

Approved January 30, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m. on January 29, 1991 in room 531-N of the Capitol.

All members were present except:

Senators Gaines, Daniels and Steineger

Committee staff present:

Theresa Kiernan, Revisor of Statutes
Mike Heim, Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Michael M. Shultz, Associate Professor of Law, University of Missouri-Kansas City
School of Law

Art Chambers, Kansas American Planning Association
Terry Humphrey, Kansas Manufactured Housing Association
Ron Worley, Zoning Administrator for Sedgwick County

Continued hearing on SB 23 - Concerning planning and zoning.

Michael M. Shultz, Associate Professor of Law, University of Missouri-Kansas City School of Law, testified first with regard to how the bill would affect homes for developmentally disabled persons, noting that changes are needed in the bill in this area in order that it not be a violation of federal law. (Attachment 1). Mike Heim of Legislative Research noted that the summer interim committee had discussed the problems denoted in Mr. Shultz's testimony but had decided not to deal with this but rather "wait and see" what develops. The Chairman explained that this is a separate issue which will involve a lot of time and would have to be taken under consideration at a later time.

Art Chambers, Kansas American Planning Association, gave testimony in support of SB 23. (Attachment 2). He also submitted some technical and minor changes his organization suggests. (Attachment 3).

Terry Humphrey, Kansas Manufactured Housing Association, followed with testimony in support of the bill with suggested amendments (Attachment 4). This testimony had been distributed at last week's meeting along with letters of support from other states and other pertinent information about manufactured housing (Attachment 5). She distributed copies of a further amendment (Attachment 6). Ms. Humphrey added that in answer to previous testimony, she feels manufactured housing is quite attractive and almost indistinguishable from on site construction. Also, the differences in the building codes for manufactured housing and on site construction do not affect the appearance although not all locales are covered by codes. She explained that local governments would have control over manufactured housing and the right to inspect them. She displayed photographs of homes on a street in the Sherwood area in Topeka which demonstrated that not all housing in neighborhoods will be compatible.

Ron Worley, Zoning Administrator for Sedgwick County, testified in support of the bill with some changes. (Attachment 7). The Chairman asked Mr. Worley if he would support the amendments offered by Ms. Humphrey. Mr. Worley had not seen the amendments but would look at them.

There being no further time, the Chairman continued the hearing on SB 23 until Tuesday, February 5, for those who had already indicated a desire to testify before the committee.

The minutes of January 24 were approved.

The meeting was adjourned at 10:00 a.m.

Date: 1-29-91

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Gordon Bower	LAWRENCE ASSN NEIGHBORHOOD	HOODS LAWRENCE KS
Nancy Shontz	League of Women Voters Lawrence-Dodge Co	Lawrence, KS
Tom Phillips	City of Lawrence	12350 W 87th St. ⁶⁶²¹⁹ LAWRENCE, KS
Joyce Wolf	Ks Audubon Council	LAWRENCE
JUDEE JOHNSON	INDIAN HILLS NEIGHBORHOOD ASSN.	806 W. 29TH ST. LAWRENCE, KS 66046
Art Chambers	Ks. PLANNING Assoc.	Olathe KS
RON R. WORLEY	SENGWICK CO. KS	1248 S. Seneca Wichita, KS 67213
Willie Martin	Sedgwick Co.	Wichita
PAUL M. KLOTZ	ASSN. OF CMHC'S OF KS	TOPEKA
Lila Paslay	Assoc for Retarded Citizens	Topeka
GERRY RAY	Johnson Co. Commission	Olathe
Anna Smith	Ks. Assoc. of Counties	Topeka
JANET STUBBS	HBA of Ks.	Topeka
Patricia Banks	KANSAS PLANNING ASSOC.	LAWRENCE
Laura Doole	City of Topeka	Topeka
Merilee Larson	Sheltered Living Inc	Topeka
GINA McDONALD	Ks Assoc. Centers for Independent Living	3258 S. TOPEKA Blvd TOPEKA 66611
Wayland Anderson	KSBA / OWR	Topeka
Steve Adams	Wildlife & Parks	Topeka
Jerry Halton	Ks. Wildlife Fed.	Topeka
George A. Austin	Dir. of Water Resources KSBA	Topeka
John A. Henderson	DWR: KSBA	Topeka

TESTIMONY BEFORE THE SENATE LOCAL GOVERNMENT COMMITTEE

January 29, 1991

Michael M. Shultz
Associate Professor of Law
University of Missouri-Kansas City School of Law
Director, Urban Legal Studies Program

Introduction

My name is Michael Shultz. I am a resident of Prairie Village, Kansas, and a law professor at the University of Missouri-Kansas City School of Law, where I teach local government law, land use law, housing law and civil rights litigation. I am here to address the need to amend K.S.A. 12-736 as part of the comprehensive recodification of the state's planning and zoning legislation. K.S.A. 12-736 deals with municipal zoning of group homes for developmentally disabled persons. It is my belief, and the belief of the Kansas Attorney General, that K.S.A. 12-736 is invalid in light of Congress's adoption of the Fair Housing Amendments Act of 1988. Already, one city in Kansas has come under federal scrutiny for interfering with the establishment of a group home.

This morning, I would like to briefly review K.S.A. 12-736, explain the Fair Housing Amendments Act of 1988, and the federal court cases which have applied the Act, and suggest revisions to K.S.A. 12-736. My conclusions are based on my general background as a land use professor and lawyer, my review of the legislative history of the federal law, and my reading of all of the cases decided under the law, as well as the complaints filed by the Department of Justice and the settlement agreements entered into by local governments that have been charged with violating federal law because of their interference with the establishment of group homes for handicapped persons.

Kansas State Law

The Kansas group home siting statute, Kan. Stat. Ann. §12-736, provides that local governments must permit group homes for the developmentally disabled in all zoning districts in which single family homes are permitted. The government, however, may require the group home to obtain a conditional or special use permit and also may subject the home to all land use regulations that apply to single family homes. In addition, group homes in zones devoted exclusively to single family housing may not locate closer than 1000 feet from one another unless the government permits a closer location.

The law defines a group home as "any dwelling occupied by not more than 10 persons, including eight or fewer physically

handicapped, mentally ill, mentally retarded or other developmentally disabled persons who need not be related by blood or marriage and not to exceed two staff residents...which dwelling is licensed by a regulatory agency of the state." Under the state law, a person is developmentally disabled only if the disability manifests itself before the person turns 22 years of age. In addition, the following persons are ineligible for placement in a group home:

1. those assigned to community corrections program or a diversion program;
2. those on parole from a correctional institution or on probation for a felony offense; and
3. those in a state mental institution following a verdict of not guilty by reason of insanity in a criminal trial.

No person may be placed in a group home unless the home is licensed as a group home by the department of social and rehabilitation services. The law expressly provides that any local land use regulation that is contrary to the state law is invalid.

The law is a bit confusing because it really has two objectives. First, it seeks to invalidate local land use regulations that would limit the siting of group homes in neighborhoods with single family homes. This is consistent with the national movement to facilitate the siting of group homes. Second, however, the law carefully limits the persons who are entitled to be placed in a group home. These limitations are a matter of state law and it would not appear that local governments could permit group homes for persons who are not eligible for placement under the state law. Nonetheless, I have not proposed changes in the portion of K.S.A. 12-736 dealing with persons who are entitled to be placed in group homes.

Federal Law

The Fair Housing Amendments Act of 1988 (the FHAA) addresses the problem of housing discrimination against handicapped persons generally.¹ The law applies both to those who sell or rent property and to local governments that regulate the availability of housing under their land use regulations. Specifically, the law makes it illegal to "otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap" of that buyer or renter, any person intending to reside in the dwelling, or any

¹. The FHAA also prohibited housing discrimination based on familial status.

other person associated with the buyer or renter.² In addition, the law prohibits any person from interfering with any person in the exercise of rights secured under Title VIII.³

The FHAA defines "handicap" as a "physical or mental impairment which substantially limits one or more of such person's major life activities."⁴ The legislative history of the FHAA indicates that Congress intended that the term "handicap" should be given a broad meaning. It will apply to those afflicted with HIV as well as to drug addicts in rehabilitation programs. The law does not protect any person who is a current illegal user of drugs, nor any person who has been convicted of manufacturing or distributing various illegal drugs.⁵

The FHAA provides that the United States Department of Justice is to investigate and, when appropriate, file a civil action against local governments that discriminate against the handicapped. In addition, the victims of the discrimination may file their own lawsuit in federal court. In a private lawsuit, the government may be required to pay compensatory and punitive damages to the plaintiffs in addition to attorneys' fees incurred by the plaintiffs. In a suit brought by the Justice Department, the government may also have to pay substantial fines. In one recent case, the City of Chicago Heights, Illinois, settled a lawsuit brought by Justice only after agreeing to pay \$45,000 in damages. In addition to these civil sanctions, a court may order a government to permit a group home that sought to be established.

What's a Local Government To Do?

Local governments in Kansas have the difficult task of deciding whether to comply with a state law which may be in conflict with the FHAA. The Kansas Attorney General has issued an opinion that portions of the state group home siting law are in conflict with the FHAA.⁶ In contrast, the League of Kansas Municipalities has taken the position that the state law may be more consistent with the FHAA than the attorney general believes. Unfortunately, there has been only a handful of cases interpreting the impact of the FHAA and local governments will have to make some difficult choices. Based on the legislative history of the FHAA, the federal court cases, the complaints filed by the Department of Justice, and the settlement agreements entered into by local

². 42 U.S.C. §3604(f)(1).

³. Id. §3617.

⁴. Id. §3602(h)(1).

⁵. The federal law is far more inclusive than the state law in terms of those who would qualify as handicapped.

⁶. A.G. Op. No. 89-99 (August 11, 1989).

governments, I have reached the following conclusions:

1. The provision in the Kansas state law that prohibits group homes in single family neighborhoods from locating closer than 1000 feet from one another without permission of the governing body is unlawful. Group homes for the handicapped have the right to locate in the single family neighborhood in the same manner as any other single family home. There is one federal court case that has upheld these so-called density restrictions on group homes,⁷ but the judge admitted that he was not sure of his own opinion. To the contrary, the Kansas Attorney General has stated that these density restrictions are illegal.

2. The provision in the Kansas state law that local governments may regulate group homes by conditional or special use permits is questionable. It is best to assume that if single family homes do not need to acquire special or conditional use permits, neither do group homes. Again, the state's Attorney General believes that conditional or special use permits are illegal if they single out group homes for the handicapped. The group home still would be subject to all zoning restrictions, including setback, lot coverage and height restrictions. Conditional or special use permit processes are dangerous because they may permit a denial of a group home not because of legitimate objections to a group home but because of objections to the residents of the group home.⁸ Under the federal law, the government may still impose limits on occupancy of any dwelling, but the limits must be reasonable and not applied against group homes in a discriminatory way. The author would recommend amending zoning ordinances to permit group homes for the handicapped, as that term is defined under federal law, in all zones where residential uses, including single family homes, are permitted.

3. Most commentators believe that it is still lawful to license group homes to ensure that the handicapped are receiving adequate care. Many states, including Kansas, have group home licensing laws. Local governments may be able to license group homes under their home rule powers, but any local licensing law should be carefully drafted so that it cannot be used as a means to deny group homes based on the intended residents. Rather, the

⁷. *Familystyle of St. Paul, Inc. v. City of St. Paul*, 728 F. Supp. 1396 (D. Minn. 1990), *aff'd*, 1991 U.S. App. LEXIS 172 (8th Cir. 1991). In contrast, the Maryland Attorney General has opined that that state's density restrictions on group homes are illegal. Md. A.G. Op. No. 89-026 (August 7, 1989).

⁸. See, for example, *Baxter v. City of Belleville*, 720 F. Supp. 720 (S. D. Ill. 1989), where the court ordered the government to issue a special use permit to a group home for AIDS victims.

local law should ensure that the operators of the home are qualified to provide care to the group home residents.

4. Local governments should be able to impose health and safety regulations on group homes so long as the regulations are applied equally to group homes for handicapped and nonhandicapped persons. For example, it should be lawful to require multiple fire exits in all group homes regardless of residents. The regulation does not discriminate on its face, and even if it has the effect of discriminating against the handicapped, it has a substantial health and safety justification.

5. Local governments also can still impose reasonable occupancy limitations on dwellings. Although the federal law does not specifically address the issue of group homes and, therefore, does not deal with questions such as the size of permissible group homes, it does expressly permit reasonable restrictions on occupancy.⁹

Proposed Revisions to K.S.A. 12-736 (See Appendix A)

I suggest that K.S.A. 12-736 be amended to come into compliance with federal law. Presently, the state law conveys a false sense of security to local governments which believe that they are acting lawfully if they comply with the law. In addition, the state law has not been nearly as successful as intended in assisting group homes in locating in traditional single family neighborhoods. Based on discussions with group home sponsors, and my own study of the regulation of group homes in Johnson County, I am convinced that local governments are abusing the discretion given to them under K.S.A. 12-736. I suggest the following changes:

1. The state law should adopt the use of the phrase "handicapped persons" and the definition of "handicap" found in the FHAA. This makes the state and federal laws consistent with one another.

2. The state law should not allow local governments to impose conditional use permits on group homes for handicapped persons. Instead, group homes should be treated in the same manner as any other single family dwelling. The conditional use permit process is nothing more than an invitation to the local government to violate the federal law.

3. The state law should not require that group homes be separated any particular distance from one another. Under the Kansas statute, this is a clear violation of federal law. The

⁹. 42 U.S.C. §3607. The restrictions may not operate to discriminate against the handicapped and must be "reasonable".

provision violates the intent of the FHAA that all persons, including the handicapped, be given a choice as to the neighborhoods in which they want to live. Imagine telling a black person that he cannot live in a neighborhood for his own good because we do not want it to become a minority ghetto!

4. Finally, the state law should be amended to prohibit restrictive covenants that would interfere with the siting of group homes. The state should not allow individuals to violate the state policy in promoting the deinstitutionalization of handicapped persons.

Conclusion

It is important that K.S.A. 12-736 be brought into compliance with federal law. The law, as it now stands, sends out a false message to local governments about what they may lawfully do when regulating group homes for handicapped persons. The revisions that I have proposed should bring the state into substantial compliance with federal law.

Thank you for the opportunity to present my remarks to the Committee.

*delete darkened
add italicized*

APPENDIX A

PROPOSED REVISION OF

K.S.A. 12-736
GROUP HOMES

12-736 (a) It is hereby declared to be the policy of the state of Kansas that physically handicapped, mentally ill, mentally retarded or other **developmentally disabled** handicapped persons shall not be excluded from the benefits of single family residential surroundings by any municipal zoning ordinance, resolution or regulation. **It is also declared to be the policy of the state of Kansas to encourage the dispersion of group homes within areas zoned exclusively for single family residences.**

(b) For the purpose of this act:

(1) "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer physically handicapped, mentally ill, mentally retarded or other **developmentally disabled** handicapped persons who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the physically handicapped, mentally ill, mentally retarded or other **developmentally disabled** handicapped residents of the home, which dwelling is licensed by a regulatory agency of this state;

(2) "municipality" means any township, city or county located in Kansas;

(3) **"developmental disability" means a severe chronic disability of a person, which**

(A) **is attributable to a mental or physical impairment or combination of mental and physical impairments;**

(B) **is manifested before the person attains age 22;**

(C) **is likely to continue indefinitely;**

(D) **results in substantial function limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living and (vii) economic self-sufficiency; and**

(E) **reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated** "handicap" means, with respect to a person--

(1) a physical or mental impairment which substan-

tially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)).

(4) "licensed provider" means a person or agency who provides mental health services and is licensed by:

(A) The department of social and rehabilitation services pursuant to K.S.A. 75-3307b or 65-425 et seq., and amendments thereto; or

(B) the behavioral sciences regulatory board pursuant to K.S.A. 75-5346 et seq. or 74-5301 et seq., and amendments thereto; or

(C) the state board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.

(c)

(1) No mentally ill person shall be eligible for placement in a group home unless such person has been evaluated by a licensed provider and such provider determines that the mentally ill person is not dangerous to others and is suitable for group-home placement. A group home shall not be a licensed provider for the purposes of evaluating or approving for placement a mentally ill person in a group home.

(2) No person shall be eligible for placement in a group home if such person is (A) Assigned to a community correction program or a diversion program; (B) on parole from a correctional institution or on probation for a felony offense; or (C) in a state mental institution following a finding of not guilty by reason of insanity pursuant to K.S.A. 22-3428, and amendments thereto.

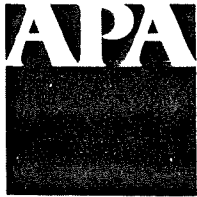
(d) No person shall be placed in a group home under this act unless such dwelling is licensed as a group home by the department of social and rehabilitation services.

(e) **Except as hereinafter provided, no** No municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area or which subjects group homes to regulations not applicable to other single family dwellings in the same zone or area **in violation of this act** is invalid. Notwithstanding the provisions of this act, group homes **may be required to procure a special or conditional use group home permit and** shall be subject to all **other** regulations applicable to other property and buildings

located in the zone or area that are imposed by any municipality through its zoning ordinance, resolution or regulation, building regulatory codes, subdivision regulations, special or conditional use group home permit regulations or other nondiscriminatory regulations. For the purpose of preserving the single family residential character of the area, the governing body of the municipality may require the physical structure of the group home to be generally compatible with other physical structures in the surrounding neighborhood. In order to avoid excessive concentration of group homes, from and after the effective date of this act, no such group home may be located within 1,000 feet of another such group home in areas zoned exclusively for single family dwellings, unless the governing body of the municipality approves a closer location by a majority vote thereof. A special or conditional use group home permit shall be issued upon a determination by the governing body of the municipality that the establishment of the group home is in compliance with the provisions of this section.

(f) No person or entity shall contract or enter into a contract, restrictive covenant, equitable servitude, or such similar restriction, which would restrict group homes or their location in a manner inconsistent with the provisions of subsection (e) of this act.

HISTORY: L. 1988, ch. 142, §1; L. 1989, ch 58, §1; July 1.



KANSAS CHAPTER
AMERICAN PLANNING ASSOCIATION

January 23, 1991

Don Montgomery
Chairman
Senate Local Government Committee
128-S Statehouse
Topeka, KS 66612

RE: Testimony by Art Chambers, President KAPA, regarding Senate
Bill No. 23.

Dear Chairman Montgomery and Members of the Committee:

My name is Art Chambers and I am testifying today as the president of the Kansas Chapter of the American Planning Association (KAPA). For the last six years I have been the Director of Planning for the City of Olathe. Prior to that I was a member of the Wichita-Sedgewick County Metropolitan Area Planning Department. In addition, I have been active in KAPA for the last thirteen years, including being chairman of the chapter's legislative committee.

Today I would like to provide you with background information regarding: 1) the Kansas Chapter of the American Planning Association; 2) why new planning legislation is needed; 3) how this legislation (SB No. 23) was created; and 4) why we are interested in this particular piece of legislation.

It is not my intent to go into great detail about the bill, because the legislative staff has already done an excellent job of explaining Senate Bill No. 23. In addition, there will be other testimony about some of the specific items in the bill. My main purposes are to provide information and to explain our support for the bill.

1. Kansas Chapter of the American Planning Association (KAPA)

The Kansas Chapter of the American Planning Association currently has over 270 members. Approximately 100 members are lay persons involved in planning, either as a planning commissioner or as an elected official. About thirty are students enrolled in the planning programs at KSU and KU. The remaining 140 members are professional planners that are employed by cities, counties, regional agencies, the state, consulting firms and the universities. The members of KAPA reside in all areas of the state and represent counties, rural areas, small towns, and large cities.

Senate L. G.

1-29-91

Attachment 2

2. Why new enabling legislation is needed.

Kansas enabling legislation for comprehensive planning, zoning and subdivision regulations was first adopted in 1921. Major revisions were made in the 1940s and the 1960s. Since 1970, there has been very little substantive change made to the statutes, but there has been a tremendous change in our society and how people live, work and play. The statutes have simply not kept up with the times.

Although there have been few substantive changes made to the enabling legislation since 1970, there have been some amendments. Those amendments over the last twenty years have resulted in inconsistencies, internal conflicts, unneeded complexity, and procedural differences between cities, counties, and regional/metropolitan commissions. In other situations, there are gaps in the law that have been filled by administrative interpretations or by court decisions.

One way to reduce the complexity of planning legislation is through consolidation and recodification. For example, Senate Bill No. 23 would repeal over 70 statutory sections and replace them with only 28 sections. Three of the four general separate statutes enabling counties to zone would be combined. The planned unit development provision of the act is also an area where the volume of law is much greater than is necessary to get the job done. The existing statute contains nine sections and occupies seven pages of Kansas Statutes Annotated. The proposed legislation will reduce it to one notation.

Clear, concise planning enabling legislation is important to the cities in Kansas. A study conducted last summer by Vern Deines at Kansas State University and the League of Kansas Municipalities showed that over half of the counties have a planning board and over 75% of the cities with a population of 1,000 or more have a planning commission. A copy of the results of the survey is attached for your information.

New legislation is needed to provide a consolidated and simplified set of statutes dealing with planning, zoning and subdivision. Enabling legislation that provides a uniform statute for cities and counties dealing with general guidelines and grants of authority would allow cities and counties to better address their future needs in terms of planning for growth and development. This would be advanced by incorporating new planning techniques that have been developed over the last twenty years. Hopefully it will also reduce the confusion and complexity associated with the development process.

3. How this legislation was created.

In 1980 the KAPA formed a legislative committee for the purpose of reviewing Kansas planning laws in detail and recommending a comprehensive update to the Kansas Legislature. The initial committee included planners from cities, counties, regional agencies, consulting firms and universities. In order to broaden the review of the statutes, the committee was expanded to include staff from the Kansas League of Municipalities, the Kansas Home Builders Association, the Kansas Manufactured Housing Institute and attorneys that are involved in planning. Later, representatives from other cities, counties, the Kansas Association of County Planning and Zoning Officials, and the Kansas Association of Counties were invited to participate.

A current membership roster of the KAPA Special Enabling Legislation Study Committee is attached for your information.

From the very beginning, the KAPA believed that the review of the current statutes and the drafting of new legislation should involve as many people and organizations as possible. As a result, the drafting phase took over eight years, but that allowed for a considerable amount of debate, discussion and compromise. In late 1988 and early 1989, the KAPA prepared a summary of proposed changes. That summary had a wide distribution to planners, and other people interested in planning legislation.

Then towards the end of the 1989 legislative session, HB 2551 was introduced. That bill represented the first draft of new planning legislation. However, no hearings were held on the bill.

Prior to the 1990 legislative session, a new bill (HB 3058) was drafted and introduced. Hearings were held in March, 1990 by the House Local Government Committee. A number of people testified in favor of the bill besides the KAPA. Those in support included the Kansas Home Builders Association, the Kansas Manufactured Housing Institute, the Kansas Association of County Planning and Zoning Officials: Michael Howe, Lenexa, City Attorney; Barry Hokanson, Director of Planning for Johnson County; and C. Bickley Foster, Planning Consultant.

After the hearings, the House Local Government Committee determined that additional study was needed before it could make a recommendation to the full House. As a result, a special interim Committee on Local Government was created by the Legislative Coordinating Council in the summer of 1991.

This committee, comprised of Representatives and Senators, was chaired by Representative Nancy Brown. That committee spent nearly six days hearing testimony and discussing this issue.

I would like to take this opportunity to go on record and express our appreciation to the interim committee for devoting so much time to this issue. The fact that they spent six days on this issue shows that it is an important issue.

During the six days, many people testified on the proposed legislation. I will not go into detail about the testimony because it is discussed in the Committee's Report on "Proposal No. 22-Planning and Zoning Codification".

The second product of the interim committee was a recommended bill that would basically recodify the enabling legislation for planning. A summary of that bill was included in the committee's report. That recommended bill was then pre-introduced as Senate Bill No. 23.

4. Why KAPA is interested in new planning enabling legislation.

As indicated above, the current statutes are antiquated, confusing, inconsistent and are unnecessarily lengthy. Given today's society and the need for better methods for addressing the future planning enabling legislation should be as simple and easily understood as possible. We feel that Senate Bill No. 23 will represent a major step in that direction.

During the past few months there have been some suggestions about a few possible changes to the proposed enabling legislation. Most of the changes are minor in nature and could be characterized as "technical" or "clean up" type changes. Other changes could be characterized as clarification, for example to include language to: allow cities and counties to enter into interlocal agreements for the purposes of administering subdivision regulations or; clarify that streets and public ways should not be counted when determining the percent of protest for a rezoning case. Another type of change would be to include an option for the City Council to adopt the Comprehensive Plan.

I should point out that there is still one issue without universal consensus. That issue is manufactured housing. I am sure you will hear testimony on this issue today and tomorrow.


January 23, 1991

Page 5

In conclusion, I would like to note that during the review of this issue there has been a considerable amount of discussion because it addresses many, many diverse areas (i.e. cities, counties, zoning, subdivisions, floodplains, etc). Thus, unlike a single issue bill there may be a specific section that a particular city, county, organization or association does not whole heartily support. However, the proposed bill is much better than current legislation. In this instance adoption of the proposed new enabling legislation will provide more benefit than trying to address and resolve every minor issue. We would strongly encourage the committee to act favorably on Senate Bill No. 23.

I would like to thank this committee for their cooperation. If any member has questions on this or any other matter, please call me or any member of KAPA.

Sincerely,


Arthur D. Chambers, AICP
KAPA President

ADC:sj

Attachment

**KAPA SPECIAL ENABLING LEGISLATION
STUDY COMMITTEE**

PRICE BANKS, Director of Planning
Lawrence - Douglas County
Planning Department
City Hall, P. O. Box 708
Lawrence, KS 66044
B: 913/841-7722
H: 913/841-1614

RON WILLIAMSON, AICP
Bucher, Willis, Ratliff
7920 Ward Parkway, Ste 100
Kansas City, MO 64114-2021
B: 816/363-2696
H: 913/649-2087

VERNON DEINES
Regl. & Community Planning
Kansas State University
Seaton Hall 302
Manhattan, KS 66506
B: 913/532-5958

GERRY RAYE
Johnson County Courthouse
100 E. Park, Suite 205
Olathe, KS 66061
B: 913/782-5000

JIM KAUP, Attorney
League of Kansas Municipalities
112 West 7th Street
Topeka, KS 66604
B: 913/354-9565
H: 913/233-7580

NEIL SHORTLIDGE, Attorney
1000 Plaza West
4600 Madison
Kansas City, MO 64112
B: 816/561-4414
H: 913/362-3438

JANET STUBBS, Executive Director
HBA of Kansas
8th & Jackson, Suite 803
Topeka, KS 66612
B: 913/233-9853
H: 913/266-4068

TERRY HUMPHREY
Kansas Manufactured Housing
112 SW 6th Street, STE 204
Topeka, KS 66603
B: 913/357-5256
H: 913/564-9324

ART CHAMBERS, Director of Planning
City of Olathe
P.O. Box 768
Olathe, KS 66061
B: 913/791-6250
H: 913/764-5286

ROY DUDARK
Plan. & Comm. Development
City-County Building
300 W. Ash - P.O. Box 736
Salina, KS 67402-0736
B: 913/827-8781

C. BICKLEY FOSTER
Foster & Associates
2818 N. Edward Avenue
Wichita, KS 67204
B: 316/838-7563

M.S. MITCHELL
Legislative Chairman
HBA of Kansas
1215 Forest
Wichita, KS 67203
B: 316/265-9812

ANN SMITH
Kansas Assoc. of Counties
212 SW 7th Street
Topeka, KS 66603
B: 913/233-2271

MARVIN KRAUT, Planner
Wichita-Sedgwick County Planning Office
City Hall
455 N. Main
Wichita, KS 67202
B: 316/268-4425

DAVE YEAROUT
12336 Summertree Circle
Olathe, KS 66062
H: 913/764-4838
B: 816/333-4375

JERRY R. DEMO
Director of Planning & Zoning
Butler County Courthouse
El Dorado, KS 67042

JIM SCHLEGEL, Director
Topeka-Shawnee County
Metro Planning Office
820 SE Quincy
TOPEKA, KS 66612
B: 913/295-3728

Status Report on AICP Continuing Education Grant
 SURVEY OF KANSAS CITIES AND COUNTIES
 ON PLANNING ACTIVITIES AND TRAINING NEEDS

A survey of the 105 Kansas counties was first conducted in 1984 and updated in 1990 to determine the status of planning activities and training needs for local officials and citizen leaders. The preliminary partial results of the 1990 update are listed:

<u>Activity</u>	<u>1984</u>	<u>1990</u>
	<u>Percent</u>	
1) Counties with planning board/commission	58%	55%
2) Counties with planning departments	62%	44%
3) Counties using planning consultants	26%	19%
4) Counties using regional planning agency	-	27%
5) Counties using other state agency/ organizations	-	23%
6) Counties with comprehensive plans	45%	47%
7) Counties with other functional element plans	35%	13%
8) Counties with zoning regulations	49%	51%
9) Counties with subdivision regulations	40%	22%

Since only 55% of the counties have a planning board/commission in 1990, there is urgent need for public education on the goals and objections of planning, including the establishment of county planning boards/commissions. There is also a need for preparation of comprehensive plans and implementation tools (zoning, subdivision and CIP) in the majority of the counties, which require considerable professional planning assistance.

A survey of the 627 Kansas cities was just conducted in 1990 to determine the status of planning activities and training needs for local officials and citizen leaders. The preliminary partial results of the 1990 survey are listed:

<u>Activity</u>	<u>Population</u>	<u>1990</u>
		<u>Percent</u>
1. Cities with planning board/ commission	0-999	24%
	1,000-2,499	76%
	over 2,500	95%
2. Cities using city staff * for planning	0-999	31%
	1,000-2,499	60%
	over 2,500	72%
3. Cities using planning consultants	0-999	20%
	1,000-2,499	48%
	over 2,500	70%

4. Cities using regional planning agency or other intergovernmental agreement	0-999	20%
	1,000-2,499	19%
	over 2,500	10%
5. Cities using other agency/organization	0-999	5%
	1,000-2,499	8%
	over 2,500	1%
6. Cities with comprehensive plans	0-999	16%
	1,000-2,400	49%
	over 2,500	85%
7. Cities with capital improvement plan	0-999	18%
	1,000-2,499	39%
	over 2,500	69%
8. Cities with zoning regulations	0-999	26%
	1,000-2,499	74%
	over 2,500	97%
9. Cities with subdivision regulations	0-999	9%
	1,000-2,499	46%
	over 2,500	83%

* For cities under 2,500 population, city staff includes a zoning administrator, a building inspector and/or a draftsman, not a professional planner.

Since nearly all cities under 2,500 population do not have professional planners on staff and only 20% of these cities under 2,500 population use planning consultants and/or regional planning agencies, there is a critical need for professional planning assistance. The majority of cities under 2,500 population do not have a comprehensive plan, a capital improvement plan, or subdivision regulations, although a majority of cities between 1,000-2,499 population have zoning regulations. Likewise, since only 24% of cities under 1,000 population have a planning board/commission in 1990, there is an urgent need for public education on the goals and objectives of planning, including the establishment of city planning boards/commissions.

Cities over 2,500 population generally have a planning board/commission (95%), a comprehensive plan (85%), a capital improvement plan (69%), zoning regulations (97%) and subdivision regulations (83%), although the majority of these cities need to update their comprehensive plans

prepared in the 1960s and 1970s. These cities are relatively well staffed for professional planning assistance, compared to cities under 2,500 population and the rural, less populated, counties. Thus the APA Kansas Chapter Continuing Education Program for a cadre of professional planners to train local officials and citizen leaders will focus on small towns (under 2,500 population) and rural counties in Kansas.

Vernon P. Deines, AICP
Professor, Kansas State University
Chair, APA Kansas Chapter
Professional Development
October 1990

TECHNICAL AND MINOR CHANGES TO
SENATE BILL #23

Submitted by the Kansas Chapter of the American Planning Assoc.
Arthur D. Chambers, President

Page 3 lines 29 and 30

"for such joint planning cooperation, there may be
established a joint planning commission . . ."

Page 4 line 12

"of the membership thereof or noted elsewhere in this act."

Page 4 line 28

"for such purposes."

Page 5 line 3

"specifically identify specifically . . ."

Page 6 line 31

"provisions for, but not limited to,"

Page 6 line 39

"changes to land elevations . . ."

Page 7 line 35

"ordinance or resolution by a simple majority, or it . . ."

Page 8 line 26

"of joint designation regulation."

Page 9 line 8

"er and the location . . ."

Page 9 lines 35 and 36

"shall advise the planning commission or joint committee. ."

Page 9 line 41

"(e) No zoning-er-building building or zoning permit"

Page 10 line 12

"issuance of building or zoning permits"

Page 10 line 23

"icated ~~to~~ for public purposes . . ."

Page 10 line 32

"Such regulations may include provisions, but not limited
to, for restricting and regulating, restruct-and-regulate
the height . . ."

Page 10 line 39

"and other uses areas, . . ."

Page 12 line 32
"in the zoning regulations . . ."

Page 13 line 20
"amend and adopt by a simple majority such recommendation . . ."

Page 15 line 22
"and adopt by a simple majority such recommendation . . ."

Page 16 line 5
"property, excluding public streets and ways, . . ."

Page 16 line 4
" . . .to be notified by this act of the proposed . . ."

Page 17 line 42
"ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit."

Page 18 lines 34 through 39
~~"be present. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit."~~

Page 18 line 40 through 42 and page 19 line 1
~~"(f) The board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. Any person . . ."~~

Note: The above changes are being made because the language deals with appeals to the BZA which is found in Paragraph (d).

Page 19 line 17
"has begun or and substantial . . ."

Page 19 line 39
"adopting ordinance or resolution has . . ."

Page 20 line 4
" . . .setback ordinance , resolution or official map . . ."

Page 20 line 8
"the official city or official county newspaper . . ."

KANSAS MANUFACTURED HOUSING ASSN.



Single family residential design
home outside Ottawa, Kansas

Senate L.G.
1-29-91
Attachment 4

KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY BEFORE THE
SENATE LOCAL GOVERNMENT COMMITTEE

TO: Senator Don Montgomery, Chairman and
Members of the Committee

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Association

DATE: January 23, 1991

RE: Senate Bill 23

Mr. Chairman and members of the Committee, I am Terry Humphrey Executive Director of the Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to appear before you in support of Senate Bill 23.

For the past six years I have worked in cooperation with the Kansas Chapter of the American Planners Association and other interested parties on the comprehensive re-write of Kansas planning and zoning laws. In short KMHA feels that SB 23 is important because it consolidates and simplifies the statutes dealing with planning, zoning and subdivisions. In addition, the enabling legislation is uniform for cities and counties wherever possible, which makes it easier for the public to learn the system and participate.

Specifically we support New Section 20 which states "the governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes." This provision is similar to K.S.A. 19-2938 a county statute passed in 1976 stating "arbitrary exclusion of manufactured housing prohibited." However, New Section 20 of the proposed bill covers cities and counties.

Why do we need state statutory guidance for local government about manufactured housing?

First, most local governments exclude manufactured housing from single family residential districts. According to a 1986 survey

83% of Kansas cities and 50% of Kansas counties that respond prohibit manufactured housing from single family districts and to our knowledge very little has changed in the last few years.

Such restrictive ordinances have out dated roots. They stem from our industry's first product - travel trailers, which were indeed mobile units. However, more than 55 years latter the industry has evolved from transient housing to permanent manufactured housing with traditional residential features.

Secondly, without state statutory inducement it is unlikely that discriminatory treatment of manufactured housing will change! For years politics on the local level have played up the confusion and miss-information about manufactured housing. City commissions, county commissions and planning commissions have been heavily influenced by the building trades and the real estate industry. Unfortunately these groups have opposed manufactured housing because it is built to a national building code that they perceive to be inferior to local codes and also a competitive advantage. A common tactic by these groups is to scream inferior housing and loss of property value without substantiating these claims.

But in reality, both of these issues have been studied and a very different conclusion drawn. According to two recent studies manufactured housing does not negatively impact surrounding property values. The studies are:

- "The Impact Of The Presence Of Manufactured Housing on Residential Property Values: A comparative study of residential property transfers and selected residential areas of Guilford County" by North Carolina A&T State University
- "Residential Property Value and Mobile/Manufactured Homes a Case Study of Belmont, New Hampshire" by the Joint Center for Housing Studies of MIT and Harvard University, 1986.

Also, in 1987 when the Manufactured Housing Institute engineers did a comparison of the manufactured housing construction and safety standards to the ICBO Code. They found "manufactured housing provides a comparably safe shelter while difference do exist between the two codes, these differences are not of a nature which affect the quality of the home."

In fact, according to a recent Foremost Insurance Company "Fire Loss Study", "overall, the chance of a fire occurring in a site built home is twice that of a manufactured home."

Third, the Nation, Kansas and local governments are seriously concerned about the lack of affordable housing. Recently Wichita and Topeka have held affordable housing symposiums to strategies solutions to their affordable housing problems. The Commission on Access to Services for the Medically Indigent and Homeless held hearings on affordable housing this summer and the State Housing Concerns Advisory Committee is developing a State Housing Strategy focusing on the housing dilemma for low to moderate income people. Likewise, in the recently passed National Affordable Housing Act, manufactured housing is defined as a single family dwelling unit and will have to be given consideration in local and state housing strategies before federal dollars are available.

Manufactured housing is affordable housing for example in 1989 the average multisetion manufactured home cost \$24.17 per square foot compared to \$53.25 per square foot for site built housing. While manufactured housing can't serve all the affordable housing needs, manufactured housing does build housing priced from \$20,000 to \$60,000 in Kansas. Obviously, it is this price range that meets the needs of the low to moderate income families. Yet, by their own admission the traditional site builder is not set up to meet this need. In a September 30, 1988 article in the Topeka Capital-Journal, Jerry Whittman, Executive Director of the Topeka Home Builders said,

"Of course, affordable means different things to different people. The 70's are really the bottom price for new, single-family homes. And we have builders in Topeka working at that level.

We have to remember that they must build at a profit. They aren't state-funded; these builders have to support themselves," he emphasized.

Whittman said the \$150,000 bracket is where "building at a profit becomes easier."

Nationwide there are many organizations that recognize that manufactured a can play a significant role in affordable housing if local land use regulations are changed to accept manufactured housing. Those reports are:

- The President's Commission on Housing (1982)
- American Planning Association "Planning For Affordable Single Family Housing" (1986)
- The U.S. Conference of Mayors National Housing Forum: Working Towards a Consensus (1988)
- Secretary Jack Kemp's Advisory Commission on Regulatory Barriers to Affordable Housing - Draft Report (1990)

Fourth, Nationwide legislative trends in land use policies affecting manufactured housing are changing. Since 1976 eighteen states have passed fair zoning statutes effecting manufactured housing. Those states are:

1. California - 1980
2. Colorado - 1984
3. Florida - 1981
4. Indiana - 1981
5. Iowa - 1983
6. Maine - 1984
7. Michigan - 1979
8. Minnesota - 1982
9. Nebraska - 1981
10. New Hampshire - 1981
11. New Jersey - 1983
12. New Mexico - 1987
13. North Carolina - 1987
14. Pennsylvania - 1986
15. Tennessee - 1979
16. Vermont - 1976
17. Virginia - 1989
18. Wisconsin - 1983

For a moment consider the state of California which has operated under a fair zoning provision for 11 years. California has some of the most expensive real estate in the nation and they utilize manufacture housing with no ill effects. In fact, since the law went into effect there has been no attempt to overturn it. Likewise, in my discussions with the industry in Iowa they report similar success.

While I have given you four very good reasons to support New Section 20 of SB 23, I want to respond to some issues that have been raised about this provision.

Will New Section 20 preempt local control? No. Local governments will be able to subject manufactured housing to all the same developmental standards required of site built housing plus any additional appearance standards designed to insure the compatibility of housing. By establishing these standards local government will not have to except any manufactured housing that does not meet their housing requirements.

Administratively, this form of land use regulation has been around since 1976 and is workable for even the smallest cities. Both Iowa and California use appearance standards in their local regulation of manufactured housing. To help promote this concept in 1986 the American Planning Association published a

booklet "Regulating Manufactured Housing" that fully explains the appearance standard concept. Also, this concept is currently being published in a "how to" manual by the League of Kansas Municipalities in cooperation with KMHA. The manual "Manufactured Housing in Residential Neighborhoods": a manual for Kansas cities and counties", also has model ordinances.

To date I have worked with the Kansas Chapter of the APA, the League of Kansas Municipalities, the Kansas Association of Counties and a number of individual cities in attempt to find a solution to this vary serious problem. Fortunately, I have gained the support and cooperation of some of these groups, however, there are still a few individual cities and counties that want no mention of manufactured housing in state planning and zoning enabling law. These cities will raise some of the inflammatory issues that I have already spoken to. Without a doubt those very same arguments were put forth in the 18 states that have passed fair zoning statutes for manufactured housing. However, to my knowledge none of these horror stories have come true nor has a state statute been repealed.

None the less, in an effort to build consensus and further clarify New Section 20 I have attached an amendment to my testimony. The amendment simply clarifies that manufactured housing can not be excluded solely because it is manufactured housing. I have discussed this amendment with the League of Kansas Municipalities and at this time they are inclined to support it.

In closing, I would like to remind you that manufactured housing is affordable housing and it comes in a variety of designs - some that is virtually indistinguishable from traditional site built housing. In Kansas many local governments exclude this housing. Therefore, without state intervention it is unlikely that manufactured housing will be accepted.

Kansans need housing choices, the Kansas Manufactured Housing Industry (4 plants and allied industries) needs a level playing field in order to market their housing. Please support SB 23, New Section 20 and our suggested amendment. Thank you.

4-7

1 public hearing pursuant to the publication notice, signed by the
 2 owners of record of 20% or more of any real property proposed to
 3 be rezoned or by the owners of record of 20% or more of the total
 4 area required to be notified of the proposed rezoning of a specific
 5 property, the ordinance or resolution adopting such amendment shall
 6 not be passed except by at least a three-fourths vote of all of the
 7 members of the governing body.

8 (f) Zoning regulations may provide additional notice by providing
 9 for the posting of signs on land which is the subject of a proposed
 10 rezoning, for the purpose of providing notice of such proposed
 11 rezoning.

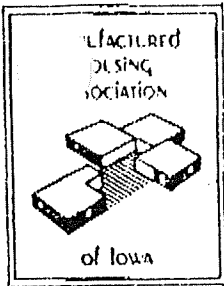
12 New Sec. 19. (a) Regulations adopted under authority of this act
 13 shall not apply to the existing use of any building or land, but shall
 14 apply to any alteration of a building to provide for a change in use
 15 or a change in the use of any building or land after the effective
 16 date of any regulations adopted under this act. If a building is
 17 damaged by more than 50% of its fair market value such building
 18 shall not be restored if the use of such building is not in conformance
 19 with the regulations adopted under this act.

20 (b) Except for flood plain zoning regulations in areas designated
 21 as a flood plain, regulations adopted by a city pursuant to K.S.A.
 22 12-715b, and amendments thereto, or a county pursuant to this act
 23 shall not apply to the use of land for agricultural purposes, nor for
 24 the erection or maintenance of buildings thereon for such purposes
 25 so long as such land and buildings are used for agricultural purposes
 26 and not otherwise. No plat or dedication of such land for public
 27 purposes may be made except as provided by this act.

28 New Sec. 20. The governing body shall not adopt or enforce
 29 zoning regulations which have the effect of excluding manufactured
 30 homes.

from single-family residential districts solely
 because they are manufactured homes

31 New Sec. 21. (a) Any governing body which has enacted a zoning
 32 ordinance or resolution shall create a board of zoning appeals by
 33 adoption of the appropriate ordinance or resolution. Such board shall
 34 consist of not less than three nor more than seven members. If a
 35 city enacts zoning regulations which affect land outside the corporate
 36 limits of such city, at least one member of the board shall be a
 37 resident of the area outside the city's limits. The members first
 38 appointed shall serve respectively for terms of one, two and three
 39 years, divided equally or as nearly equally as possible among the
 40 members. Thereafter the terms of the members may be changed to
 41 either three or four years, whichever is deemed to be in the best
 42 interest of the city or county. Vacancies shall be filled by appointment
 43 for the unexpired terms. The members of such board shall serve



1400 DEAN AVE. DES MOINES, IA 50316-3938 (515) 265-1497 1-800-395-6424
FAX 515-265-6480

January 17, 1991

Senator Don Montgomery
Chairman, Senate Local Government Committee
128-8 State Capitol
Topeka, Kansas 66612

Dear Senator Montgomery:

I am pleased to learn that the Kansas Legislature is seriously considering statutory language to prevent discrimination against manufactured homes. My purpose in writing is to encourage you and your colleagues to pass SB-23, including section 20, into law.

The Iowa Legislature passed a similar measure in 1984. At that time we had to deal with the same allegations you're no doubt hearing: That manufactured homes are inferior, that they will have a negative impact on property values, and that local governments don't need state interference with zoning matters.

After six and a half years of experience in Iowa, a state very comparable to Kansas, I can report to you that none of these allegations is true. Manufactured housing is playing a valuable role in the Iowa housing mix. Virtually all of the Iowa cities and counties with zoning ordinances have amended their local ordinances, in various ways, to accommodate manufactured housing in response to the state law.

The interesting development is that there have been very few complaints about the state manufactured housing zoning law. It's almost as if the local leaders knew they needed manufactured housing, but didn't want to take the local political heat for change, needing the state to be the facilitator for change. Additionally, after a few manufactured homes were sited on private property, the marketplace dynamics took over: The homes were placed in neighborhoods where they were comparable in price, if not better than surrounding homes. People tend to go to neighborhoods where they fit in. The neighbors didn't complain about the manufactured homes, and the local leaders now have a new housing option, an attraction for helping to recruit new industry to a town.

Senate L.G.
1-29-91
Attachment 5

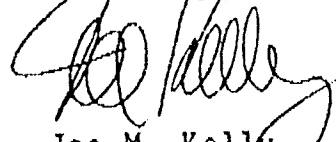
January 17, 1991

Finally, your action in section 20 of SB-23 will help many Kansans to get into the housing stream, will give realtors more homes to resell, will help traditional site builders as some of our customers move into their homes, will help your four manufactured housing factories and protect jobs, and will increase local property taxes.

In closing I will pose this question: Why can a citizen in Des Moines, or Minneapolis, or Indianapolis, or Nashville, or Detroit purchase a manufactured home built in Kansas and place it on private property in those cities and not be able to do the same in many cities in Kansas?

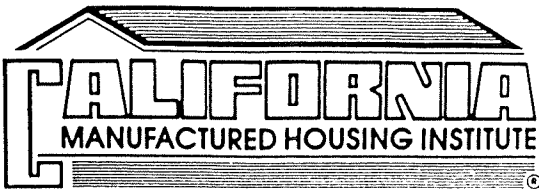
I appreciate the opportunity to comment on this issue, and I will be happy to answer any questions from you or any of your colleagues.

Sincerely,



Joe M. Kelly
Executive Vice President

JMK:pr



10390 Commerce Center Drive, #130, Rancho Cucamonga, CA 91730 • (714) 987-2599

January 18, 1991

Senator Don Montgomery
Statehouse, 128-S
Topeka, Kansas 66612

Dear Senator Montgomery:

Terry Humphrey, Executive Director of the Kansas Manufactured Housing Institute, has asked me to write to you regarding Section 20 of Senate Bill 53. Terry said she believes you might be interested in learning of California's experience with legislation that forbids zoning discrimination against manufactured housing.

California has had legislation in effect for 11 years that requires local planning and zoning regulations to accommodate manufactured homes (formerly called mobilehomes) on individual lots zoned for single-family homes. Initially adopted in 1980, this legislation was strengthened in 1988 to allow a manufactured home on **any** residential lot under the same terms and conditions as a conventionally constructed home is allowed.

Essentially, then, a local government cannot distinguish between a manufactured home and a site-built home within its regulatory structure. Local governments must regulate both as single-family dwellings.

Obviously, these legislative actions were not accomplished without controversy. The greatest opposition came from cities and counties which argued that local control was being violated and that local property values would be negatively impacted.

After more than a decade, the industry and local governments in California can look back with the wisdom that comes from hindsight and conclude that neither of these fears have come to pass. Let me take each issue separately.

The Loss of Local Control

The issue of affordable housing in California becomes more intense each year. Almost annually, the legislature adopts new laws which require local governments to respond more adequately to meeting the housing needs of all income levels.

Senator Don Montgomery
January 18, 1991
Page Two

Local governments need every tool available to them to respond to the affordable housing dilemma California faces. Manufactured housing is one of the tools in meeting this challenge. The legislature, by requiring local governments to deal with manufactured housing, has not preempted their authority or diminished their power. The legislature has empowered local governments by giving them one more tool.

Besides, the reality is that manufactured housing is just as viable as any other housing type, and sooner or later local governments will have to accept this fact -- either through legislative mandate or court action. A state-wide legislative action is the best means of ensuring that local governments can respond to the inevitable with consistent, adequate and fair regulation.

Local governments, with the industry's support, will always maintain the authority to set development standards high enough to eliminate the threat of "trailer homes" being erected next to suburban tract housing.

If manufactured housing was truly a threat to the authority of local governments, there would be a concerted effort to amend or delete California's laws. There has been no such effort. To the contrary, local governments have quietly accepted the law. Some local officials have privately expressed that they are happy the legislature settled this issue, because they are now free from the controversy and the legal liability.

Diminished Property Values

The fear of diminished property values is often at the heart of most manufactured home zoning issues. How real is this threat, though? Approximately 4,000 manufactured homes are sited on individual rural, suburban and urban parcels each year in California -- right next to conventionally constructed homes. There has been no diminishing of real estate values in California.

The fact is, underlying land values will determine when and how manufactured housing will perform in a local real estate market. Exclusive neighborhoods need not fear an invasion of low cost manufactured homes because lot prices will preclude this from occurring.

Senator Don Montgomery
January 18, 1991
Page Three

In exclusive neighborhoods, should a manufactured home be able to compete as a housing choice, the manufactured home will be of comparable price, quality and aesthetics to surrounding properties. Lending and appraisal guidelines will require this balance.

I hope this letter helps you understand the impact of a Legislative action requiring local governments to accept manufactured homes in single-family neighborhoods. If I can be of further assistance, please contact me.

Sincerely,



Tony Hadley
Director
Local Government
and Development Services

cc: Terry Humphrey

The best-kept housing secret in California



Now twice as many Californians can buy a home!

Twice as many California households can afford a manufactured home than can afford a site-built home. The figures are 39% versus 19%.

This doubles the potential market.

Why? Efficient construction standards and methods, innovative development standards, new financing programs and alternative ownership opportunities are just a few of the many reasons.

Manufactured housing presents a world of opportunities not only for first-time and senior homebuyers, but also for developers and

government officials seeking solutions to California's housing needs.

Already, more than 60,000 California families buy a new or existing manufactured home each year. Homebuyers are discovering that manufactured homes offer plenty of value, style, amenities and craftsmanship. The homes are well-designed, energy efficient and built to last.

You can discover the advantages of manufactured housing, too. Call or write us for more information about the role manufactured housing can play in your community.



10390 Commerce Center Drive, Suite 130
Rancho Cucamonga, California 91730
(714) 987-2599

Manufactured Housing: A Home for Every Neighborhood



LAND LEASE

Canyon View Estates, Santa Clarita. Size: three bedrooms, two baths, 1,080 square feet. Price: \$63,500. Downpayment: \$6,747. Monthly mortgage: \$627. Monthly land lease: \$450. Total monthly cost to occupy: \$1,077. Family income necessary to qualify: \$37,404.



PLANNED DEVELOPMENT

Rancho Viejo, San Diego County. Size: three bedrooms, two baths, 1,255 sq. ft. Price: \$149,990. Downpayment: \$29,980. Monthly mortgage: \$1,034. Family income necessary to qualify: \$37,224.



RURAL SUBDIVISION

Copper Meadows, Calaveras County. Size: three bedrooms, two baths, 1,350 square feet. Price: \$86,000. Downpayment: \$4,300 (FHA). Monthly mortgage: \$747. Family income necessary to qualify: \$26,892.



URBAN INFILL

Alicia Court, Pomona. Size: three bedrooms, two baths, 1,545 sq. ft. Price: \$120,000. Downpayment: \$6,000 (FHA). Monthly mortgage: \$1,046. Family income necessary to qualify: \$37,656.



10390 Commerce Center Drive, Suite 130 • Rancho Cucamonga, CA 91730 • (714) 987-2599

June 1990

5-7

Special Report

March 1991

DEVELOPMENT INCENTIVES FOR MANUFACTURED HOUSING

Manufactured Homes and Affordable Housing

The State of California has a long history of promoting the use of manufactured housing to meet the needs of moderate income families. The State began regulating construction and development standards for manufactured housing during the 1940s — when the industry was producing what were more aptly characterized as travel trailers — in an effort to respond to post-war housing needs.

In recent decades, State and local regulatory policy and industry practices have been aimed at upgrading construction and development standards so that manufactured housing can compete in the mainstream of the housing market as a significant source of entry-level and retirement housing. This mainstreaming effort resulted first in an evolution of the temporary travel trailer to the mobilehome and, later, to permanent manufactured housing.

This **Special Report** examines a range of regulatory and development incentives that have been implemented by local governments in California to encourage development of manufactured housing land-lease developments.

The Housing Element and Manufactured Housing

California law (Section 65583 of the Government Code) specifically requires



local governments to identify adequate sites and appropriate zoning and development standards to encourage the development of manufactured housing. Manufactured housing developments easily meet the needs of families earning the state's median income with little, if any, direct public subsidy. This housing represents a potential for making home ownership a reality for families who otherwise would qualify only for rental housing.

The Department of Housing and Community Development, when reviewing a local government's Housing Element, pays particular attention to policies which either encourage or discourage the development of manufactured housing. State housing law considers manufactured housing essential in the range of shelter alternatives necessary to meet the needs of all income levels.

Typically, construction costs for manufactured housing are one-third lower than those for conventional single-family homes. And certain efficiencies in manufactured home development standards — combined with ownership patterns unique in the real estate industry — make the possibility of manufactured home ownership a reality for a significant percentage of the State's population.

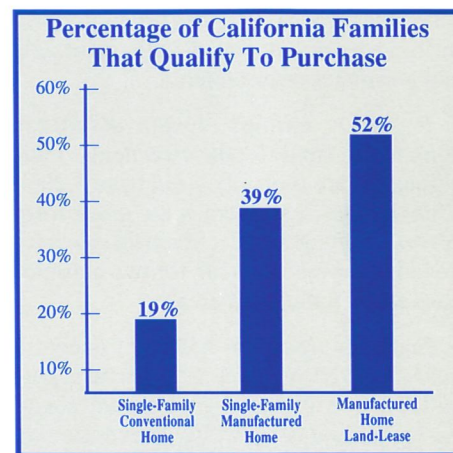
For example, while only 19 percent of California's families can now afford to purchase the median priced new single-family home, 52 percent of California families can afford to purchase a single-family manufactured home in a residential manufactured home development (R-MHD).

Ownership and Development Characteristics of Residential Manufactured Housing (R-MHD)

R-MHDs are residential developments that have characteristics common to both multifamily and single-family neighborhoods.

R-MHDs are income producing properties — as are multifamily complexes — but individual detached manufactured homes in the development are owner-occupied. Homeowners enter into a long-term lease with the partnership or corporation which manages and maintains community infrastructure and facilities.

R-MHDs occupy a specific niche in the range of shelter options. The average cost



of the home in a development is \$50,000. The homeowner carries a 20–25 year mortgage on this home which averages about \$400 per month. Additionally, the homeowner pays a monthly lease fee ranging, on the average, from \$250–\$400 per month to occupy the lot. This lease fee covers common landscaping maintenance, use of community services such as the pool and clubhouse and long-term maintenance of utilities and infrastructure.

The total monthly cost to live in a manufactured home development (home mortgage and land lease) is typically pegged to area apartment rents. However, the lifestyle and density patterns of a manufactured home development are decidedly single-family. R-MHDs compete in the shelter market between multifamily and condominium.

Maintenance of the development is ensured by the corporation managing the income investment. Home maintenance is ensured by the homeowner who has a

substantial investment — including a 15–20 percent down payment — in his or her home. The down payment necessary to buy a home in a R-MHD is substantially lower than for single-family housing because no down payment is necessary for the underlying land.

The homeowner enjoys the tax benefits of deducting interest on the mortgage and the appreciation associated with the home, although home appreciation is lower than for single-family housing since the homeowner does not own the underlying land.

Design Considerations for R-MHDs

California is one of the few states that prescribes a state-wide development standard for R-MHDs. These standards govern streets, walkways, parking, utilities, lighting, storage, setbacks and separation between homes, facilities and other design factors.

Local governments typically adopt these state standards and enhance them by prescribing density, overall development size, and perimeter requirements.

R-MHDs employ design standards common to small lot developments. Individual lots are typically sized from 3,200–4,800 square feet. Homes are sized from 900 to 1,800 square feet. Each lot typically includes covered parking for two automobiles and a patio/yard area.

State law (Section 65852.7) deems a manufactured home development a permitted use on all parcels planned and zoned for residential use. A city or county may require a use permit.

In reality, however, manufactured home communities are economically viable as a managed, income-producing property only if they are developed in the 6–8 unit per acre range. This density allows a monthly land-lease fee that keeps the development competitive within its market niche.

Development Incentives

To encourage development of R-MHDs, the General Plan, zoning ordinance, development standards and development policy may focus on the following actions:

1. The General Plan must make an adequate supply of land available at a density range of 6–8 units per acre. If the amount of land zoned at this density is scarce, market-rate tract housing on small lots will dominate these zones.

Similarly, if there is an inadequate supply of land zoned at the 6–8 unit

per acre range, manufactured home developments will be forced to compete for even scarcer land zoned at the multifamily range.

2. An alternative is to make manufactured home developments (at a maximum of 8 units per acre) an allowed use in lower-density zones. The rationale for this density bonus would be based upon the need for non-subsidized affordable housing. As a condition of development in these lower-density zones, the developer may be required to make available a percentage of lots and homes to families within the low or moderate income range.
3. Aside from General Plan and zoning designations, the city must adopt a set of development standards governing manufactured home developments. These standards must generally reflect those contained in Title 25, Chapter 13, Part 2.1 of the California Health and Safety Code (the Mobilehome Parks Act). When reviewing or adopting standards for R-MHDs, local governments must use this Act as a minimum development standard. Likewise, whenever a local jurisdiction sets a standard which exceeds a minimum state standard, an analysis should demonstrate the impact of this deviation on housing affordability.
4. Local jurisdictions can plan or zone parcels exclusively for manufactured housing — just as they do for single-family and multifamily housing. This action would ensure that manufactured homes would be brought into the housing mix over a build-out period. This, in turn, will ensure an adequate supply of manufactured home lots, thereby stabilizing lease rates in existing communities.

Zoning land for manufactured housing sets a market value on the land and, therefore, has legal implications. However, if the zoning designation is accomplished with the cooperation of the land-owner, these legal implications are mitigated. A future request for rezoning would require an analysis of why the parcel should be removed from the potential supply of affordable housing.

5. A local government may require that whenever large master plans or specific plans are proposed, a percentage of housing units must be

developed under R-MHD standards. This would be in keeping with State housing law which requires that housing for all income levels be encouraged.

6. Local governments may remove the requirement that R-MHD be subject to a conditional use permit. A CUP is a regulatory process commonly reserved for undesirable or incompatible land uses. This requirement creates a poor image and, therefore, a barrier to development, financing, marketing and public acceptance. Additionally, requiring a CUP is a duplicative government review procedure that slows the development process. In lieu of a CUP, a R-MHD may be permitted by right in any residential zone where density and prescribed development standards can be met.

Conclusion

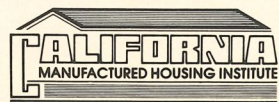
In conclusion, there are good reasons to create General Plan, zoning and development policies that encourage the development of R-MHDs:

- R-MHDs are considered an important source of affordable housing. Manufactured housing developments easily meet the needs of families earning the state's median income with little, if any, direct subsidy.
- The adequacy of a local government's Housing Element is judged, in part, by its policies that encourage the development of manufactured housing.
- A manufactured housing development offers a single-family lifestyle at roughly the cost of renting an apartment. However, manufactured homeowners have a substantial investment in their home and lifestyle. They also benefit from tax policy and home equity.
- In some instances, the public may perceive the single-family nature of R-MHDs as more compatible than a multifamily development, particularly if a choice must be made among alternatives that meet this income level.
- A manufactured home development is a controlled, managed environment. The local government has no responsibility for improving or maintaining community infrastructure. Further, community covenants are strictly enforced by management.

About CMHI...

The California Manufactured Housing Institute (CHMI) is a non-profit trade and professional association of 225 companies representing builders of manufactured homes, retailers, supplier companies, financial services, developers and community owners. Chapters of the Institute are located in Sacramento, the Central Valley, Orange County, the Inland Empire, San Diego and San Luis Obispo. Offices are maintained in Rancho Cucamonga and Sacramento.

The Institute was founded to advance the availability and ownership of quality, high value homes, marketed by licensed retailers, by promoting the purchase of manufactured housing and the development of desirable sites and communities in California. The Institute's public, government and consumer relations programs are directed toward these goals. For more information about manufactured housing, contact:



10390 Commerce Center Drive, Suite 130
Rancho Cucamonga, Ca 91730
(714) 987-2599

California Designs

California Manufactured
Housing Institute



Quality Built

Your Home is Precision Built

All manufactured homes built today meet rigid construction and inspection standards enforced jointly by the State of California and the federal government. This construction code, with its emphasis on the adoption of new technology and efficient factory building techniques, keeps the costs of manufactured homes one-half to one-third those of site-constructed homes. You will find that quality, durability and high value are the hallmarks of today's precision-built manufactured home.

5-11



Choice of Amenities

A variety of architectural styles and in California, manufactured homes offer a wide variety of siding, roofs of tile or composition and a gamut from traditional ranch to contemporary. They range in size from studio to large. Attached garages or carports are available. And, yes, you can choose your carpet, tile, cabinetry and wallpaper.

Manufactured Home is Energy Efficient

The degree of energy efficiency in a manufactured home is a couple of reasons: First is the fact that all manufactured homes meet or exceed energy requirements mandated by the Department of Energy for each home. Optional features can tailor your energy needs to your

Attractive Siting Enhances Your Home's Value

California law affords you the right to site your home in any residential neighborhood. Or you may select the most common consumer option and choose to site your home in a planned unit development or subdivision containing other manufactured homes. These communities give you the flexibility of leasing or owning your lot, depending upon your investment desires. When properly sited, landscaped and maintained, your manufactured home will appreciate in value in accordance with residential properties in your immediate neighborhood.

You'll Find Ready Financing for Your Manufactured Home

Scores of financial service companies — including some of the largest financial companies in California — have loan programs for manufactured homes. These companies provide all types of conventional and government-insured financing plans. You can finance your home through either a retail installment or, if you are financing the home and land together, through a conventional long-term real estate mortgage. Manufactured homes qualify for loans backed by FHA, VA, FmHA, Ginnie Mae, Fannie Mae and Freddie Mac.

Where Can I Buy a Manufactured Home?

Under California consumer law, all new manufactured homes must be sold by a licensed retailer who must routinely complete certified continuing education programs. Over 120 California retailers are members of the California Manufactured Housing Institute (CMHI), the industry's professional trade association for more than 50 years. Some retailers sell homes from a model center which they own and operate. Others sell homes from centers located at a community or subdivision. Many retailers specialize in the resale of manufactured homes. Special multiple listing services exist in some areas of California to help retailers locate the manufactured home that will best suit your needs. For a list of CMHI-member retailers in your area, call (714) 987-2599.

Where Can I Place My Home?

If you own your lot in an urban, suburban or rural location, you can site your manufactured home on it providing the home meets local development standards. Otherwise, you can shop around and decide whether you want your home on a residential lot or in a planned subdivision or land-lease community. Your retailer remains your best source for locating an available lot and in assuring you receive appropriate building, utility and occupancy permits. Your retailer will also be able to determine the development standards and foundation requirements your home must meet before being placed in a particular neighborhood or development.

How Will I Finance My Home?

While most financing is arranged through your retailer, you may arrange financing directly with a financial institution. Financing options for manufactured homes range from installment loans (when only the home is being purchased) to conventional fixed and adjustable rate mortgages (when the home and land are being financed as a single real estate entity). The foundation system, landscaping and exterior amenities (carport/garage, porch, driveway and steps) can be financed, as well. Your down payment is typically 10-20 percent. Sources of financing include banks, savings and loan associations, credit unions and commercial finance companies. As with all real estate, financing programs for manufactured homes are constantly being improved to meet consumer needs.

Who Will Install My Home?

Again, your retailer is your best source. This trained professional can arrange contracting crews or, if you want to manage the necessary subcontractors yourself, can direct you to appropriate contracting companies. If you are purchasing a home in a planned unit development, you should be aware that community management or the developer may have an exclusive right to site and sell homes in the development. If you decide to manage the subcontracting of the installations crews, be sure to get all necessary building permits.

Will My New Home Come with a Warranty?

All new manufactured homes come with a written warranty, which states specific obligations of the manufacturer and retailer.

Do Manufactured Homes Appreciate and Hold Their Value?

Manufactured homes are constructed with the same materials as site-built homes, giving the homes identical durability standards. Whether the home is in a planned development where the site is rented or on your own property, if it is well-located, properly maintained and sold on-site, studies show it will appreciate in value, in accordance with similar properties in the immediate neighborhood.



Outlook '90

California Manufactured Housing



5-10a



Styles, Features and Trends

Manufactured homes come in a wide variety of architectural styles and interior decors. Homebuyers have the option of most any amenity they demand for comfortable living.

Interiors can be modest or feature spacious living rooms with vaulted ceilings, formal dining rooms, kitchens with breakfast nooks and the latest appliances, bedrooms with walk-in closets, dressing areas, and bathrooms with garden tubs and whirlpools.

Most new manufactured homes are sold with major appliances, draperies and carpeting in a choice of colors included in the price of the home. Options such as air conditioning, garbage disposals, dishwashers and stereo systems are available.

Today's manufactured home also comes in a variety of exterior architectural styles. In trend-setting California, manufactured homes are available with stucco or wood siding; roofs of tile or composition shingles; and large floor-to-ceiling windows. Architectural styling runs the gamut from traditional ranch to cape cod to contemporary southwest. Attached garages or carports are available for most homes.

Homeowner Demographics

More than 1.1 million Californians live in more than 550,000 manufactured homes, according to the California Department of

Housing and Community Development. Manufactured housing is a significant portion of California's housing stock, representing about 6 percent of all new single-family homes sold each year. Further, manufactured homes represent the vast majority of homes sold for under \$60,000, excluding the price of land.

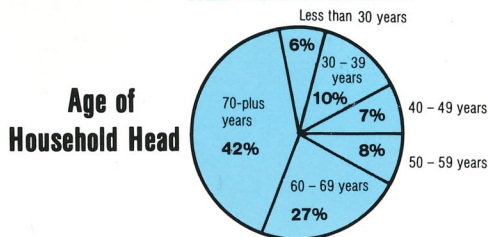
During 1989, more than 60,000 California families purchased a new or existing manufactured home. A recent survey of California manufactured homeowners by National Family Opinion, Inc., reveals that 92 percent are satisfied with their homes and, of these, 85 percent plan to remain in their current manufactured home or move up to another.

The typical head of household is 62 years of age, is a high school graduate who attended some college and is either retired or employed full-time in a technical/administrative or professional/managerial position.

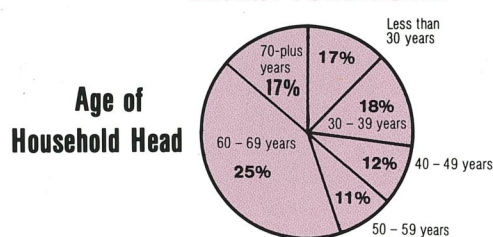
The profile of those who have purchased manufactured homes since 1984 demonstrates that significant changes are occurring in the characteristics of manufactured homeowners. Recent purchasers are younger, more affluent, have larger families, have attained a higher level of education and are less likely to be retired than manufactured homeowners as a whole.

Profile of California Manufactured Homeowners

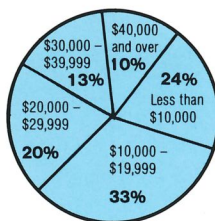
ALL HOMEOWNERS



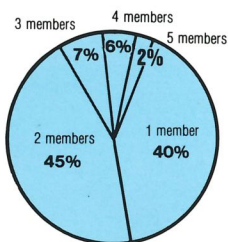
RECENT PURCHASERS



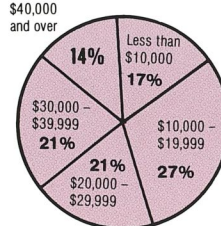
Annual Household Income



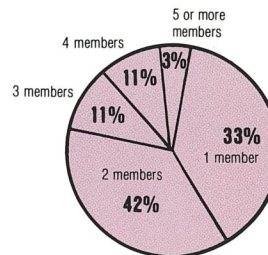
Household Size



Annual Household Income



Household Size



Source: Foremost Insurance Company and National Family Opinion, Inc.

5-10

Manufactured Home Lifestyle



The diversity of today's manufactured home and the amenities available means that there is a home to meet practically any lifestyle. Homes range in size from 700 square feet to over 2,500 square feet.

The cost of the average new manufactured home sold in 1989 was \$43,400, without land. The price range of new manufactured homes sold in 1989 was \$14,300 to \$110,000 excluding the cost of land. In 1989, construction costs per square foot for a new manufactured home averaged \$30.55 compared to \$43.14 per square foot for a comparable site-built home.

Local regulatory acceptance of manufactured housing is a key to the diversity represented by today's manufactured home. California law requires local governments to design effective planning and land use regulations that encourage the development of high-quality manufactured home communities and siting opportunities.

Single-Site Occupancy

Many manufactured homes are indistinguishable from their site-built counterparts in construction and appearance. In California, about 40 percent of new manufactured homes sold each year are sited on individually-owned property in either urban, suburban or rural areas. Facilitating this opportunity are state laws (Government Code Sections 65852.3 and 65852.4) which allow manufactured homes to be sited on any residential lot, providing the home meets local development standards.

Also facilitating this siting opportunity is a trend among financial institutions to offer favorable loan programs for manufactured homes on single-family lots. Since 1980, the share of manufactured homes financed and sited as real property has grown to 20 percent of the new manufactured homes sold in California.

Finally, covenants, conditions and restrictions adopted on or after January 1, 1988, cannot forbid the siting of a manufac-

ture home on a residential lot, if the home can meet the same architectural standards as site-built homes in the neighborhood.

Land-Lease Communities

About 60 percent of new manufactured homes sold each year in California are sited in planned developments where the consumer owns his or her home and leases a homesite from a single landowner. These communities typically offer residents a number of amenities and services, including security, clubhouses, pools, spas, and maintenance of common areas. There are more than 5,900 land-lease communities in California offering a wide variety of lifestyles.

Land-lease fees in California vary from region to region but they generally range from \$200 to \$500 per month, with the largest number of lots renting for approximately \$275. The "yellow pages" of the telephone directory, under the heading "mobilehome parks" is a good source of information about communities in a particular area.

Manufactured Home Subdivisions

A growing number of manufactured homes in California are being sold in conventional subdivisions or planned unit developments where the land and home are sold with a fee simple deed. The real estate section of the local newspaper is the best source to find the location of these subdivisions.



CMHI Background

The California Manufactured Housing Institute (CMHI) is a non-profit trade and professional association of 225 companies representing builders of manufactured homes, retailers, supplier companies, financial services, developers and community owners.

Chapters of the Institute are located in Sacramento, the Central Valley, Orange County, the Inland Empire, San Diego and San Luis Obispo. Offices are maintained in Rancho Cucamonga and Sacramento.

The Institute was founded to advance the availability and ownership of quality, high-value homes, marketed by licensed retailers, by promoting the purchase of manufactured housing and the development of desirable sites and communities in California. The Institute's public, government and consumer relations programs are directed toward these goals. For more information about manufactured housing contact:

California Manufactured Housing Institute
10390 Commerce Center Drive, Suite 130
Rancho Cucamonga, California 91730
(714) 987-2599 (800) 765-7500



Director
ment
te or

Manufactured Homes

Increased reliance on factory production has resulted in major changes in the efficiency of housing construction. Builders today routinely use prefabricated wall panels, prehung doors, preassembled stairs, roof trusses and cabinetry. Building costs and the predictable performance of these products make their continued use inevitable. Almost all new California homes today include some factory-constructed parts.

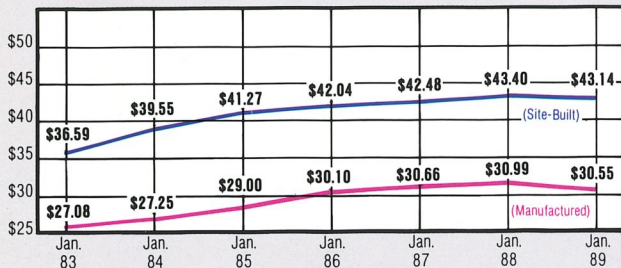
Some homes are entirely constructed in a factory. Manufactured homes represent a large majority of these homes. Precision-built, three-dimensional modules of one or more sections are transported to a homesite and installed on a foundation. In 1989, an estimated 11,681 new manufactured homes were constructed in California.

Definitions of Factory Homes

Other types of factory homes are factory-built and mobile homes. California law clearly distinguishes among the types of factory homes by the building code to which the home must comply.

Manufactured homes are constructed to comply with the preemptive National Manufactured Home Construction and Safety Standards (the HUD Code), which is administered and enforced

Single-Family Residential Construction Costs



* Cost for average 1500-square-foot home. Costs include garage/carport and foundation. Sources: Berlin Research Corporation and Real Estate Research Council of Southern California.

Manufactured Home Production in California

	PRODUCTION*	SHIPMENTS**
1980	14,608	12,743
1981	13,274	11,384
1982	9,131	7,630
1983	13,570	11,145
1984	12,655	10,451
1985	11,861	10,045
1986	12,393	10,520
1987	11,836	9,651
1988	12,142	10,517
1989	11,681 (est.)	10,783 (est.)
1990	12,200 (est.)	11,300 (est.)

* Production means all homes constructed in California factories.

** Shipments means all homes sited in California.

by the U.S. Department of Housing and Urban Development (24 CFR 3280) and the California Department of Housing and Community Development.

Factory-built homes, often called modular homes, are constructed to comply with the California Uniform Building Code, which is incorporated into law at Title 25, Chapter 3 of the California Administrative Code. Other types of factory-built homes are kit, log and panelized houses.

Mobilehomes were constructed to comply with standards promulgated by the American National Standards Institute in effect for mobilehomes prior to June 15, 1976, when the federal preemptive HUD Code became effective.

Federal Standards and Factory Inspection

All manufactured homes built since June 15, 1976, must conform to the HUD Code, a building code administered and enforced by the U.S. Department of Housing and Urban Development. Manufactured homes are the only form of housing constructed to comply with a national building code.

The HUD Code regulates home design and construction, strength and durability, fire resistance and energy efficiency, as well as the installation and performance of heating, plumbing, air conditioning, thermal and electrical systems.

The HUD Code mandates that each factory adopt an approved quality control program. This includes a system for testing and

inspecting each home constructed. In California, this inspection system covers review of the blueprint of the home and the construction of the home as it moves through the factory. The building code is enforced by the National Conference of States on Building Codes and Standards in cooperation with the California Department of Housing and Community Development (HCD). A final inspection of the home occurs when the state or local government issues a mandatory certificate of occupancy, which is an inspection of the installation of the home.

In California, the construction quality of all manufactured homes is backed by a one-year written warranty.

Manufactured Housing Industry Profile

Manufacturers

There are 15 companies building manufactured homes in 23 plants in California. In 1989, manufacturing and retail sales of new homes amounted to a \$560 million contribution to the California economy. Of the 11,681 new homes constructed during 1989 in California, an estimated 10,783 were sited in the state and the remaining were sold to consumers in neighboring states.

Retailers

Under California consumer law, all new manufactured homes must be sold by a retailer licensed by the California Department of Housing and Community Development. These professionals must routinely complete certified continuing education programs. More than 120 retailers are members of the California Manufactured Housing Institute (CMHI), the industry's professional trade association.

Some homes are sold from sales centers owned and operated by the retailer. Others are sold from a model center located at a land-lease community or subdivision. Many retailers are pro-



viding ready-to-occupy homes on urban and rural parcels. Those specializing in this type of home sales will "build" a custom manufactured home on a lot already owned by a consumer or help the prospective homeowner find a suitable lot.

Some retailers specialize in the sale of existing manufactured homes. Since few manufactured homes are ever moved once delivered to an original foundation site, manufactured homes, even in land-lease communities, are sold on-site and the space lease is transferred to the new homeowner. Sales of existing manufactured homes have surpassed 48,000 units annually.

Financial Institutions

A number of California financial service companies and their branch offices have loan programs for manufactured homes.

Percentage of California Manufactured Homes Sited on Permanent Foundations*

	QUANTITY	PERCENTAGE OF TOTAL MARKET
1980	116	1%
1981	723	5%
1982	836	9%
1983	1150	8%
1984	1748	14%
1985	1731	15%
1986	1648	14%
1987	1660	17%
1988	1905	18%
1989	2186 (est.)	20% (est.)
1990	2513 (est.)	22% (est.)

* 1980 was the first year California law allowed manufactured homes to be titled as real property.

These institutions include banks, savings and loans, credit unions, mortgage brokers and commercial finance companies. These companies provide all types of conventional and government-backed financing plans for manufactured homes.

The most common method of financing a manufactured home is through a retail installment contract. This can be arranged through the retailer or by the homebuyer directly with a financial institution. Terms range from 15 to 30 years. Conventional long-term real estate mortgages are available for manufactured homes when they are placed on permanent foundations.

Manufactured homes are eligible for insurance under government-backed programs offered by the Federal Housing Administration (FHA), the Veterans Administration (VA) and the Farm Home Loan Administration (FmHA). Further, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation will buy loans backed by manufactured home real estate.

Sales of Existing Manufactured Homes

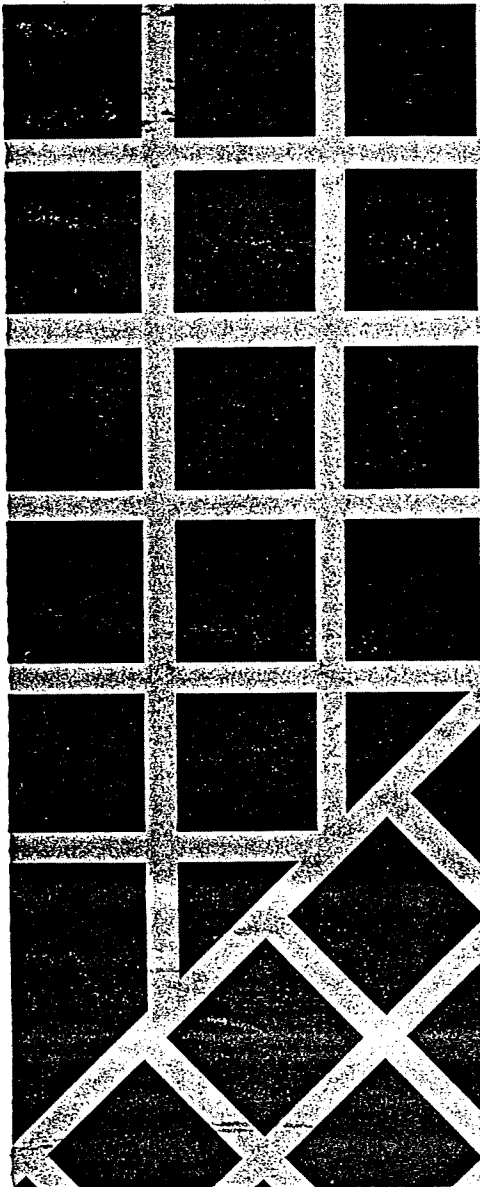
1982	37,069	—
1983	37,282	+ 1%
1984	41,744	+12%
1985	45,518	+ 9%
1986	47,034	+ 3%
1987	48,209	+ 2%
1988	48,308	+ . 2%
1989	26,167*	—

*Sales between January 1, 1989 and June 30, 1989.

Source: California Department of Housing and Community Development

The Urban Lawyer

The National Quarterly on Local Government Law



Winter 1988

Volume 20, Number 1

Self-Induced Hardship in Zoning
Variances: Does a Purchaser
Have No One But Himself to
Blame?

Osborne M. Reynolds, Jr.

Federal Grants-in-Aid: Evolution,
Crisis, and Future

Bruce J. Casino

Equal Treatment of Housing: A
Proposed Model State Code for
Manufactured Housing

Molly A. Sellman

The Local Government as Insured
or Insurer: Some New Risk
Management Alternatives

Thomas W. Rynard

Adding *Thornburg* to the Thicket:
The Ecological Fallacy and
Parameter Control in Vote Dilution
Cases

John K. Wildgen

Definitions, Measurements, and
Statistics: Weeding Wildgen's
Thicket

Richard L. Engstrom

Michael D. McDonald



Published by the
Section of Urban, State and
Local Government Law
American Bar Association

Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing

Molly A. Sellman

B.A., University of Michigan, 1970;
M.A., University of Michigan, 1974;
J.D., Detroit College of Law, 1979;
LL.M., George Washington University
National Law Center, 1987.

I. Introduction

THE THRESHOLD INQUIRY FOR STATE LEGISLATURES considering the promulgation of enabling legislation for statewide housing needs is: why should states enact land-use legislation or refine their existing land-use legislation thereby providing for the equal treatment of housing, specifically, manufactured housing?¹ The answer, simply stated, is to facilitate the general public's accessibility to affordable housing.² Given the increasingly deficient supply of affordable housing available to this nation's homebuyers and the current demand for housing that meets code standards, state legislation facilitating the siting of manufactured housing in residential communities can be a major factor in rectifying

1. The term "manufactured home" or "HUD-Code" home refers to a dwelling built to conform to Federal Manufactured Housing Construction and Safety Standards established and administered by the United States Department of Housing and Urban Development. Pursuant to section 308(c) of the Housing and Community Development Act of 1980, Pub. L. No. 96-399 § 308, 94 Stat. 1614 (1981), the term "manufactured home" was substituted for "mobile home" in all relevant sections of the National Housing Act, the United States Housing Act of 1937, and the Housing and Community Development Act of 1974. The amended version of the statute defines a manufactured home as "a structure, transportable in one or more sections, which, in traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three-hundred-twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems therein. . . ." 42 U.S.C. § 5402(6) (Supp. V 1981) (amending 42 U.S.C. § 5402 (1976)).

2. See HOUSING SUPPLY & AFFORDABILITY (F. Schnidman & J. Silverman ed. 1983) at 1, *Defining the Affordability Issue*, *id.* at 21; ANDERSON, *READING THE YARDSTICKS OF AFFORDABILITY*, see also Urban Land Institute, *THE AFFORDABLE COMMUNITY* (1983) [hereinafter *THE AFFORDABLE COMMUNITY*].

this nation's affordable housing crisis.³ Today several key factors warrant state resumption of certain regulatory powers which directly or indirectly impact upon the availability and supply of affordable housing opportunities at the local level. First, the alteration of this country's traditional local responsibilities and roles in housing and community development policies is being stimulated by (1) a decline in direct federal involvement; (2) the changing system of housing finance; and (3) widespread demographic, economic, and physical shifts⁴ culminating in an unprecedented and growing imbalance between demand for housing and the ability to produce an adequate supply at an affordable cost. Second, housing is an issue of "more than local significance" as states reassert their role in the local land-use planning process.⁵ Third, despite the tremendous contribution of manufactured housing to this nation's affordable housing stock,⁶ serious regulatory impediments and road-

3. The President's Commission on Housing declared that "housing is a fundamental element of a strong State economy and a basic social need. When housing costs become too high and a housing recession occurs, there are widespread economic and social hardships." THE REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING 3 (1982) [hereinafter REPORT ON HOUSING]. The President's Commission concluded that "manufactured housing is a significant source of affordable housing for American families, particularly first-time homebuyers, the elderly, and low- and moderate-income families." *Id.* at 85. Similarly, The Council on Development-Choices for the '80s, addressing the issue of affordable housing, concluded that "[n]o area of development more crucial to our national well-being than housing. We need enough of it, it must be affordable to all income groups, it must suit a greater variety of needs and preferences, and it must be located reasonably close to where jobs are." See HOUSING SUPPLY & AFFORDABILITY, *supra* note 2, at xvi. The Council, like the President's Commission, determined that one way "to produce more affordable housing is to allow greater use of manufactured housing. . . . Housing coming off assembly lines compares favorably in looks, livability, and durability with conventional housing. When these units are sensitively sited and landscaped, little but price distinguishes them from other housing. Almost all local and state regulations, however, discriminate against manufactured housing. These discriminatory policies cause communities to ignore and forgo a promising opportunity to narrow the gap between the supply and demand for affordable housing." *Id.* at 56.

4. M. Nenno, *Housing Programs and Policies: Federal, State and Local Dimensions*, 1985 ZONING AND PLANNING LAW HANDBOOK 349 (1985).

5. See generally Berger, *The Role of State Government Affordable Housing in HOUSING SUPPLY & AFFORDABILITY*, *supra* note 2, at 167. Berger lists five general strategies by states for improving local zoning practices: (1) state override of local zoning; (2) state qualifications/limitations placed on local performance of zoning; (3) state enhancement of local capabilities; (4) state/regional development planning; and (5) state information and model codes.

6. See HOUSING SUPPLY & AFFORDABILITY, *supra* note 2 (quoting The President's Commission that "manufactured housing is a significant source of affordable housing for American families, particularly first-time homebuyers, the elderly, and low- and moderate-income families"); see also THE AFFORDABLE COMMUNITY, *supra* note 2 (quoting the Council for Development Choices that "[a]nother way to produce more affordable housing is to allow greater use of manufactured housing."). See Brett, *Manufactured Housing—A Pivot Point in Affordability*, LAW. TITLE NEWS (Jan.-Feb. 1986), at 6-9.

blocks exist in the local land-use planning process.⁷ Frequently, local governmental entities make no provisions for manufactured housing in their regulations or tend to overregulate land by enacting an arsenal of zoning ordinances and regulations designed to exclude this form of housing.⁸ In the area of existing legislation, local governments are often guilty of negligently failing to update and amend their land-use controls to reflect the technological advancements, and aesthetic and architectural improvements of manufactured housing in the last decade⁹ or to reflect the growing body of law favoring the siting of manufactured housing in residential districts.¹⁰

7. See Flynn, *Impediments to the Increased Use of Manufactured Housing*, 60 U. DET. URB. L. J. 485 (1983). Regulatory control of manufactured housing and/or mobile homes falls into five categories: (1) financing; (2) taxation; (3) zoning; (4) landlord-tenant law; and (5) construction standards. Of these governmental controls, local zoning regulations are the most burdensome governmental regulatory device for homeowners and developers to overcome. See also Berry, *Restrictive Zoning of Mobile Homes: More "Mobile" Than "Home" Under the Law*, 21 IDAHO L. REV. 141 (1985).

8. See, Brown & Sellman, *The Invalidity of the "Mobility" Standard*, 19 URB. LAW. 367 (1987) (examining the range of local government exclusionary motives and their effects on the siting of manufactured housing in communities). The issue of preserving local regulatory control of housing opportunities was dealt a sharp blow by the New Jersey Supreme Court in its landmark decision, *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713, *appeal dismissed*, 423 U.S. 808 (1975). The *Mt. Laurel* court, in a matter of first impression, weighed the duty of the state's local governments to promote and provide for regional housing opportunities, concluding that a municipality's obligation to meet its "fair share of the present and prospective regional (housing) need," is a major component of the state's general welfare because "shelter, along with food, are the most basic human needs [emphasis added]." *Id.* at 724, 727. For a discussion of the impact of the *Mt. Laurel II* decision, *Southern Burlington County NAACP v. Mount Laurel*, 92 N.J. 158, 456 A.2d 390 (1983), see R. Babcock, *Mount Laurel II, Apres Nous le Deluge*, THE ZONING GAME REVISITED 207-33 (1985).

9. See J. Hoben, *Accepting Manufactured Housing: An Alternative* 3-6 (1985) U.S. Department of Housing and Urban Development (unpublished report); A. BERNHARDT, *BUILDING TOMORROW: THE MOBILE MANUFACTURED HOUSING INDUSTRY* 107 (1980) (the author points out that a manufactured home, from a design and engineering standpoint, is a "more sophisticated structure than a conventional home."). See also 2 A. RATHKOPHF, *THE LAW OF ZONING AND PLANNING*. § 19.02, at 19-5 (4th ed. 1982) (observing that manufactured housing, in light of exterior design improvements, is "scarcely distinguishable from site built single family homes.") *Compare* *Robinson Township v. Knoll*, 410 Mich. 293, 316, 302 N.W.2d 146, 152 (1981) (in which the Michigan Supreme Court found that "mobile homes can be designed or modified to compare favorably in appearance to many site-built homes. There is no longer reason to presume that mobile homes will fail to live up to a community's aesthetic standards") with *Heath v. Parker*, 93 N.M. 680, 604 P.2d 818, 819-820 (1980) (in which the New Mexico Supreme Court concluded that a manufactured home "is substantially the same as a conventional one-family dwelling" and "compares favorably with other [site-built] homes in the subdivision") See also Brown & Sellman, *supra* note 8, at 371-79 (discussing the technological advancements of manufactured housing).

10. See *Robinson Township v. Knoll*, 410 Mich. 293, 302 N.W.2d (1981); *Heath v. Parker*, 93 N.M. 680, 604 P.2d 818 (1980); *Geiger v. Township of North Whitehall*, 510 Pa. 231, 507 A.2d 361 (1986); *Petz v. Parish of St. Tammany, Louisiana*, 628 F.

The American Planning Association's report, *Regulating Manufactured Housing*,¹¹ underscores the indispensable need for state enabling legislation overseeing local government regulation of manufactured housing. The APA report, based upon a 1985 survey, revealed that when states enact codes favorable to manufactured housing, local governments are more apt to draft favorable land-use controls of their own.¹² The report found that "60 percent of the 121 communities that permit manufactured housing by right in residential districts—and in most cases on individual lots when certain design and appearance standards are met—were located in states that have passed legislation that prohibit the exclusion of manufactured homes built in compliance with the HUD Code."¹³ Although the report emphasized that it was "difficult to say how many of these communities would have enacted their current provisions in the absence of state legislation," the report nevertheless revealed that a number of local communities replied that their "revisions were made in response to new state requirements."¹⁴ Hence, "[t]he potential for effective action by states is precisely why housing issues will become agenda items for state legislatures and governors during the 1980s. Within state legislation, the opportunity exists for altering and/or expanding the action and capabilities of state government and those of local governments. Hence, effective state action may require changes in the relationship between the states and their local governments, through state resumption of specific powers formerly delegated to local government. . . ."¹⁵

At the local level, two intertwined factors—the excessive costs to property owners of governmental regulations¹⁶ and the excessive cost of

Supp. 159 (E.D. La. 1986); *Your Home, Inc. v. City of Portland*, 483 A.2d 735 (1984); *Martz v. Butte-Silver Bow Government*, 641 P.2d 426 (1982); and *Scurlock v. City of Lynn Haven, Florida*, MCA 84-2129-RV (N.D. Fla. April 1, 1987).

11. See W. SANDERS, *REGULATING MANUFACTURED HOUSING*, AMERICAN PLANNING ASSOCIATION, PAS Report No. 398, 3 (1986). The report, based upon a 1985 survey, revealed that the general public is "more receptive to manufactured housing" due to the improved appearance, better quality, and affordability of manufactured housing than it was in 1970 when the American Planning Association conducted its first survey of public perceptions and attitudes. Cf. F. BAIR, *MODULAR HOUSING, INCLUDING MOBILE HOMES: A SURVEY OF REGULATORY PRACTICES AND PLANNERS' OPINIONS*, PAS Report (1971).

12. W. Sanders, *supra* note 11, at 4.

13. *Id.*

14. *Id.*

15. See Berger, *supra* note 5, at 168.

16. See generally S. SEIDEL, *HOUSING COSTS & GOVERNMENT REGULATIONS: CONFRONTING THE REGULATORY MAZE* 1 (1978). The author found that [g]overnment regulation of the residential development process has increased rapidly

litigating local land-use controls challenged as exclusionary or discriminatory—affect the overall cost of housing. The cost of regulations attributable to local governments' predisposition to overregulate land may be divided into three categories: (1) increased governmental administrative costs, (2) increased costs of delays and uncertainty, and (3) increased costs of excessive regulations or unnecessary requirements,¹⁷ all of which inflate the already escalating cost of housing making affordable housing beyond the economic reach of many prospective homebuyers. For example, local land-use legislation reflecting a variety of exclusionary techniques embodied in the proliferation of excessive standards and overspecifications, i.e., minimum lot sizes, minimum lot widths, minimum floor area restrictions, the quality of grading and paving, the number of parking spaces, sewers, construction materials and construction techniques, targeted at low and moderately priced housing, add to the skyrocketing cost of housing.¹⁸ The harsh reality of local governments' tendency to overregulate the land development process by enacting an array of complex and confusing zoning procedures and regulations, which may ultimately be challenged as either discriminatory or exclusionary, is that neither local governments, real estate developers and homebuilders nor prospective homebuyers have the funds to litigate the constitutionality of such regulations¹⁹ or face the risks of

over the past several years both in the scope of its coverage and the magnitude of its impact. While many of these regulations are aimed at positive objectives—preserving the environment, making homes safer, reducing sprawl, etc.—all too frequently these regulations, as they are implemented, resulted in significantly increasing the price and reducing the number of new housing units. In many cases this result is intentional; a community manipulates its regulations to prevent the construction of moderately priced housing. But even where exclusion is not the intent, by requiring units which are more energy-efficient, which will stand forever, and which are environmentally unobtrusive, the final price of the home must necessarily be beyond the means of all but the wealthy.

17. See S. SIEDEL, *supra* note 16, at 42-45.

18. *Id.* at 304. In the field of housing regulations, government intervention was responsible for increasing costs. In some cases, it was clear that the magnitude of these cost increases was relatively small, while in other cases it was apparent that a significant increase was created. Although some circumstances or necessity justified the passage of such government regulations, it was the inefficiencies of the administrative processes and sometimes the misuse of its power for illegitimate ends which was responsible for inflating costs. *Id.*

An extensive survey of 27,000 home builders conducted by the Center for Urban Policy Research found that 15 to 21 percent of the price of a home may be attributable to excessive governmental regulation of the development process. *Id.* at 335-54.

19. See Delogu, *The Misuse of Land Use Control Powers Must End: Suggestions For Legislative and Judicial Responses*, 32 ME. L. REV. 29 (1980) (observing that "[m]unicipal governments in almost all parts of the country are frequently inclined to exercise their police, spending, and policymaking powers in an impermissible exclusionary manner").

lengthy delays and uncertainties when the end result may be a pyrrhic judicial victory.²⁰ If, however, the framework of the local land-use planning process is influenced by a progressive state code²¹ providing for affordable housing opportunities and the inclusion of manufactured housing, local governments should benefit by protection from the burden of costly and time-consuming litigation and a judicial finding of unconstitutional conduct on the part of local governmental decision makers.²² The reliance upon exclusionary land-use controls or poorly drafted legislation,²³ which might be perceived as unconstitutional conduct on the part of local government officials, may result in the award of monetary damages to successful plaintiff-developers and landowners such as the statutory damages awarded under the civil rights statute, 42

20. In the majority of exclusionary zoning challenges, [t]he landowner runs the risk of wrongly predicting the outcome of complex litigation; the zoning body runs the risk of having its latest policy deemed unimportant or ill-conceived by the judiciary, and the community loses the benefits that otherwise would have accrued had private and public expenditures been directed at productive, rather than adaptive, behavior.

See Kmiec, *Deregulating Land Use: An Alternative Free Enterprise Development System*, 130 PA. L. REV. 28, 63 (1981).

21. See Berger, *supra* note 5, at 169 (suggesting the utilization of state information and model codes as strategy for improving local zoning practices).

22. Local government's exposure to liability for the unconstitutional conduct of their officials was set forth in the Supreme Court's decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978). The *Monell* Court ruled that a local government is a "person" for the purposes of 42 U.S.C. § 1983 damages for constitutional violations and will be held responsible for those acts which represent "official policy" or "custom" rather than on a theory of respondeat superior. The parameters of the "official policy" requirement of *Monell* was defined in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), when the Supreme Court considered the issue of "whether, and in what circumstances, a decision by municipal policymakers on a single occasion may satisfy" the official policy requirement of *Monell*.

The *Pembaur* Court emphasized that while *Monell* was intended to "make clear that municipal liability is limited to action for which the municipality is actually responsible," the establishment of official policy does not lie exclusively in the local legislative branch. "If the decision to adopt [a] particular course of action is properly made by that government's authorized decisionmakers, it surely represents 'policy'." Thus, the application of *Pembaur* to current land-use controversies signals that liability may be imposed when high ranking decision makers, *Terry Properties, Inc. v. Standard Oil*, 799 F.2d 1523 (11th Cir. 1986), or low-ranking officials, *Sullivan v. Town of Salem*, 805 F.2d 81 (2d Cir. 1986), engage in unconstitutional conduct which constitutes "official policy." See also *Esquivel v. Village of McCullom Lake*, 633 F. Supp. 1199 (N.D. Ill. 1986), and *Maze v. City of Fond du Lac*, 643 F. Supp. 1108 (E.D. Wis. 1986).

23. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985) (the U.S. Supreme Court, departing from its prior position of merely upholding land-use regulations if the requisite rational basis is declared, signalled it was now willing to look behind the legislation's stated purposes when testing the rationality of local land-use classifications and regulations. The *Cleburne* Court unequivocally cautioned local governments not to "rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational" to legitimize their police powers in land-use proceedings).

U.S.C. § 1983.²⁴ Today local governments are beginning to recognize that "lengthy, cumbersome procedures can help drive up housing costs, absorb large amounts of administrative time, stimulate unnecessary community controversies and sometimes stifle rather than encourage high quality development."²⁵ A streamlined or simplified regulatory process²⁶ liberating developers and homebuilders from potential pitfalls, risks, or uncertainties inherent in the development gauntlet and regulatory maze that local governments have fashioned under the rubric of their police powers is a preferred, if not more appropriate response, to resolving this country's critical housing needs. The Council on Development Choices for the '80s, a HUD-sponsored public-private committee organized to address the issues of affordable housing and community development, found that "[a]t all levels of government, but especially at the local level, there has evolved a maze of regulations that unnecessarily complicate and delay development. The results are higher costs and lack of innovative development."²⁷ In order to limit the impact of a range of unfettered local regulatory controls over housing opportunities, the Council recommended: (1) the coordination of development regulations, (2) the simplification of permitting procedures to minimize delay and uncertainty, and (3) the removal of arbitrary zoning and subdivision restrictions on manufactured housing.²⁸

24. See *Bourgeois v. Parish of St. Tammany, Louisiana*, 628 F. Supp. 159, 161 (E.D. La. 1986) (The federal district court, granting the plaintiff-manufactured homeowners' 42 U.S.C. § 1983 claim for damages, observed "even though a zoning ordinance is presumptively valid, if it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare, it can be invalidated as violative of the fourteenth amendment." The challenged ordinance precluded the siting of manufactured homes, classified as "trailers," from residential districts. Looking beyond the mere pronouncements of the parish's ordinance of promoting "the character of the districts and their peculiar suitability for particular uses, with a view toward conserving the value of buildings and encouraging the most appropriate use of land throughout the Parish," *id.*, the Court concluded, "the degree to which the ordinance in question contributes to the preservation of property values, the general lack of regulation in this area and the failure of the Parish to regulate in other areas which might be more fruitful, i.e., a building code or other aesthetic regulations, makes it difficult to find that this zoning ordinance is 'reasonable' in light of the purposes urged by the Parish." *Id.* at 162.).

25. See National League of Cities, *Streamlining the Local Development Process*, in HOUSING SUPPLY & AFFORDABILITY, *supra* note 2, at 179.

26. See generally, *Streamlining the Local Development Process*, *supra* note 25.

27. See THE AFFORDABLE COMMUNITY, *supra* note 2, at xvi.

28. *Id.* at xvi-xvii. When revising development regulations, The Council for Development Choices in the '80s found that in order

[t]o ensure that the private sector can offer the preferred development choices, steps must be taken to untangle the massive array of obsolete regulations that fail to recognize the realities of the development process. . . . Until these regulations are

In the final analysis, the implementation of appropriate state housing and development legislation²⁹ that can be consistently applied in conformance with the traditional demand for local autonomy of land-use planning and zoning processes is preferable to judicial intervention. This legislation avoids the potential misuse of municipal powers and ensures that review of local action is grounded on state authority, thus benefiting all interested parties. One land-use authority, writing on the issue of land deregulation, observed that while "individual landowners may ultimately receive judicial relief, it is certainly poor practice to rely upon the courts to develop a coherent public policy toward affordable housing. Basic separation of powers concepts suggest that these issues require legislative, not judicial attention."³⁰

Support at the federal level for a fundamental reassessment of the state role in housing and development can be found in the 1982 directive issued by The President's Commission on Housing when it declared that "[h]ousing affordability is no longer just a local problem. The response must be nationwide."³¹ Examining the serious consequences of over-regulation of housing, The President's Commission found,

The pattern is clear: regulations have proliferated at all levels of government. While government has a legitimate concern about vital present and future interests, failure to consider and anticipate detrimental effects on housing has led to excesses and abuses, conflict, unnecessary costs, discouragement of innovation, and duplication. The Commission believes, however, that the public's attitude toward this sort of regulation has turned. *The time has come for restraint in government regulation of housing* [emphasis added].³²

The Report of the President's Commission on Housing provides an important impetus for states contemplating remedial land-use legislation favoring the siting of manufactured housing in residential districts. It calls upon state and local governments to "remove from their zoning laws all forms of discrimination against manufactured housing, includ-

changed, compactness, mixed uses, an adequate supply of affordable housing, and related objectives will not be widespread. Unnecessary barriers must be removed and less costly and duplicative regulatory systems must be established to encourage private sector action within the bounds of reasonable standards for health and safety and prudent fiscal management. *Id.* at 70.

29. See J. HOBEN, *AFFORDABLE HOUSING: WHAT STATES CAN DO* (1982).

30. See Kmiec, *Manufactured Home Siting: Regulatory Challenges and a Proposal for Federal Deregulation*, 6 ZONING AND PLAN. LAW REP. 113, 116 (1983). See, e.g., Mallach, *Do Lawsuits Build Housing? The Implications of Exclusionary Zoning Litigation*, 6 CAMDEN L.J. 653 (1975).

31. THE PRESIDENT'S COMMISSION ON HOUSING, *supra* note 3, at 237.

32. *Id.* at xxxiii.

ing off-site fabricated housing systems or components conforming to the requirements of one of the current nationally recognized model codes."³³ For example, The Report pointed out that "[e]xclusionary zoning provisions based on *type of manufacture* are *arbitrary and unrelated* to legitimate zoning concerns. [emphasis added]"³⁴ Therefore, in order

[t]o protect property rights and to increase the production of housing and lower its cost, all State and Local legislatures should enact legislation providing that no zoning regulations denying or limiting the development of housing should be deemed valid unless their existence or adoption are necessary to achieve a vital and pressing governmental interest.³⁵

One prophylactic solution to resolve the issue of piecemeal exclusionary regulations of local governments while simultaneously discharging the duty to accommodate manufactured housing at the local decision-making level³⁶ would be refinement of state enabling legislation demanding comparable or equal treatment of all forms of housing. A state legislative signal based upon a state code or statutory provision addressing the affordable housing and manufactured housing issues would send a clear message to local governments "that exclusion is intolerable and that the burdens of housing our people must be borne in some even-handed way by all the political subunits of the state."³⁷ Moreover, the growing resumption of state authority in land-use controls and initiatives, as a response to crucial statewide housing issues, is a preferable alternative to intervention by the federal government or to local governmental control mechanisms which are often "too parochial and admin-

33. *Id.* at 203.

34. *Id.* at 204.

35. *Id.* at 200. The Commission recommended that subject to vital and pressing governmental interests:

- Density of development should be left to the marketplace;
- Discrimination against manufactured housing should be removed;
- The size of individual dwelling units should not be restricted;
- Growth controls should be justified by a vital and pressing governmental interest;
- Farmland regulation limiting housing should be avoided;
- Builders should be able to secure all necessary permits in a procedure; and
- Builders should pay only such fees as relate to their own development.

Id. at xxiv.

36. Although most local governments acknowledged some duty to provide for manufactured housing within their jurisdictions, "[t]he disagreement today is the exact nature of that duty and the actual adherence and enthusiasm of state and local jurisdictions in carrying it out." See KMEC, MANUFACTURED HOME SITING: A STATUTORY AND JUDICIAL OVERVIEW 105, 107 (1983).

37. See Delogu, *supra* note 19, at 56.

istratively inefficient."³⁸ When housing needs are viewed as "issues of more-than-local" significance, reassumption of regulatory controls by the state with its "broad constitutional authority and financial capability" strengthens the state's position to "directly influence housing availability and the minimum cost of newly built housing."³⁹

Hence, the cornerstone of any state-level legislative response pertaining to statewide housing needs and policies—especially those relating to manufactured housing—must articulate "some clear limitations on the local exercise of land-use control powers, some express language proscribing exclusion, some inclusionary duties, and finally some provision which facilitates judicial challenge of alleged exclusionary controls."⁴⁰ States willing to adopt such a preemptive response would in effect be orchestrating the diminishment of unbridled local land-use excesses while retaining legitimate local authority. The new result, however, would be a restoration of a proper balance between private property rights and local governmental regulation of land-use controls and a regulatory climate conducive to the development of affordable housing.

II. States Codes: An Overview

To date, sixteen states have drafted codes or statutory provisions limiting the scope of local government regulation of manufactured housing.⁴¹ The common thread that winds through these land-use enabling statutes is the inclusion of a statutory provision prohibiting exclusionary local government treatment of manufactured housing. However, a closer examination of these state codes indicates two distinct legislative approaches. Three states—Iowa, Minnesota, and Vermont—have enacted progressive codes encouraging the utilization of manufactured housing by mandating equal treatment of all forms of housing. The remaining

38. See SEIDEL, *supra* note 16, at 19.

39. See Berger, *supra* note 5, at 168.

40. See Delogu, *supra* note 19, at 56.

41. See generally CAL. GOV'T CODE § 65852.3 (West 1983); COLO. REV. STAT. § 30-28-115 (1986); FLA. STAT. ANN. § 553.35 (West 1972 & Supp. 1987); IND. CODE § 36-7-4-1106 (Supp. 1987); IOWA CODE ANN. §§ 414.28 & 358A.30 (West 1976 & Supp. 1986); KAN. STAT. ANN. § 19-2938 (1981); ME. REV. STAT. ANN. tit. 30, § 4965 (West 1973 & Supp. 1986); MINN. STAT. ANN. §§ 394.25, 462.357 (1) (Supp. 1987); NEB. REV. STAT. § 15-902 (Cum. Supp. 1986); N.H. REV. STAT. ANN. § 674.32 (1986); N.J. STAT. ANN. § 40:55D-100 (West 1983 & Supp. 1987); N.M. STAT. ANN. § 916 (2) (A); OR. REV. STAT. § 197.295 (1985); TENN. CODE ANN. § 13-24-201 (Supp. 1986); VT. STAT. ANN. tit. 24, § 4406(4)(A) (Supp. 1984); Mich. Pub. Acts 299 (Dec. 1986).

twelve states confer upon individual local governments varying degrees of discretionary authority in the area of appearance criteria to restrict siting of manufactured housing. State statutory provisions sanctioning the usage of local appearance criteria or standards create a major loophole. Rather than legislating comparable treatment or parity for manufactured housing with other forms of housing, the application of local appearance criteria or standards becomes a source of discriminatory or exclusionary treatment by local governments. The following portion of this article analyzes states' current land-use control legislation in terms of the breadth and variety of their remedial approaches to manufactured housing as a source of affordable housing.

A. *State Codes Requiring Parity*

The most progressive land-use enabling legislation drafted by a state requires individual local governments to regulate all housing forms in the same manner. Parity among housing forms can be pivotal to the siting of manufactured housing throughout residential districts. Impermissible exclusionary ordinances and regulations frequently occur because of outdated misconceptions that manufactured housing is qualitatively distinguishable in appearance and in performance standards from site-built housing. To date, the most progressive state legislation, promulgated in 1976, is that of Vermont. Most significantly, the state's "Equal treatment of housing" statutory provision effectively proscribes attempts to exclude manufactured housing from residential neighborhoods by mandating comparable treatment with other housing forms:

(4) Equal treatment of housing.

(A) Except as provided in section 4407(6) of this title, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.⁴²

Under the above-cited subsection, municipalities are estopped from distinguishing between housing based on methods of construction, thus ensuring that manufactured housing will be afforded parity with site-built housing. In response to the state's affordable housing needs, the "Equal treatment of housing" provision specifically precludes local governments from excluding affordable housing:

42. VT. STAT. ANN. tit. 24., § 4406 (4) (A) (Supp. 1987).

(B) No zoning regulation shall have the effect of excluding from the municipality housing to meet the needs of the population as determined in section 4382(c)⁴³ of this title.⁴⁴

In addition, local governments may not prevent "the establishment of mobile home parks" in their communities.⁴⁵ Further strengthening this landmark enabling legislation is the administrative interpretation by the Vermont Agency of Development and Community Affairs requiring the elimination of all "invidious distinctions between housing based solely on methods of construction. . . ."⁴⁶ Clearly, the aim of Vermont's "Equal treatment of housing" provision is to preclude local governments from regulating manufactured housing as a conditional or special use if site-built housing is regulated as a permitted land use.

Iowa's statutory provisions also mandate equal treatment of manufactured housing with site-built housing. Pursuant to separate statutory provisions, both cities⁴⁷ and counties⁴⁸ are prohibited from adopting or enforcing:

zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. Moreover, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot.⁴⁹

Nevertheless, Iowa's statutory provisions do not abrogate recorded restrictive covenants thus allowing the enforcement of private deed restric-

43. VT. STAT. ANN. tit. 24, § 4383(c) (Supp. 1987). Section 4383(c) states: Where appropriate, and to further the purposes of section 4302(b) of this title, a municipal plan shall be based upon inventories, studies, and analyses of current trends and shall consider the probable social and economic consequences of the proposed plan. Such studies may consider or contain, but not limited to: (1) population characteristics and distribution, including income and employment; (2) the existing and projected housing needs by amount, type, and location for all economic groups within the municipality and region; (3) existing and estimated patterns and rates of growth in the various land use classifications, and desired patterns and rates of growth in terms of the community's ability to finance and provide public facilities and services.

44. *Id.*

45. *Id.* No provision of this chapter shall be construed to prevent the establishment of mobile home parks pursuant to chapter 153 of Title 10—Amended 1975, No. 236 (Adj. Sess.). § 1.

46. See KMEC, *supra* note 30, at 107 (citing the Memorandum to Regional Planning Commissions from Vermont Agency of Development and Community Affairs).

47. IOWA CODE ANN. § 414.28 (West 1976 & Supp. 1986).

48. IOWA CODE ANN. § 358A.30 (West 1976 & Supp. 1986).

49. *Id.*; IOWA CODE ANN. § 414.28 (West 1976 & Supp. 1986).

tions against manufactured homes and/or mobile homes.⁵⁰ Both provisions defined a manufactured home as "a factory-built structure which is manufactured or constructed" pursuant to the HUD Code. However, the provisions are clearly aimed at the regulation of permanently sited manufactured homes since mobile homes are specifically excluded as transportable dwellings.⁵¹ Moreover, a mobile home will not be treated as a manufactured home "unless it has been converted to real property" at which time a mobile home "shall be taxed as a site-built dwelling."⁵²

The last of the triumvirate of states legislating comparable treatment of housing is Minnesota. The state legislature's 1982 amendment to the Municipal Planning Act provides that: "No regulation may prohibit . . . manufactured housing built in conformance with Minnesota Statute Section 327.31-.35 (the HUD Code) that comply with all other zoning ordinances promulgated to this section."⁵³

Although local governments retain regulatory authority to adopt residential design standards for traditional zoning purposes,⁵⁴ parity among housing forms, whether factory-built or site-built, is clearly required by the inclusion of statutory language demanding that "[t]he regulations shall be uniform for each class or kind of buildings, structures or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordi-

50. IOWA CODE ANN. § 385A.30 (West 1976 & Supp. 1986). "This section shall not be construed as abrogating a recorded restrictive covenant." Cf. New Mexico's Manufactured Housing and Zoning Act's prohibition against the abrogation or limitation of a recorded restrictive covenant or deed restriction, 1987 N.M. LAWS 196 § 2 (A)-(6)(A) and COLO. REV. STAT. § 30-28-115(3)(b)(IV) (1986).

51. IOWA CODE ANN. § 358A.30 (West 1976 & Supp. 1984).

As used in this section, "manufactured home" means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place of human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles.

52. IOWA CODE ANN. § 358A.30 (West 1976 & Supp. 1984).

53. MINN. STAT. ANN. § 462.357(1) (West 1987). The 1982 provision also amended the County Planning Act, § 394.25 to the same effect.

54. MINN. STAT. ANN. § 462.357(1) (West 1987).

Authority for zoning. For purpose of promoting the public health, safety, morals and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes. . . .

nance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps."⁵⁵

B. State Codes Permitting Regulation of Appearance Criteria

While the following group of state codes and statutory provisions ostensibly prohibit the total exclusion of manufactured housing from local jurisdictions, nevertheless these thirteen states grant local governments varying degrees of latitude in their regulatory treatment of manufactured housing. Unfortunately, some state legislative approaches are mere smoke screens. The degree of discretion granted local decision makers often results in overregulation allowing "those antagonistic to manufactured housing to place unrealistic site and aesthetic requirements upon its location, thereby carrying out implicit exclusion, even as explicit exclusion is prohibited."⁵⁶

Although California's Government Code § 65852.3 sanctions local control over appearance and location, manufactured housing is afforded a significant degree of accommodation. The 1980 California provisions provide that no "city, including a charter city, county, or city and county shall . . . prohibit the installation of mobile homes certified under the [HUD Code] on a foundation system . . . on lots zoned for single-family dwellings."⁵⁷ The impact of this legislative limitation on exclusionary treatment of manufactured housing is greatly reduced by statutory language affording local governments the opportunity to specifically designate lots for manufactured homes in single family districts determined to be "compatible for such mobilehome use."⁵⁸ In addition, the provision allows the imposition of restrictions for building setback standards, yard, access, parking, architectural and aesthetics, and minimum square footage, and imposes additional requirements pertaining to roof overhang, roofing, and siding materials.⁵⁹ Notwithstanding this delegation of broad authority to communities, the California legislature included a final provision aimed at curtailing such a bridled local governmental discretion by prohibiting the

55. *Id.*

56. See Kmiec, *supra* note 30, at 107.

57. CAL. GOV'T CODE § 65852.3 (West 1983).

58. *Id.* "However, a city including a charter city, county, or city and county may designate lots zoned for single-family dwellings for mobilehomes [sic] . . . which lots are determined to be compatible for such mobilehomes [sic] use."

59. *Id.* "However, any architectural requirements imposed on the mobilehome structure itself, exclusive of any requirement for any and all additional enclosures, shall be limited to its roof overhang, roofing materials, and siding materials."

application of "any development standards which will have the effect of totally precluding mobilehomes from being installed as permanent residences."⁶⁰

California's enabling legislation has been perceived as an "illustration of apparent liberalization"⁶¹ since the retention of "local control" enables local governments to simply camouflage their exclusionary objectives. For example, the absence of restrictive statutory language defining or interpreting the "lots which are determined to be compatible" provision enables California local governments to enact special permitting procedures for manufactured housing. The utilization of special permitting procedures—including but not limited to public hearings, lengthy review processes, and special fees for administering the review processes required of manufactured housing—are not applied to conventional, site-built housing. A 1981 memorandum by the California Department of Housing and Community Development stated that local governments may exercise their judgment in determining "compatibility" provided there is a rational basis for their determination.⁶² Nevertheless, California's legislature could remedy the statutory provision's inherent weaknesses by drafting appropriate remedial legislation⁶³ aimed at fulfilling the state legislature's mandate of providing Califor-

60. *Id.*

61. See Kmiec, *supra* note 30, at 107.

62. See generally G. Hobrecht, *California Government Code Section 65852.3: Legislature Prohibits Exclusion of Mobile Homes on Single-Family Lots*, 16 U.C.-DAVIS L. REV. 167, 173 (1982) (citing California Department of Housing and Community Development, Memorandum Regarding Department's Legal Interpretation of SB 1960 (Jan. 23, 1981)). A 1986 survey conducted by the California Department of Housing and Community Development revealed that most California local governments comply with the statute's directives; notwithstanding that finding, the Department of Housing and Community Development urged the state legislature to clarify local governments' authority to regulate the siting of manufactured homes on permanent foundations on lots zoned for single-family detached dwellings. This recommendation was made in response to what the study called the continuing resistance of local governments to deny permit applications to manufactured homes on permanent foundations and the continuing practice of local governments to enforce statutory provisions authorizing the total exclusion of manufactured housing from lots zoned for single-family detached dwellings. See DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, STATE OF CALIFORNIA, LOCAL GOVERNMENT MOBILEHOME AND MOBILEHOME PARK POLICIES IN CALIFORNIA 37 (1986).

63. See Hobrecht, *supra* note 61, at 184. The author concluded California could increase its affordable housing stock by implementing the following proposals:

- (1) reducing the costs associated with placing a manufactured home on an individual lot;
- (2) amending Section 65852.3 to apply to all residential zones in which single-family dwellings are either a primary or secondary permitted use;
- (3) adopting legislation that would invalidate restrictive covenants prohibiting manufactured homes and mobile homes in subdivisions; and
- (4) requiring local governments to zone more land for manufactured home parks.

nians with affordable housing.⁶⁴ One legislative solution for streamlining or simplifying the regulatory process for manufactured housing while preserving the "compatibility" issue for local governments would be the inclusion of a proviso requiring local governments to identify lots deemed incompatible in their communities together with proof of incompatibility by a detailed basis for their determination.

A hybrid of the California and Vermont statutes is the 1981 amendment to Indiana's planning and zoning enabling legislation which requires that local governments' legislation "subject dwelling units and lots to identical standards and requirements, whether or not the dwelling unit to be placed on a lot is a manufactured home or some other type of dwelling unit."⁶⁵ The state's proscription against exclusionary treatment of manufactured housing, however, has neither the breadth nor depth of Vermont's "Equal treatment of housing" provision. Under the Indiana provision,

[s]tandards and requirements, specified in comprehensive plans and ordinances . . . may not totally preclude all manufactured homes constructed after January 1, 1981 and that exceed twenty-three (23) feet in width and nine hundred fifty (950) feet of occupied space, from being installed as permanent residences on any lot on which any other type of dwelling unit may be placed [emphasis added].⁶⁶

Like California, Indiana regulates the aesthetic and structural appearance of manufactured housing, but these requirements are limited "to roofing and siding materials."⁶⁷ Moreover, setback, yard areas, parking, minimum foot and underfloor space must be applied equally to all "dwellings," whether they are factory-built or site-built.⁶⁸

A similar middle-of-the-road approach toward manufactured housing is Maine's enabling legislation which recognizes two distinct forms of

64. 1980 CAL. STAT. 3690, ch. 1142, 1 provides: "The Legislature finds and declares that manufactured housing, which includes mobilehomes, offers Californians additional opportunity to own and live in decent, safe, and affordable housing on a permanent basis."

65. IND. CODE § 36-7-4-1106 (Supp. 1987).

66. *Id.* at (c) and (d) (Supp. 1987).

67. *Id.* at (b). "However, aesthetic standards and requirements pertaining to the home structure itself which are adopted under this section may only pertain to roofing and siding materials."

68. *Id.*

Comprehensive plans and ordinances adopted under the provisions of this chapter may subject dwelling units and lots to identical standards and requirements, whether or not the dwelling unit to be placed on a lot is a manufactured home or some other type of dwelling unit. These standards and requirements may include, but are not limited to: (1) setback distance; (2) side and rear yard area; (3) vehicle parking space; (4) minimum square footage of the dwelling unit; and (5) underfloor space enclosure requirements.

factory-built or manufactured housing: HUD Code homes and modular homes.⁶⁹ Under the "Location of manufactured housing" provision, local governments are required to "permit manufactured housing . . . to be placed or erected on individual house lots in a number of locations on underdeveloped lots where single-family mobile homes are allowed subject to the same requirements as single family dwellings, except as otherwise provided. . . ."⁷⁰ The statutory provisions have two significant features: First, the Maine legislature provided that "[i]t shall not constitute compliance with this simply to provide one or more zones or locations where mobile home parks or mobile home subdivisions or development are allowed."⁷¹ Local governments had until January 1, 1985, to comply with this mandate. Second, local zoning ordinances may not dictate that "manufactured housing on individual lots be greater than 14 feet in width . . ."⁷² effectively precluding the exclusion of single-width manufactured homes from residential districts. Local governments are, however, permitted to establish design criteria, including roof design; a permanent foundation; and "exterior siding that is residential in appearance, *provided that the requirements do not have the effect of circumventing the purpose*" [emphasis added] of the statute.⁷³ One unique provision not incorporated into any other state statute permits local governments to establish "controls on manufactured housing which are less restrictive than are permitted" by statute.⁷⁴

Of the sixteen state statutes, Colorado's "Public welfare to be promoted" statutory provision qualifies as the most performance-oriented and most favorable to local government policymaking.⁷⁵ Although the statute contains the requisite exclusionary prohibition against zoning regulations "which exclude or have the effect of excluding manufactured homes from the county if such homes meet or exceed, on an equiv-

69. ME. REV. STAT. ANN. tit. 30, § 4965.1 (West 1973 & Supp. 1986).

70. *Id.* at § 4965.2.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. COLO. REV. STAT. § 30-28-115 (1985). *Id.* at § 31-23-303: Legislative declaration. (3) The general assembly declares that the availability and affordability of housing for residents of this state is a matter of statewide concern. It is the purpose of section 31-23-301 (5) to promote the public health, safety, and welfare by allowing residents of this state an additional opportunity to be able to live in decent, safe, and affordable housing on a permanent basis by prohibiting the exclusion of manufactured homes on single site lots from municipalities where the manufactured homes meet or exceed on an equivalent performance engineering basis by the standards established by the municipal building code.

alent performance engineering basis,⁷⁶ standards established by the county building code,⁷⁷ the Colorado legislature preserved a great deal of regulatory authority at the local level. For example, local governments are permitted to enact "county building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors."⁷⁸ The statute further specifies that the "manufactured home" must be at least 24 feet wide and 36 feet in length (excluding single width manufactured homes), have a permanent foundation and specific siding material and roof design, and be HUD certified.⁷⁹ Notwithstanding these requirements, local governments were delegated even broader authority to enact:

any zoning, development, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and set-back standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the country.⁸⁰

Under private land-use controls, manufactured housing fares worse since "[n]othing in [the statutory provision] shall be deemed to supersede any valid covenants running with the land."⁸¹

Two unique legislative statutes have evolved around the concept of a state's responsibility to provide affordable housing. The motivating force behind both New Jersey's "Affordable Housing Act of 1983" and Oregon's "Needed Housing In Urban Growth Areas" is to assure that local governments will provide safe and decent affordable housing for its citizens, in part, by requiring the inclusion of manufactured housing in the local land-use plans.

New Jersey's "Affordable Housing Act of 1983,"⁸² is a direct result

76. COLO. REV. STAT. § 30-28-115(II) (1985). "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units."

77. *Id.* at (3)(b)(1).

78. *Id.* at (3)(b)(III).

79. *Id.* at (3)(a)(1)(A)-(E).

80. *Id.* at (3)(b)(II).

81. *Id.* at (3)(b)(II).

82. N.J. STAT. ANN. § 40:55D-100 (West 1983 & Supp. 1986).

This bill provides that restrictions placed by municipalities upon the use of manufactured homes not less than 22 feet wide and sited on a permanent foundation on land owned by the manufactured homeowner, may not exceed the restrictions placed on other buildings of similar use.

The bill encourages a municipality, when reviewing development regulations pertaining to residential development, to determine if mobile home parks are a practicable means of providing affordable housing in the municipality.

of a legislative study commission⁸³ and the state supreme court's *Mt. Laurel*'s decisions.⁸⁴ The New Jersey legislature, citing the state's critical shortage of affordable housing,⁸⁵ declared it was "in public interest to promote the use of manufactured homes as affordable housing in New Jersey."⁸⁶ Under the statute's prohibition against exclusionary zoning of affordable housing, a local government may not "exclude or restrict, through its development regulations, the use, location, placement, or joining of sections of manufactured homes which are not less than 22 feet wide, are on land title to which is held by the manufactured homeowner, and are located on permanent foundations, *unless those regulations shall be equally applicable to all buildings and structures of similar use* [emphasis added].⁸⁷ Thus, while double-width manufactured homes must be treated in the same manner as site-built homes, the provision's "22 feet wide" restriction effectively prohibits homes that are manufactured in single-widths. Single-width units are apparently relegated to mobile home parks; however, local governments, in their review and approval of residential development regulations, are "encouraged to review those regulations to determine whether or not mobile home parks are a practicable means of providing affordable housing in

83. The New Jersey Mobile Home Study Commissions's 1978 report that regulation, taxation, and financing laws pertaining to manufactured housing had hindered the state's ability to provide affordable housing to moderate-income households. See Kmiec, *supra* note 30, at 108.

84. See *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713 (1975); *Southern Burlington County NAACP v. Town of Mt. Laurel*, 92 N.J. 158, 456 A.2d 390 (1983).

85. N.J. STAT. ANN. § 40:55D-101 (Legislative findings and declarations)
The Legislature finds and declares that:

a. The housing needs of many New Jersey citizens remain unmet each year, exemplified by the fact that, in recent years, only one-half of the estimated annual need for new housing units has been actually constructed.

b. The costs of conventional housing construction, mortgages, land and utilities have increased tremendously in recent years making it increasingly difficult for certain segments of the population, notably the elderly, families with young children, unmarried individuals, and young couples, to afford suitable conventional housing.

c. Due to the conventional housing shortage in New Jersey, the Legislature has a responsibility to encourage alternative means of housing for New Jersey citizens.

d. The design, durability and appearance of manufactured housing has improved significantly over the last decade so that certain styles of manufactured homes are difficult, if not impossible, to distinguish from conventional homes, and yet only 400 of these manufactured homes were sold Statewide during 1982.

e. Despite these significant improvements, there has not been a corresponding rapid escalation in the costs of manufactured homes, with the result that these homes remain affordable for the general population.

f. It is, therefore, in the public interest to promote the use of manufactured homes as affordable housing in New Jersey.

86. *Id.* at 2(f).

87. *Id.* at § 104.

the municipality."⁸⁸ Finally, the New Jersey legislature went one step further than the other state legislatures to ensure that its affordable housing mandate be implemented by creating the Affordable Housing Council,⁸⁹ a state regulatory agency empowered with the dual roles of enforcing the affordable housing statute and monitoring state housing needs.

Oregon's manufactured housing provision has been incorporated into the "Needed Housing in Urban Growth Areas" statute.⁹⁰ Under the statute, manufactured homes, defined as HUD-Code homes,⁹¹ are permissible in parks and subdivisions; however, siting on individual lots in single-family districts subjects manufactured housing to a permitting process.⁹² The Oregon statute which defines "needed housing" as "housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels,"⁹³ and includes ". . . manufactured homes,"⁹⁴ is premised on the necessity for "decent, safe and sanitary housing" in urban growth areas.⁹⁵ Notwithstanding this legislative pronouncement for "needed housing," there is no legislative infringement upon the "local government's prerogative" to "(a) Set approval standards under which a particular housing type is permitted outright; (b) Impose special conditions upon approval of a specific development proposal; or (c) Establish approval procedures."⁹⁶ However, the impact of local governmental control is slightly diminished by a preceding provision requiring that "[a]ny approval standards, special conditions and the procedures for approval adopted by a local government shall be *clear and objective* and shall not

88. *Id.* at § 105.

89. N.J. STAT. ANN. 52:22D-301 *et seq.* (West 1986 & Supp. 1987).

90. OR. REV. STAT. § 197.295 (1983).

91. *Id.* at § 197.295(3).

92. The statute proscribes the exclusion of manufactured housing in a narrow manner: "Limitation on city and country authority to prohibit certain kinds of housing. No city or country may *by charter prohibit* from all residential zones attached or detached single family housing, multiple-family housing for both owner and renter occupancy or manufactured homes [emphasis added]." *See* OR. REV. STAT. § 197.312 (1983).

93. *Id.* at § 197.303.

94. *Id.* "(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy and manufactured homes; and (b) Government assisted housing."

95. OR. REV. STAT. § 197.307:

Effect of need for certain housing in urban growth areas. (1a) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income is a matter of state-wide concern. (2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable decent, safe and sanitary housing. (3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need.

96. *Id.* at (4).

have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay [emphasis added].⁹⁷

Both New Hampshire and Nebraska established an affirmative duty on the part of local governments to provide for manufactured housing in their jurisdictions; nevertheless, the enthusiasm of these legislative mandates is greatly qualified since local governments may restrict the location of manufactured housing. Although New Hampshire seemingly bans the total exclusion of manufactured housing, this proscription is circumscribed by the statutory inclusion that "manufactured housing [is] to be located on individual lots in some, but not necessarily all, residential areas within the municipality."⁹⁸ In terms of appearance criteria, manufactured housing sited on individual lots must "comply with lot size, frontage requirements, space limitation and other reasonable controls . . ." that site-built housing must meet.⁹⁹ Under Nebraska's statutory provisions,¹⁰⁰ local decision makers have been afforded enormous discretionary authority enabling them to create manufactured housing districts. Pursuant to the statutory provisions, each city or local legislative body must provide or include at least one district within its jurisdiction for the use of land for manufactured home courts and individually owned lots in manufactured home courts.¹⁰¹ However, manufactured housing located within these districts is vulnerable to arbitrary local standards and values¹⁰² since a municipality may "prescribe reasonable and necessary requirements of the site development for mobile

97. *Id.* at (5).

98. N.H. REV. STAT. ANN. § 674.32 (1986):

Exclusion of Manufactured Housing. A municipality shall not exclude manufactured housing completely from the municipality by regulation, zoning ordinance or by any other police power. A municipality which adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in some, but not necessarily all, residential areas within the municipality, or in mobile home parks and subdivisions created for the placement of mobile homes on individually owned lots, or in all 3 types of locations. Manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitation and other reasonable controls that conventional single family housing in the same area must meet.

99. *Id.*

100. NEB. REV. STAT. §§ 14-402, 15-902, and 19-903 (1983).

101. *Id.*

102. NEB. REV. STAT. § 15-902 (1983). This discretionary authority is spelled out in the following provision:

Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare, and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development, and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan.

homes in such districts *in accordance with local standards* [emphasis added]."¹⁰³

Kansas, Michigan, and Tennessee have limited their legislative prescriptions to the total exclusion of manufactured housing without constraining local governments from enacting specific exclusionary land-use controls or decreeing the inclusion of manufactured housing on individual lots in residential districts. For example, the Kansas statutory provisions merely states that "[a]rbitrary exclusion of manufactured housing [is] prohibited" and local governments are restrained from regulating "the occupancy of location of dwelling units in such a way as to effect an arbitrary exclusion of manufactured housing."¹⁰⁴ The vagueness of this statutory language and the obvious lack of any definitive guidelines, has thrown the state's local governments into disarray resulting in varying degrees of treatment of manufactured housing dependent upon the local governmental decision makers' interpretation of the ambiguous phrase "arbitrary exclusion."

Michigan's 1986 legislative pronouncement pertaining to manufactured housing simply declares that "local government ordinances shall not be designed as exclusionary to mobile homes generally whether the mobile homes are located inside or outside of mobile home parks or seasonal mobile home parks"¹⁰⁵ or utilize "special use zoning requirements that apply only to, or excludes, mobile homes."¹⁰⁶ The delegation of regulatory authority in the area of appearance criteria permits communities to "include reasonable standards" for mobile homes located outside mobile home parks "to ensure that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone."¹⁰⁷ Unfortunately, this last provision exposes manufactured housing to discretionary and ill-defined local standards. In the area of performance standards, local governments are prohibited from enforcing manufacturing or construction standards "incompatible with, or more stringent" than

103. *Id.*

104. KAN. STAT. ANN. § 19-2938 (1981):

Arbitrary exclusion of manufactured housing prohibited. Neither the board of county commissioners nor the planning board of any county shall, in the exercise of any of the powers and duties conferred . . . regulate the occupancy or location of dwelling units in such a way as to effect an arbitrary exclusion of manufactured housing.

105. 1986 Mich. Pub. Acts 299. § 7(3). Although the Michigan statute is the most recent addition to the field of state regulation of manufactured housing, the statute utilizes the archaic term "mobile home" rather than "manufactured home," the term substituted for "mobile home" in 1981 when Congress amended the National Mobile Home Construction and Safety Standards Act of 1974.

106. *Id.* at § 7(6).

107. *Id.* at § 7(6)A.

the HUD Code.¹⁰⁸ The statute's lukewarm treatment of manufactured housing is unexpected in light of the Michigan Supreme Court's precedent-setting *Robinson Township v. Knoll* decision¹⁰⁹ which set the tone for judicial intervention into the arena of exclusionary treatment of manufactured housing. In *Robinson*, the Michigan Supreme Court resoundingly rejected local governments' attempt to restrict manufactured homes to mobile home parks, dispelling the myths that manufactured homes may be precluded from residential districts on the misguided notion that they are qualitatively different from site-built homes.¹¹⁰

Tennessee's Manufactured Residential Dwellings provision¹¹¹ also negates local regulatory measures which totally exclude residential dwellings from "land designated for residential use" which are "partially or completely constructed in a manufactured facility." The breadth of this statutory protection is sharply curtailed since the term "residential dwelling," by definition, does not apply to single-width manufactured homes. In addition, these "factory-manufactured mobile homes" must conform to state and local land-use controls. Regarding appearance criteria, manufactured homes must have "the same general appearance as required for site-built homes"¹¹² affording local governments the opportunity to apply arbitrary zoning restrictions to manufactured housing under the guise of local appearance standards.

Finally, Florida's Manufactured Building Act of 1979¹¹³ contains no outright prohibition against exclusionary zoning of manufactured housing nor any implicit inclusionary provision for manufactured housing in residential districts. Manufactured homes, referred as to "mobile

108. *Id.*

109. 410 Mich. 293, 302 N.W.2d 146 (1981).

110. The statute's "reasonable standards" may be reflective of the *Robinson* court's holding that a manufactured home or mobile home "may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home." *Id.* at 149.

111. TENN. STAT. ANN. § 13-24-201 (Supp. 1986):

Exclusion of manufactured residential dwellings prohibited—Exceptions.—Notwithstanding any provision of the law to the contrary, no power or authority granted by this Code to regulate zoning or land use planning shall be used to exclude the placement of a residential dwelling on land designated for residential use solely because the dwelling is partially or completely constructed in a manufacturing facility; provided, however, that the term "residential dwelling" as used in this chapter shall not apply to factory-manufactured mobile homes constructed as a single self-contained unit and mounted on a single chassis . . . nor shall this chapter have any effect whatsoever upon any zoning or other regulations whether state or local concerning such factory-manufactured mobile homes as herein defined.

112. *Id.* at § 13-24-202.

113. FLA. STAT. ANN. § 553.38 (West 1972 & Supp. 1986).

homes,"¹¹⁴ are regulated under a bifurcated system. The state's legislative approach confers jurisdiction upon The Department of Community Affairs to regulate the safety and performance standards of manufactured housing¹¹⁵ while local governments have wide authority over local land-use and development matters.¹¹⁶ In order to divest local governments of this broad discretion, the legislature included a proviso mandating that "local rules and requirements" must be reasonable and uniformly applied and enforced without any distinction as to whether a building is a conventionally constructed or manufactured building."¹¹⁷

The most recent entry in the field of state manufactured housing statutes is New Mexico's 1987 "Manufactured Housing and Zoning Act"¹¹⁸ which affords manufactured housing relatively little protection from land-use restrictions of home rule municipalities. Under the statute's proscriptive language, a local government may not "exclude manufactured homes from a specific use district in which site built, single-family housing is allowed or place more severe restrictions upon a manufactured home than are placed upon single-family, site-built housing within that specific-use district" provided the manufactured housing is built to either the HUD or Uniform Building Code.¹¹⁹ Notwithstanding that provision, local governments have great latitude since the Act's provisions cannot be "construed as abrogating or limiting the powers of political subdivisions regarding exercise of zoning, planning, and subdivision powers . . . except to the extent" that they are inconsistent with the Act's provisions.¹²⁰ Moreover, the Act does not apply to local legislation adopted by a home rule municipality prior to January 1,

114. *Id.* at § 553.36(11). Florida's restrictive definition of "manufactured building" does not include manufactured homes built according to the HUD Code standards. On the other hand, "mobile homes" are defined as "any residential unit constructed to standards" of the HUD Code. *Id.* at § 553.36(12).

115. *Id.* at § 553.38 (1):

"The department shall promulgate rules which protect the health, safety, and property of the people of this state by assuring that each manufacturing building is structurally sound and properly installed on site and that plumbing, heating, electrical, and other systems thereof are reasonably safe, and which interpret and make specific the provisions of this part."

116. *Id.* Subsection (2) provides in part that "local land use and zoning requirements, fire zones, building setback requirements, side and rear yard requirements, site development requirements, property line requirements, subdivision control, and onsite installation requirement as well as review and regulation of architectural and aesthetic requirements are specifically and entirely reserved to local authorities." *Id.* at § 553.38(2).

117. *Id.*

118. 1987 N.M. LAWS 196 § 2 (A).

119. *Id.* at § 3.

120. *Id.* at § 6(B).

1987, nor adopted after January 1, 1987, unless it is inconsistent with the Act.¹²¹ Although the term "specific-use district" is neither defined nor interpreted, the statute authorizes local governments "to regulate manufactured housing to require that it meets all requirements" other than "original construction requirements" of site-built housing and to "require by ordinance that such manufactured housing be consistent with applicable historic or aesthetic standards."¹²² Surprisingly, the Act may not be construed as abrogating or limiting recorded restrictive covenant or deed restriction[s],¹²³ which may be perceived as a legislative response to the New Mexico Supreme Court's landmark decision in *Heath v. Parker*¹²⁴ where the court, citing the theory that "[r]estrictive covenants should be construed in favor of the free use of property," ruled a double-wide manufactured home "was substantially the same as a conventional one-family dwelling and did not violate the restrictive covenant[s]" prohibition against "trailers."¹²⁵ The New Mexico statute qualifies as an imperfect state legislative response in light of its restrictive and unfavorable approach to the manufactured housing issue which is exemplified by the broad delegation of regulatory authority to local governments and the lack of an affirmative mandate providing for the siting of manufactured housing by right in local communities.

III. Drafting a Model State Code

The foregoing legislative analysis unequivocally establishes that state-level land-use legislation preempting the traditional concept of local control over affordable housing, specifically manufactured housing,

121. *Id.* at § 7.

Existing Ordinances.—The Manufactured Housing and Zoning Act shall apply to all municipalities except that the Manufactured Housing and Zoning Act shall not apply to any ordinance or regulation adopted by a home rule municipality which was adopted prior to January 1, 1987 or an ordinance or regulation adopted by a home rule municipality after January 1, 1987 which is not inconsistent with the Manufactured Housing and Zoning Act. However, if such ordinance or regulation is repealed then the Manufactured Housing and Zoning Act shall apply thereafter to that home rule municipality.

Id.

122. *Id.* at § 3.

123. *Id.* at § 6(A).

124. 93 N.M. 680, 604 P.2d 818 (1980). The *Heath* court, in a matter of first impression, struck down a privately drafted restrictive covenant prohibiting a "trailer" from a residential subdivision. The court ruled that "[u]nless such dwellings are expressly and explicitly excluded by the terms of a protective covenant, their use should not be enjoined, provided that in each case, the dwelling otherwise conforms to the spirit of the restriction." *Id.* at 819-20.

125. *Id.* at 818-19.

can serve two vital public purposes: first, the preemptive nature of a code coupled with its affirmative mandate and accompanying regulatory provisions set the tone and tenure for statewide housing policies and land-use management and control;¹²⁶ and second, a state code assists local governments in formulating their housing and land-use policies¹²⁷ while facilitating the drafting of zoning ordinances and regulations thereby assuring a more equitable response to the placement of affordable manufactured housing in communities.

With these considerations in mind, legislative drafters and land-use

126. See Delogu, *The Dilemma of Local Land Use Control: Power Without Responsibility*, 33 ME. L. REV. 16, 33 (1981) (pointing out that "[t]he failure of state government to act responsibly produces an ever widening range of irresponsible actions by lower levels of governments and individuals, permitting our worst instincts to surface," the author suggests a three-part role for state government in land-use planning and control).

127. See HOBEN, *supra* note 29, at 5-8 (citing the manner in which states influence housing and listing a variety of existing affordable housing initiatives utilized by states based upon the responses of thirty-three states to a survey conducted by the Council of State Community Affairs Agencies).

See also A REPORT OF THE AMERICAN BAR ASSOCIATION ADVISORY COMMISSION ON HOUSING AND URBAN GROWTH recommending the following initiatives for municipalities to undertake in order to supply housing opportunities at the local level:

1. Increasing the receptivity to federal and state funds by the creation of local agencies to administer such monies, donation of surplus land, property tax abatement, small-scale rent supplement programs, or the assumption of some site development costs.

2. Ensuring housing maintenance and the rehabilitation of existing housing stock by the creation of rehabilitation loan funds, code enforcement, institution of home-steading programs, or various tax incentives such as the elimination or suspension of new taxes on improvements.

3. Expediting the construction of new housing by actively soliciting development and suitable sites, encouraging the inclusion of low- and moderate-income units in large-scale planned unit developments, or expediting the administrative process for projects that respond to housing needs.

4. Balancing housing and employment opportunities by relating the location of public and private employment centers, such as new government agencies or major industrial or commercial facilities, to the availability of decent housing, even to the extent of developing a site-selection process and standards based on this principle.

5. Coordinating housing planning with capital improvement programming by relating the provision of public facilities, to the availability of decent housing, even to the extent of developing a site-selection process and standards based on this principle.

5. Coordinating housing planning with capital improvement programming by relating the provision of public facilities such as water, sewer, roads, and schools to the availability of lower income housing.

6. Providing services and facilities to lower income households as well as to the housing units by making available counselling, management training, housing referral and placement services, and other programs that foster both economic and social stability in new residential areas.

7. Revising both the substance and procedure of local land-use and housing regulations so as to facilitate new construction of lower income housing and to make it possible to renovate the existing housing stock for the use of lower income households.

R. FISHMAN, HOUSING FOR ALL UNDER THE LAW: NEW DIRECTIONS IN HOUSING, LAND USE AND PLANNING LAW, at 452-53 (1978).

planners, contemplating a state-level response to resolving the accommodation of manufactured housing in local communities, should incorporate the following requisite policy statements into state and land-use enabling legislation: first, an affirmative policy favoring the inclusion of manufactured housing;¹²⁸ second, a policy mandating the siting of manufactured housing "by right" in residential districts;¹²⁹ and third, a positive policy requiring the equal application of local land-use controls and appearance criteria and performance standards to both manufactured housing and conventional site-built housing.¹³⁰

IV. A Model State Code

The Affordable Housing Act

Section 1. *Legislative Findings and Declarations*

The Legislature finds and declares that a need for affordable housing exists for citizens and that its citizens have a right to affordable housing. The Legislature has determined that manufactured housing provides state homeowners with an affordable source of decent, safe and sanitary housing on a permanent basis. The Legislature further finds that in the last decade the improved design, appearance and significant technological advances of manufactured housing built to HUD Code standards, makes manufactured housing equivalent to conventional, site-built single family dwellings for purposes of land-use controls and housing code standards. Therefore, the legislature finds and declares that it is in the

128. See Delogu, *supra* note 19, at 63. Theorizes that the "whole idea of exclusion . . . would be dealt a sharp blow if the legislature clearly stated the contrary view." As a remedial answer, the author suggests that a

broadly worded statement of purposes should be added to the state's planning and zoning enabling legislation endorsing, among other things: the principles and policies of inclusion rather than exclusion; the right to travel and to settle where one will; the right to use land in any reasonable manner which does not threaten the public's health, safety, and general welfare; and *the right of all citizens to affordable housing* [emphasis added].

129. See *Accepting Manufactured Housing*, *supra* note 9, at 9. The author, considering the issue of siting manufactured housing by right in residential districts, suggests that

[t]he simplest and most far-reaching change that may be made to increase the opportunity for manufactured homes to be located on individual lots is to amend the definition of a single-family dwelling . . . to include a manufactured home built to the HUD standards. Such homes should be treated as similar to other single-family housing in all zoning matters.

See Kmiec, *supra* note 30, at 107 (the author discussing "the actual adherence and enthusiasm" of state and local governments to accommodate manufactured housing, concludes that their legislative efforts may be "illusory unless manufactured homes are permitted by right in residential districts and not by special or conditional use permit.").

130. *Id.* at 7.

public interest for this State to promote the utilization of manufactured housing in order to provide housing opportunities for persons with lower, moderate and fixed incomes.

Section 2. *Application and Scope*

(A) Equal Regulation of Housing: No municipality shall prohibit the installation of manufactured housing, on a permanent foundation, manufactured or constructed under the authority of the federally preemptive National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 *et. seq.*

(B) Exclusion of Manufactured Housing Prohibited: No municipality shall enact or enforce zoning ordinances or other regulations, including permitting procedure, which have the effect of excluding or arbitrarily restricting the use, location or placement of manufactured housing on lots zoned for single family use in residential districts, except upon the identical development standards and requirements which are applicable to conventional, site-built single family dwellings in residential districts.

(C) Appearance Criteria: No municipality shall enact or impose aesthetic and architectural standards or other requirements for single family residential dwellings that would have the effect of excluding manufactured housing; uniform standards for roof overhang, roofing material and siding material may be imposed consistent with this restriction.

(D) Mobile Home Parks: Mobile home parks may be established consistent with this Act.

Section 3. *Definitions*

The definitions as used in this section govern, unless the context otherwise requires.

- (A) "Manufactured home" means a single family dwelling which:
- (1) Consists of one or more transportable sections which are substantially constructed off site, and, if more than one section, are joined together on site;
 - (2) Is built on a permanent chassis;
 - (3) Is designed to be used, when connected to utilities, as a dwelling on a permanent foundation; and
 - (4) Is manufactured in accordance with and certified pursuant to the standards promulgated for a manufactured home pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, U.S.C. § 5401 *et seq.*
- (B) "Identical development specifications and standards" includes

access, building setback distance, enclosures, and vehicle parking space.

- (C) "Permanent foundation" means a system of support installed either partially or entirely below grade and constructed of material approved by a municipal agency.
- (D) "Roof overhang, roofing material and siding material" means roof appearance and materials commonly used on site-built homes.

FIRST AND SECOND CLASS CITIES

TO: Special Committee on Federal and State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement Of Manufactured Housing In Kansas Cities.

The city zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they do not, I noted where allowed. The survey was sent to 110 First & Second Class cities. The cities were asked the following questions and for a copy of their zoning ordinances.

- #1 - Do you allow manufactured housing in single family residential districts?
Yes/No
- #2 - If not, where are manufactured homes permitted?
- #3 - Do you have a building code?

<u>CITY</u>	<u>#1 In District</u>	<u>#2 if no Where</u>	<u>#3 Bldg. Code</u>
Abilene	No	R-4	Uniform Bldg. Code
Anthony	No		-
Atchison	No	Park/Community	Uniform Bldg. Code
Augusta	No	Park/Subdiv/R-4	Uniform Bldg. Code
Baxter Spg.	Yes	R-4	ICBO-to be adopted
Beloit	No	Park/Subdivisions	Yes
Bonner Springs	No	M-P	-
Chanute	Yes	Park	-
Chetopa	Yes	If zoned R-3	Uniform Bldg. Code
Coffeyville	No	Exception	No
Colby	No	Park & R-4	-
Concordia	No	M-H or M-P	Uniform Bldg. Code
Council Grove	Yes		No
Derby	No		-
Dodge City	No	R-4/MH Dist.	UBC
Eldorado	No	Exception/Park	Yes
Ellis	No		-
Florence	Yes		Yes
Frontenac	No	Park	Yes
Galena	Yes		Southern Bldg. Code
Garden City	No	Park/Subdivision	-
Girard	No	Park/With approval	Yes
Great Bend	No	R-4, M-1 & M-2	Uniform Bldg. Code
Goodland	Yes		Uniform Bldg. Code
Harper	No		-
Hays	No	Park	-

Haysville	No	Exception/Park	Uniform Bldg. Code
Herington	No	R-4/Park	National Bldg. Code
Hillsboro	No	Park	Yes
Hoisington	Yes		-
Holton	No	Exception/Park	Yes
Hugoton	Yes		Uniform Bldg. Code
Humboldt	No	Park	Southern Bldg. Code
Independence	No	Park	Yes
Iola	Yes		Uniform Bldg. Code
Junction City	No	Park Dist.	Uniform Bldg. Code
Kansas City	No	Park	-
Kingman	No	Park	Yes
Lansing	No	Park	Uniform Bldg. Code
Lawrence	No	Park	-
Larned	No	R-4	Uniform Bldg. Code
Leawood	No	?	BOCA
Lenexa	No	Community	Uniform Bldg. Code
Leavenworth	No	Park Dist.	Uniform Bldg. Code
Liberal	No	R-4/Park/Dist.	Uniform Bldg. Code
McPherson	No	Park	Uniform Bldg. Code
Marysville	No	Park	Uniform Bldg. Code
Nickerson	No	Park	Yes
Olathe	No	Exception/Park	Uniform Bldg. Code
Ottawa	No	MH Dist./Park	-
Overland Park	No	MH Dist./Park	BOCA
Paola	No	M-P/Park/Dist.	Yes
Phillipsburg	Yes		Yes
Pittsbiurg	No	Park	Uniform Bldg. Code
Prairie Village	No		-
Roeland Park	No		BOCA
Russell	No	R-4	Uniform Bldg. Code
Salina	No	Park/Subdivision	-
Scammon	Yes		No
Topeka	No	Exception/Park	Yes
Wamego	No	M-H/MH Dist.	UBC, UPC & NEC
Wichita	No	Park	-
Wellington	No	Parks/Dist.	Uniform Bldg. Code

* * * * *

110 First and Second Class cities mailed to.
63 Responses received.

#1 - Do you allow manufactured housing in single family residential districts?
12 answered yes
51 answered no

#3 - Do you have a building code?
45 have codes
3 do not have a code
16 did not respond to question

THIRD CLASS CITIES

TO: Special Committee On Federal And State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement of Manufactured Housing In Kansas Third Class Cities.

The city zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they did not, I note where allowed. The survey was sent to 50 Third Class cities. They were asked the following questions and a copy of their ordinances was requested.

#1 - Do you allow manufactured housing in single family residential districts?
Yes/No

#2 - If not, where are manufactured homes permitted?

#3 - Do you have a building code?

<u>CITY</u>	<u>#1 In District</u>	<u>#2 if no Where</u>	<u>#3 Bldg. Code</u>
Colwich	No	?	Uniform Bldg. Code
Edna	Not Zoned		No
Eudora	No	Exception	Standard Bldg. Code
Galva	No	Park	No
Hanston	Yes		No
Moran	Yes		-
Ogden	No		-
Otis	Not Zoned		No
Perry	Yes		-
Seward	Yes		No
Valley Falls	No	Park	-

* * * * *

50 Cities mailed to.
11 Responses received.

#1 - Do you allow manufactured housing in single family residential districts.
4 answered yes
5 answered no
2 not zoned

#2 - Do you have a building code?
2 has a code
5 do not have a code
4 did not respond to question

COUNTY ZONING

TO: Special Committee on Federal and State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement Of Manufactured Housing In Kansas Counties.

The county zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they do not, I noted where allowed. The survey was sent to 105 counties. The counties were asked the following questions and for a copy of their zoning ordinances.

#1 - Do you allow manufactured housing in single family residential districts?
Yes/No

#2 - If not, where are manufactured homes permitted?

#3 - Do you have a building code?

<u>COUNTY</u>	<u>#1 In District</u>	<u>#2 if no Where</u>	<u>#3 Bldg. Code</u>
Allen	Yes		No
Anderson	Yes		No
Atchison	Not Zoned		No
Barber	Not Zoned		-
Barton	Yes		-
Brown	Yes		No
Bourbon	Yes		No
Butler	No	A1/Park	No
Chase	Not Zoned		No
Chautauqua	Yes		No
Cherokee	Not Zoned		-
Cheyenne	Not Zoned		No
Clark	Yes		No
Clay	No	Exception/Park	No
Cloud	Not Zoned		No
Comanche	Not Zoned		No
Cowley	Yes		No
Crawford	No	Exception	No
Decatur	Yes		No
Doniphan	No	R-3/Agri.	No
Douglas	Yes Modular/Multisect.		Yes
Elk	Yes		No
Edwards	Not Zoned		-
Finney	No	Park/Subdivision	Yes
Ford	Not Zoned		-
Franklin	Yes in 4 of 5 townships		-
Geary	No	Park/Dist.	Uniform Bldg. Code

Graham	Not Zoned		-
Grant	No	M-H/M-P	Yes
Gray	Not Zoned		-
Greeley			No
Greenwood	Not Zoned		-
Harper	Yes		-
Harvey	Yes		No
Haskell	Yes		No
Jackson	Yes		No
Jefferson	No	Agri./5 acres	No
Johnson	No	Exception	Yes
Kearny	Yes	Park	No
Kiowa	Not Zoned		-
Kingman	No	Park/Agri.	No
Lane	Yes	With Permission of neighbors	No
Leavenworth	No	Exception	-
Lincoln	Yes		No
Linn	Yes		No
Logan	No	No	No
Lyon	No	Exception/2 1/2 acre	No
Marion	Not Zoned		No
Marshall	Not Zoned		No
McPherson	Yes/24wide	Park	No
Miami	Township zoning		No
Mitchell	Not Zoned		-
Morris	Not Zoned		-
Morton	Not Zoned		-
Nemaha	Not Zoned		No
Osage	Yes	Park	No
Osborne	Not Zoned		-
Ottawa	Not Zoned		No
Pawnee	No	Exception/Park	Uniform Bldg. Code
Phillips	No	Park	Yes
Pottawatomie	Yes 24 wide		Yes
Rawlins	Yes		No
Reno	No	Exception/Park	No
Republic	Yes		National Bldg. Code
Rice	Not Zoned		No
Riley	Yes in some		No
Rooks	Yes		No
Rush	Yes		No
Russell	Yes		Yes
Saline	Yes		No
Scott	No	No	No
Shawnee	Yes/double wide	Exception	No
Smith	Yes		No
Stanton	Yes		No
Stevens	Not Zoned		No
Sumner	Yes		-
Thomas	No	R-2/MH	Yes
Wabaunsee	Yes	Rural/5 acres	No
	Zoned R-5		-
Wallace	Not Zoned		Yes
Washington	Yes		No
Wichita	Yes		No

Woodson	No	Park/Dist.	Yes
Wyandotte	No	Exception(in un- incorporated areas)	-

* * * * *

105 Counties mailed to.
83 Responses received.

- #1 - Do you allow manufactured housing in single family residential districts?
37 answered yes
20 answered no
24 are not zoned
1 township zoning
1 did not respond to question
- #2 - Do you have a building code?
12 have codes
52 do not have a code
17 did not respond to question

1 public hearing pursuant to the publication notice, signed by the
 2 owners of record of 20% or more of any real property proposed to
 3 be rezoned or by the owners of record of 20% or more of the total
 4 area required to be notified of the proposed rezoning of a specific
 5 property, the ordinance or resolution adopting such amendment shall
 6 not be passed except by at least a three-fourths vote of all of the
 7 members of the governing body.

8 (f) Zoning regulations may provide additional notice by providing
 9 for the posting of signs on land which is the subject of a proposed
 10 rezoning, for the purpose of providing notice of such proposed
 11 rezoning.

12 New Sec. 19. (a) Regulations adopted under authority of this act
 13 shall not apply to the existing use of any building or land, but shall
 14 apply to any alteration of a building to provide for a change in use
 15 or a change in the use of any building or land after the effective
 16 date of any regulations adopted under this act. If a building is
 17 damaged by more than 50% of its fair market value such building
 18 shall not be restored if the use of such building is not in conformance
 19 with the regulations adopted under this act.

20 (b) Except for flood plain zoning regulations in areas designated
 21 as a flood plain, regulations adopted by a city pursuant to K.S.A.
 22 12-715b, and amendments thereto, or a county pursuant to this act
 23 shall not apply to the use of land for agricultural purposes, nor for
 24 the erection or maintenance of buildings thereon for such purposes
 25 so long as such land and buildings are used for agricultural purposes
 26 and not otherwise. No plat or dedication of such land for public
 27 purposes may be made except as provided by this act.

28 New Sec. 20. The governing body shall not adopt or enforce
 29 zoning regulations which have the effect of excluding manufactured
 30 homes

31 New Sec. 21. (a) Any governing body which has enacted a zoning
 32 ordinance or resolution shall create a board of zoning appeals by
 33 adoption of the appropriate ordinance or resolution. Such board shall
 34 consist of not less than three nor more than seven members. If a
 35 city enacts zoning regulations which affect land outside the corporate
 36 limits of such city, at least one member of the board shall be a
 37 resident of the area outside the city's limits. The members first
 38 appointed shall serve respectively for terms of one, two and three
 39 years, divided equally or as nearly equally as possible among the
 40 members. Thereafter the terms of the members may be changed to
 41 either three or four years, whichever is deemed to be in the best
 42 interest of the city or county. Vacancies shall be filled by appointment
 43 for the unexpired terms. The members of such board shall serve

from single-family residential districts solely
 because they are manufactured homes

Nothing in this section shall be construed as precluding the
 establishment or architectural or aesthetic standards applicable
 to manufactured housing, so as to ensure its compatibility with
 site-built housing in the same zoning district.

Nothing in this section shall be construed to preempt or
 supersede valid restrictive covenants running with the land.

Senate L. G.
 1-29-91
 Attachment 6



SEDGWICK COUNTY, KANSAS

DEPARTMENT OF CODE ENFORCEMENT

Ron R. Worley, C.B.O.
DEPARTMENT DIRECTOR

1248 SOUTH SENECA, • WICHITA, KANSAS 67213-4498 • TELEPHONE: (316) 383-7951

TO: Kansas Senate
State and Local Government Committee

FROM: Ron R. Worley, C.B.O.
Building Official and Zoning Administrator
Sedgwick County

DATE: January 29, 1991

SUBJ: SB-23

As you review this bill I would like for you to consider the following comments. This bill does several things that are desirable, however of great concern to Sedgwick County is the section which would have the effect of preempting local government's current authority to regulate the location of manufactured housing. An authority which the elected officials of Sedgwick County, the city of Wichita and most 2nd and 3rd class cities in Sedgwick County have chosen to use and desire to continue to have the option of using as local conditions warrant. It is a system which has worked and we believe is working. On the last page of these comments is a map of Sedgwick County which was approved February 7, 1990, for the placement of manufactured homes in the unincorporated area. The white area on this map is

*Senate L.G.
1-29-91
Attachment 7*

about two-thirds of the area of the County and anywhere in this area a manufactured home may be placed after obtaining a building permit. In the grey area other conditions, such as being a replacement, must be met or a use exception must be granted by the Board of Zoning Appeals. Since February 7, 1990 four BZA applications have been considered and three were approved. In addition 186 building permits for new or replacement mobile homes were issued in 1990. Clearly manufactured homes are not now and have never been excluded from Sedgwick County. The County Commission however, has chosen to regulate their placement. This was done after extensive discussion and public hearings which covered approximately one year. Sedgwick County does not want to suggest that every county or city should make the same decision, rather that every county and city continue to be allowed to make their own decision under Home Rule. That is an important issue.

The manufactured housing industry would like for you to dictate to all those counties and cities for which the elected officials have passed regulations governing mobile homes that they must void those local regulations and allow a mobile home (a moveable dwelling unit built to the 1976 HUD Code) on any lot or tract where a site-build home is permitted.


Currently in Sedgwick County or in the city of Wichita if, due to a road being relocated, you move a site built home that was constructed in 1976 that home would have to be


reinspected and meet the current 1991 code requirements at its new location. This is also true in most other cities in Kansas that have inspection departments. The current code, not just what was required 15 years ago in 1976, but the same standard that is currently required of a new site built home for smoke detectors, for egress windows, for ground fault electrical outlets, gas water heater vents and many other health and safety items. Under their proposal a manufactured home built in 1976 could be moved to the same lot but not be inspected at all, it could be in mint 1976 condition or it could be completely junk inside and out but as long as it had that HUD label it would be allowed to come in without any inspection. If you have an investment in a site built home next to a vacant lot this could be a very important concern to you. Many manufactured homes are not resold by dealers but by owners and come in questionable condition.

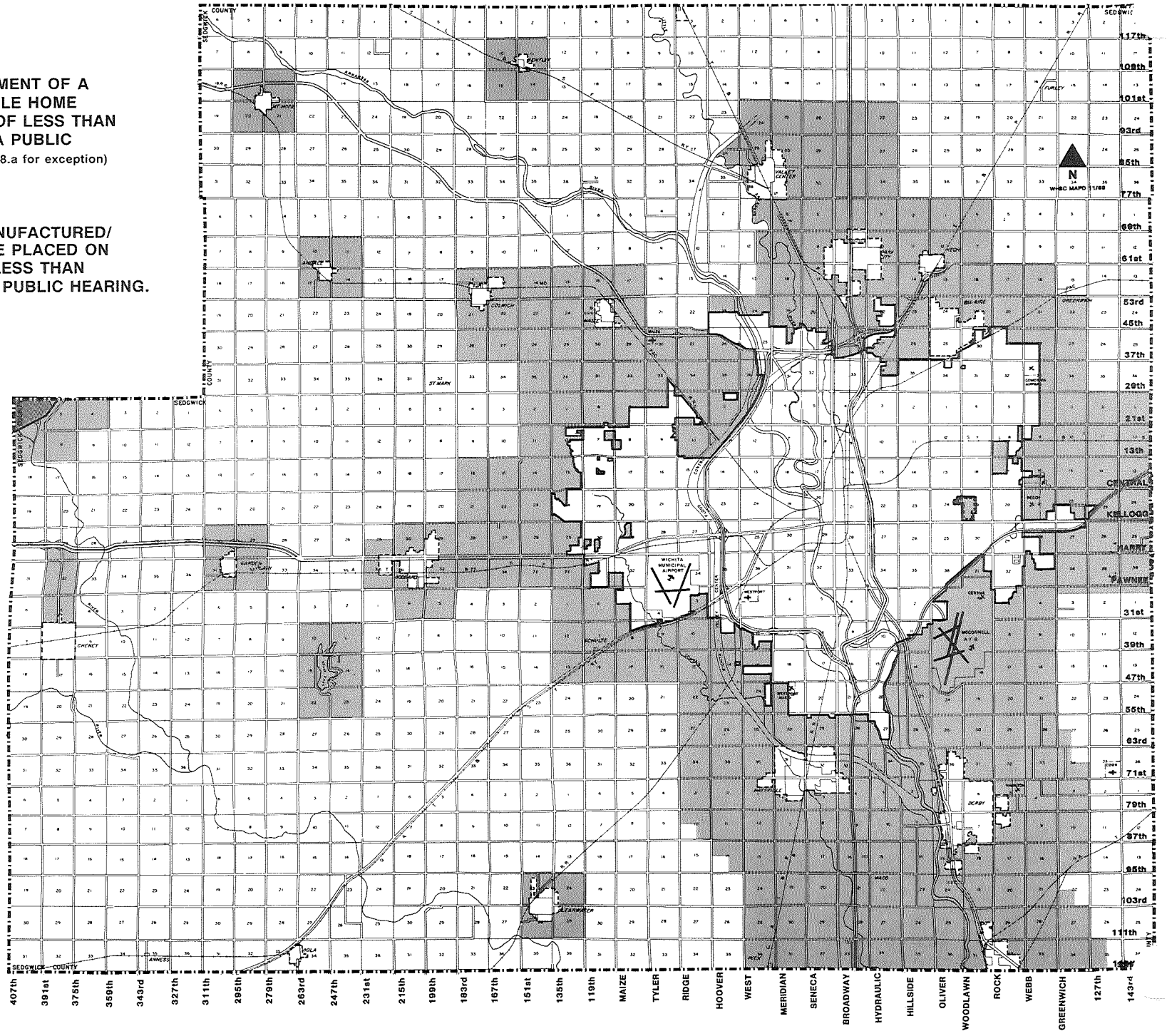
The standard codes for site built or modular construction are reviewed annually to keep current with new materials, methods of construction and fire experience.

A new addition of the code is published every 3 years and contains these changes and as a jurisdiction adopts these new codes all new site built construction is adjusted to those new requirements.

Thank you for your attention to these concerns.


AREA IN WHICH PLACMENT OF A MANUFACTURED/MOBILE HOME ON A LOT OR TRACT OF LESS THAN 20 ACRES REQUIRES A PUBLIC HEARING (See Section 1.D.8.a for exception)


EXEMPTION AREA: AREA IN WHICH A MANUFACTURED/MOBILE HOME MAY BE PLACED ON A LOT OR TRACT OF LESS THAN 20 ACRES WITHOUT A PUBLIC HEARING.
Cities not included.



MANUFACTURED HOME/MOBILE HOME REGULATIONS MAP

FEBRUARY 7, 1990

SUPPLEMENT TO "ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS"

7-4