to give neighborhoods even more say in what is built.<sup>175</sup>

The City Council could also revisit the legislation it passed in Ordinance 124608, specifically those sections that prohibited micro-housing development in urban villages and urban centers and raised minimum living space requirements to 220 square feet. This suggestion was actually made by the HALA advisory committee in its July 2015 final recommendations to Mayor Murray and the City Council.<sup>176</sup> Along with multiple other suggestions for addressing affordability in the city, the advisory committee suggested that the city “remove recently created barriers to the creation of congregate micro-housing.”<sup>177</sup> It asked that the City Council, promptly, and diligently review whether congregate micro-housing should be expanded by modifying the barriers created by Ordinance 124608 to allow for development in designated urban villages and urban centers, instead of restricting development to areas where height

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<sup>170</sup> Andrew Jakabovics, Lynn Ross, Molly Simpson & Michael Spotts, *Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals* 18 (2014).

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

<sup>172</sup> *Id.* at 24.

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

<sup>174</sup> *Id.* (pointing to Massachusetts and Connecticut, which allow affordable housing “by-right” in areas with less than 10 percent of housing designated as affordable).

<sup>175</sup> See Patrick Carter, *Micro-Housing in Seattle: A Case for Community Participation in Novel Land Use Decisions*, 39 *Seattle U.L. Rev.* 103, 1047-49 (Spring 2016) (proposing a system where developers are required to attend dispute resolution with community members to develop alternatives for disputed elements of the proposed project).

<sup>176</sup> HALA ADVISORY COMMITTEE, *supra* note 1 at 24.

<sup>177</sup> *Id.*

limits and land cost make such development unlikely.<sup>178</sup> The city did pass legislation to address affordability that incorporated many of the advisory committee's suggestions; however, it failed to act on the specific suggestions concerning micro-housing.<sup>179</sup> That does not mean that the City Council cannot revisit the issue once again. It still can, and should, follow the advisory committee's suggestion of allowing micro-housing development where it makes the most sense, in dense urban centers where it can be built to scales and at costs that make it economically feasible.

One final area where the city could easily make improvements to reduce costs and allow for increased housing space in general is in the minimum parking requirements. Such improvements could consist of any number of a variety of choices. The city could amend the minimum parking requirements directly to decrease the total number of parking spaces required for multi-family and congregate housing developments. It could also amend the definition of "frequent transit" to make both reductions and avoidance of SEPA reviews more widespread. The required headways could be tweaked to allow for slightly longer delays, or the city could follow DPD's lead in the currently overruled DR 11-2012 and amend the definition to allow for averaging of headways.<sup>180</sup> That amendment would only require the City Council to add the word "average" in one place to have the statute read "*average* transit service headways in at least one direction of 15 minutes or less for at least 12 hours per day."<sup>181</sup> At the very least, the city could simply provide a map for developers that indicates which properties throughout the city qualify for the "frequent transit" exceptions.<sup>182</sup> This would allow developers to be absolutely certain prior to planning a project, whether the project would qualify, and would save the city from having to individually determine if each project qualifies.<sup>183</sup>

If the city wanted to go even further, it could follow the White House's suggestion of eliminating off-street parking requirements altogether.<sup>184</sup> In its toolkit, the White House describes these requirements as "an undue burden on housing development, particularly for transit-

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

<sup>179</sup> Neiman, *supra* note 68.

<sup>180</sup> Staton, *supra* note 99.

<sup>181</sup> Neiman, *supra* note 68; SEATTLE, WASH., CODE §23.84A.038 (2017). Although, a better definition would read "average scheduled" to avoid the problems that arose in *Livable Phinney*, Vancil, *supra* note 148. Legislation proposed by DCI in September, 2017 would implement a Director's Rule that would insert the word "scheduled" to partially fix this issue. DCI *supra* note 152.

<sup>182</sup> Staton, *supra* note 99.

<sup>183</sup> *Id.* (This suggestion is incorporated into the legislation proposed by DCI, *supra* note 152).

<sup>184</sup> WHITE HOUSE, *supra* note 13, at 16.

oriented or affordable housing” and one of the “most noted barriers to housing development.”<sup>185</sup> Minimum parking requirements “waste developable land,” induce residents to drive in cities that should be focusing on convincing residents to use public transit, walk, and bike, and “impede the viability and affordability” of construction.<sup>186</sup> The toolkit actually gives credit to Seattle for taking a step in the right direction with the current available methods of reducing or eliminating parking requirements in frequent transit zones.<sup>187</sup> However, having made improvements does not mean that more cannot be done.

Any one of these steps would likely help to encourage development of micro-housing by reducing costs for developers—reductions which could then be passed on to renters and buyers just as the increased costs currently are.

### C. *Micro-housing as a Microcosm*

Micro-housing is just one of many types of nontraditional housing that are more sustainable than traditional single-family homes, which could, through infill, help make housing more affordable. Other such types of housing include accessory dwelling units (also known as “backyard cottages” or “mother-in-law cabins), duplexes, triplexes, rowhouses, and a number of other low to mid-rise building options that are denser than single-family housing, but can often fit comfortably into traditionally single-family zoned areas of the city.<sup>188</sup> Aside from being more sustainable and affordable, another characteristic that some of these housing options share in common with micro-housing is that they are either expressly prohibited in areas, or have been so heavily regulated that they are economically infeasible.<sup>189</sup>

As with micro-housing, the City of Seattle needs to reexamine how it has regulated these “missing middle” housing options, and should seek to ensure that they can be developed where it makes sense to do so. This might entail pulling back regulations that have made development overly expensive, or potentially even amending the land-use code or zoning maps to allow these housing options to be built where they currently cannot. What the City cannot afford to do is to allow large sections of the City, particularly those in or around designated urban villages and cores,

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

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 16-17.

<sup>188</sup> See generally Missing Middle Housing, <https://perma.cc/3G29-EQU6>.

<sup>189</sup> See Sean Keeley, *Seattle Development and the ‘Missing Middle’ Problem*, CURBED SEATTLE (Sep. 29, 2016), <https://perma.cc/VJE8-FGHM>; see also Dan Bertolet, *Finding the Missing Middle: Rowhouses, Townhouses, and Seattle’s Affordability Plan*, SIGHTLINE INSTITUTE (March 27, 2017), <https://perma.cc/D2V7-AKYM>.

to consist largely of single-family homes.<sup>190</sup> The City must, in keeping with the GMA and Comprehensive Plan, allow for innovative housing options that promote sustainability, and which comply with density mandates.

#### CONCLUSION

While much can and should be done by the city to allow micro-housing to resurface as a viable housing option, so far it has not moved in the right direction. DPD has interpreted planning guidelines in a way that makes it difficult to design units under 300 square feet, which is generally the size at which regular studios begin.<sup>191</sup> When the Seattle Construction Code Advisory Board was asked to review these guidelines, it recommended that DCI's interpretation remain in place.<sup>192</sup>

The simple fact of that matter, though, is that the city has a statutory mandate to allow for dense, urban growth. It must allow for densities sufficient for projected growth,<sup>193</sup> and the city is currently anticipating that the influx of new residents will continue into the foreseeable future.<sup>194</sup> It is some consolation that the city has claimed that allowing for growth and creating affordable housing are both driving policies as it continues to grow and develop; however, rather than simply setting these goals and policies, it needs to act on them. The city is facing an affordability crisis that is exacerbating a homelessness crisis, and which will inevitably lead to more sprawl if not properly addressed.

There are no quick fixes to the type of affordability crisis that the city is facing, and micro-housing certainly is not going to solve issues of affordability and sustainability on its own. However, micro-housing is both an affordable and sustainable housing option, and as such, certainly should not be excluded from development. The city needs to explore ways to make micro-housing, and other more affordable and sustainable housing options,<sup>195</sup> viable again, and some of the potential measures it

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<sup>190</sup> Seattle HALA Advisory Committee, *supra* note 1 at 3 (stating that almost two-thirds of Seattle's urban land is zoned for single family use).

<sup>191</sup> Neiman, *supra* note 68.

<sup>192</sup> David Neiman, *How Seattle Killed Micro-Housing, Again*, SIGHTLINE INSTITUTE (Mar. 20, 2017), <https://perma.cc/3EA6-THSZ> (stating that the Advisory Board's recommendation was based on misconceptions that micro-housing is undignified, unsafe, unhealthy, and that too much of it is being built).

<sup>193</sup> Wash. Rev. Code §36.70A.110 (2017).

<sup>194</sup> CITY OF SEATTLE, *supra* note 4, at 13 (projecting a need to accommodate 70,000 additional housing units for 120,000 more residents by 2035).

<sup>195</sup> See generally CITY OF SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT, *Removing Barriers to Backyard Cottages: DPD Report and Analysis* (October, 2015) (discussing potential routes for allowing for the construction of more Accessory Dwelling Units for efficient use of existing housing stock and infrastructure); Sue A. Tanner, *In the Matter of Queen Anne Community*

could pursue have been outlined here. Past that, the city needs to find a way to be more flexible in its land use code such as to encourage and facilitate growth, and it needs to explore methods for reducing costs and speeding up development timelines for new housing projects. If it focuses on these goals and takes meaningful action, it may yet be able to make headway on the dual crises of affordability and sustainability that are plaguing both Seattle and the nation as a whole.