



# Manufactured Housing and Zoning: *Old-School Ordinances or Progressive Policies?*

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## Table of Contents

I.	Introduction .....	3
II.	Zoning Both Enables and Imposes Barriers to Manufactured Housing .....	4
A.	Manufactured Housing Is An Important Source of Affordable Housing .....	4
B.	Why Zoning Is A Barrier to MH .....	4
1.	MH Zoning at Various Levels of Government.....	5
2.	Outdated language.....	7
3.	Distinguishing types of MH situations .....	8
C.	Surveys of State Statutes .....	10
III.	Model Legislation .....	11
A.	Examples of model jurisdictions .....	11
1.	HUD Scan .....	11
2.	Vermont .....	11
3.	California.....	11
4.	Oregon.....	12
5.	Washington.....	12
6.	Find Land Tool.....	13
B.	Attributes of successful model practice .....	13
1.	Equal Treatment .....	13
2.	Home Classification.....	14
3.	Land Titling Statutes .....	14
4.	Strategy .....	15
C.	Positive Zoning by itself is not enough.....	16
1.	Market and Other Forces.....	16
2.	Recognizing Negative Legislation.....	16
3.	Recognizing and Confronting NIMBY Objections .....	17
IV.	Zoning Playbook Outline .....	18
A.	Regulatory Assessment .....	18
1.	Federal .....	18
2.	State .....	18
3.	Local.....	18
B.	Planning Assessment.....	18
C.	Political Assessment .....	18
1.	Stakeholder Map .....	18

2. Power/Opinion Matrix .....	18
D. Developing a Strategy .....	18
E. Strategy Implementation .....	18
V. Selected Literature Review Summaries .....	19
VI. Bibliography .....	24

## I. Introduction

Housing built off-site, in a factory, has many advantages over site-built housing. It can be assembled more efficiently and faster, with fewer weather-related delays. It can be as durable and attractive as site-built housing. Yet many Americans associate manufactured homes with negative attributes: flimsy, unattractive units for poor people clustered in trailer parks. Technology and regulation have combined since 1976 to create a modern, durable and affordable home that can fit in to most urban, suburban or rural communities.

Unfortunately, zoning and land use laws often act to segregate or eliminate allowable placements for manufactured housing, or MH.<sup>1</sup> Many of these were enacted in response to perceived concerns that MH would devalue the neighborhood or lower the design standards of the community, concerns that in many cases are now ill-founded.<sup>2</sup> The purpose of this paper is to review recent literature<sup>3</sup> addressing the intersection of land use and zoning with manufactured housing and lift up practices that enable rather than constrain the siting of manufactured housing.

Following this introduction, Part II of the paper reviews how zoning both enables and poses barriers to manufactured housing placement at the Federal, state and local level. It also examines the courts' treatment of these laws and considers laws in relationship to various subtypes of manufactured housing such as those in private communities, informal subdivisions, resident-owned communities and privately-owned land. Part II closes with a review of various surveys of state practices.

Part III summarizes lessons learned, themes, and insights from the literature with special attention to zoning models that encourage the use of manufactured housing. Part IV is an outline of a zoning playbook that advocates, public officials and private industry can use to address barriers and turn them into opportunities. Finally, Parts V and VI are respectively a literature summary and bibliography of key works written in the last 30 years on this topic.

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<sup>1</sup> Other laws that can disadvantage MH ownership include laws relating to title, inspections, movable chassis, foundation, and mortgage. See for example [DSN News \(2018\)](#). The Texas Manufactured Home Association has compiled an instructive list of Texas laws affecting MH:

<https://www.texasmha.com/industry-resources/laws-rules>.

<sup>2</sup> [HUD 2021-1](#)

<sup>3</sup>This paper summarizes academic and popular literature since 1990. There is a substantial body of work addressing these issues prior to 1990.

## II. Zoning Both Enables and Imposes Barriers to Manufactured Housing

### A. Manufactured Housing Is An Important Source of Affordable Housing

Approximately 22 million people, with an average income of \$30,000, live in manufactured or mobile homes according to the [Manufactured Housing Institute](#) in 2021. The [U.S. Department of Housing and Urban Development](#) found in 2020 that manufactured housing (MH) is the largest source of unsubsidized affordable housing in the country.

Unfortunately, as one [scholar](#) put it, the zoning treatment of manufactured housing is a national tragedy.<sup>4</sup> As a result of state and local zoning and other regulations, manufactured housing is highly segregated from other types of housing. Durst estimates that “of the nearly 7 million occupied mobile homes in the country, approximately 69% are located within one half block of another mobile home, compared with only 4% of conventional owners and conventional renters” located near a mobile home.<sup>5</sup>

### B. Why Zoning Is A Barrier to MH

Zoning is a law that organizes how land may be used. It establishes an orderly pattern of development across neighborhoods and the city by identifying what may be built on a piece of property.... Zoning regulations set limits on how a property owner may use land (rather than requiring them to use it in a particular way).<sup>6</sup>

Zoning is a police power of the state that is often delegated to the county, city or other local jurisdiction. Because zoning tends to be intensely local, it can be difficult to analyze and summarize zoning laws at the national or even statewide level. Nevertheless, each level of government has different authority and adds different

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<sup>4</sup> [Mandelker 2016](#).

<sup>5</sup> “Mobile home” and “manufactured housing” are technical terms that do not have a standard meaning. The US Census refers to mobile homes as a category of off-site built housing that is movable at any time. The National Manufactured Housing Construction and Safety Standards Act of 1974 (P.L. 93-383, referred to here as the HUD Code) refers to mobile homes as homes permanently on chassis and made them illegal to manufacture in 1976 (legal units on wheels are now called “recreational vehicles” and are generally not considered suitable for long-term occupancy). Manufactured homes or factory-built homes generally refer to homes built in a factory to specifications of the HUD Code after 1976. Unfortunately, many laws and popular usage often treats mobile homes and manufactured homes as equivalents. Here, Durst appears to use the term to refer to any pre- or post-1976 factory-built home. See Durst 2019.

<sup>6</sup> Taken from <https://www1.nyc.gov/site/planning/zoning/about-zoning.page> accessed on December 3, 2021.

attributes to its zoning regulations. Different types of MH placement also trigger different types of regulations.

## 1. MH Zoning at Various Levels of Government

### a. Legislation—Federal

Implemented in 1976, the National Manufactured Housing Safety and Construction Act of 1974 (42 U.S.C. 5401-5426), also known as the HUD Code, preempted state and local building codes governing the construction of manufactured housing units.<sup>7</sup> While this effectively eliminated the state-level uncertainties surrounding the standards to which units would be constructed, the HUD Code does not address state or local standards governing the placement of individual units onsite. Local zoning, subdivision ordinances, architectural design standards, and other requirements often limit the number of locations within which manufactured housing can be placed, impose additional onsite installation standards and other design requirements which do not pertain to site-built units, and in some cases, prohibit the use of manufactured housing units altogether.<sup>8</sup>

### b. Legislation—State

While states delegate authority for zoning to localities, they do not often affirmatively mandate zoning requirements due to the traditional deference of states to localities for determining local land use rules. More recently, however, states have begun to set conditions on local zoning, sometimes in response to exclusionary single family zoning requirements that have roots in racial segregation and discrimination. In this vein, several commentators have noted that some states are more encouraging of MH use than others. See Part II.C Survey of State Statutes, and Part III. Model Legislation for more information.

States vary on the strength of their legislative support for MH. California prohibits local governments from subjecting manufactured homes approved under the HUD Code to “any administrative permit, planning, or development process or requirement” that is different from what “would be imposed on a conventional single-family residential dwelling on the same lot.” New Hampshire prohibits special exceptions or special permits for manufactured housing unless they are required “for single family housing located on individual lots or in subdivisions.”<sup>9</sup>

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<sup>7</sup> For a lively discussion of preemption see <https://manufacturedhousingassociationregulatoryreform.org/time-to-enforce-the-law-on-federal-preemption/>.

<sup>8</sup> From [HUD 2011](#).

<sup>9</sup> [Mandelker 2016](#)

Mandelker continues: “In other states, the state legislature may explicitly prohibit manufactured home discrimination, yet allow local governments the freedom to impose their own zoning standards and requirements. Despite the broad language purporting equality, cities can designate certain lots for manufactured homes in areas zoned for single family residences and can impose setback, yard, access, parking, aesthetic, square footage, roofing, and siding standards.”<sup>10</sup>

### c. Legislation—Local

Mandelker also scanned the local zoning landscape in 2016. “Statutory protections are available in a number of states, but they are limited and may authorize aesthetic standards without recognizing their potential for exclusion. Lack of by-right zoning, architectural standards and lack of buildable land have negative impact on MH homes. Zoning burdens include outright exclusion; exclusion from residential zones; or limiting use to designated MH parks.”<sup>11</sup>

Grounded Solutions conducted its own review in 2018. “Because manufactured housing is perceived of as temporary and poor quality, many municipal codes prohibit its placement. Zoning codes often have lot size and density restrictions that can be impediments to siting new manufactured home communities. Municipalities can also be proactive and designate sites as manufactured housing to help prevent landowners from selling for speculative development. In 2012, the United States Court of Appeals for the Ninth Circuit upheld a city’s authority to zone an existing manufactured housing community as manufactured housing.”<sup>12</sup>

In 2011, HUD reviewed the existing literature and found several factors which motivate local government adoption of these and other manufactured housing regulatory barriers:

- General prejudice against all forms of low-cost housing
- The perception that manufactured home residents constitute a transient population with weak ties to the community
- The low aesthetic appeal of the traditional trailer park community design
- Perceptions that manufactured housing is substandard and unsafe
- The perception that manufactured housing appreciates more slowly than traditional site-built homes and negatively influences adjacent housing prices.

HUD concludes: “Evidence suggests that nearly all of these claims are unwarranted and not based on empirical reality.”<sup>13</sup>

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<sup>10</sup> [Mandelker 2016](#)

<sup>11</sup> [Mandelker 2016](#)

<sup>12</sup> [Grounded Solutions 2018](#)

<sup>13</sup> [HUD 2011](#)

Dawkins examined the influence of local land use and design regulations on MH placement, controlling for a variety of local market conditions. “We find that a variety of regulatory restrictions ... impede the placement of manufactured housing in metropolitan areas. These regulations primarily influence whether jurisdictions have any manufactured housing units, while market conditions play a greater role in determining the number of units placed in communities that allow them. Among the various restrictions, by-right zoning for MH has the largest relative impact on unit placement.”<sup>14</sup>

#### d. Case law

According to Mandelker, case law is practically unanimous in upholding restrictive zoning and decisions denying the approval of manufactured housing as a conditional use. “Courts have held that exclusions from residence zones, refusals to grant permits for manufactured housing, restrictions to manufactured housing parks, and appearance codes are not preempted [by the HUD Code].”<sup>15</sup>

Despite this, however, Barewin noted that courts examine exclusionary ordinances (those that preclude MH from locating anywhere in the municipality) more carefully than other types of manufactured housing regulations. The courts have invalidated exclusionary ordinances because manufactured homes provide a source for affordable housing or manufactured homes represent a legitimate use of land. Courts occasionally strike down legislation that limits manufactured homes to unreasonably small areas of land.<sup>16</sup>

## 2. Outdated language

Two related scenarios arise frequently that illustrate a problem that goes beyond the express language of a statute. First, many jurisdictions fail to update their zoning statute to acknowledge changes in Federal law. In particular, there are several local jurisdictions that use the term “mobile home” in the zoning code without recognizing that the HUD Act made these uses illegal under Federal law and defines a new use, manufactured housing to HUD Code,<sup>17</sup> instead. Second, local officials assume that the zoning code reference to mobile homes is intended to encompass, and thus exclude, manufactured homes, when in fact the local code is simply outdated. Absent updated language, or an express statute that puts manufactured housing on the same footing as

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<sup>14</sup> Dawkins 2010

<sup>15</sup> [Mandelker 2016](#)

<sup>16</sup> Barewin 1990

<sup>17</sup> Modular and panelized homes are factory built but must meet local building codes rather than the HUD Code. This paper focuses on zoning interaction with HUD Code homes.



stick-built housing, the interpretation of outdated statutory language can serve as a barrier to MH placement in many residential zones.<sup>18</sup>

### 3. Distinguishing types of MH situations

Not only are different levels of government involved in deciding where MH can be placed. Different types of MH communities receive different statutory treatment as well. MH can be placed on individually owned land, on leased land in a park or on an individual site, in private communities such as parks or informal subdivisions, or on collectively-owned land in a resident-owned community. Each situation may trigger different land use requirements under state or local zoning.<sup>19</sup> Based on annual loan data published by the Consumer Financial Protection Bureau (CFPB), 64.1% of MH borrowers in 2020 owned their land; 20.5% lived on paid leaseholds where rent was owed for the land, and 10.1% lived on unpaid leaseholds where they lived without paying rent to the owner. Another 5% of MH borrowers in 2020 were exempt from reporting the land ownership status.<sup>20</sup>

#### a. Owned land

Over 60 percent of manufactured housing borrowers in 2020 directly own the land where their home is located, meaning they may be eligible for an MH mortgage. However, 17 percent of these borrowers take out a chattel loan.<sup>21</sup> Despite the prevalence of owned land in recent HMDA reporting, however, manufactured homes are traditionally titled as personal property, largely due to the modern manufactured home's mid-20th century roots in the travel trailer industry. Advances in building technology and increased government regulation have resulted in a quality home construction comparable to site-built homes. The National Consumer Law Center noted that legally, however, manufactured homes are still bound by many of the same norms as their travel trailer ancestors, including use of certificates of title, similar to an automobile.<sup>22</sup>

#### b. Individual leased land

Individuals living in MH can reside on land they do not own, in parks or on individual parcels of leased land outside of parks. The land may be leased for a fee, or “unpaid”–

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<sup>18</sup> For example: McHenry County IL; Petersburg VA; Martinsburg MD. (correspondence on file with author)

<sup>19</sup> The CFPB analyzed the land ownership status for new borrowers (both chattel and mortgage) residing in MH. It identified four categories of land title: owned land, leased land (paid through rent); leased land (unpaid), and indirect ownership such as resident-owned communities. Patterns of ownership varied across regions of the country; see [CFPB 2021](#) Figure 12 on page 36.

<sup>20</sup> Author calculations based on [CFPB 2021](#) Figure 11.

<sup>21</sup> [CFPB 2021](#)

<sup>22</sup> [NCLC](#)

the CFPB’s term for land that is leased for free, often from family or friends. Unpaid leases are most common in the south.<sup>23</sup> Rental property can be a use limited by local regulations.<sup>24</sup>

#### c. Private communities

Almost three million MH households live in an estimated 45,000 to 50,000 manufactured home communities (mobile home parks, manufactured home parks, or MHPs). In 2013, approximately a third of new manufactured houses (about 17,000) were located in manufactured housing communities.<sup>25</sup> MH is highly segregated from the conventional housing stock in a way that impacts housing affordability. According to estimates by the US Census Bureau (2017), Durst says that approximately one-third of new US mobile homes are placed in MHPs. Despite variation, MHPs are land-lease communities, where residents rent lots from park owners.<sup>26</sup>

Few new manufactured housing communities are opening. Manufactured housing communities face byzantine zoning and development standards, making it expensive and difficult to establish new sites. MHPs are also spatially distinct. In metropolitan areas, local laws and zoning codes often require that mobile homes be located exclusively within MHPs and segregated from single-family housing.<sup>27</sup> This often means MHPs are isolated into commercial and industrial zones and kept separated from conventional housing.

#### d. Informal Subdivisions

According to Durst, a large proportion of MH is not located in parks but rather on land owned by the MH homeowner. A substantial number of these MHs are located in what Durst calls informal subdivisions. Informal subdivisions are, as the name suggests, “residential subdivisions that are developed with austere levels of infrastructure and services (often lacking paved roads, sidewalks, streetlights, sewer service, and sometimes even piped water and electricity) and under minimal regulatory control—often guided by subdivision regulation but not by zoning or building codes. ...An analysis of unincorporated communities in metropolitan and micropolitan areas across the country suggests that as many as 35% of manufactured homes may be located in ISs and

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<sup>23</sup> [CFPB 2021](#).

<sup>24</sup> Jurisdictions have enacted laws to address AirBNB-type uses; the interplay between these restrictions and manufactured housing is beyond the scope of this paper.  
<https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city>.

<sup>25</sup> [Grounded Solutions 2018](#)

<sup>26</sup> Durst 2019; with the exception of Resident-Owned Communities, discussed below.

<sup>27</sup> Dawkins and Koebel 2010.

that they play a key role in expanding affordable housing options for minorities and the poor.”<sup>28</sup>

e. Resident-Owned Communities

A resident owned community, or ROC, is a neighborhood of manufactured homes that is owned collectively by the residents who live there rather than by an outside landlord.<sup>29</sup> According to CFPB, .6% of MH borrowers in 2020 lived in ROCs. Resident-owned communities are often considered manufactured housing parks for zoning purposes.

### C. Surveys of State Statutes

Several organizations have undertaken assessments of state-wide zoning support of manufactured housing. Most recently, the Manufactured Housing Institute has created an interactive map summarizing state-wide zoning legislation.<sup>30</sup>

An American Planning Association survey from 1985 asked local planners to evaluate whether their state enacted progressive zoning ordinances.<sup>31</sup> In 2011, HUD evaluated states for the strength of their legal support for MH placement. HUD found that states that most strongly promoted HUD-code usage captured the highest share of shipments over the 2000 to 2005 period.<sup>32</sup>

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<sup>28</sup> Durst 2019.

<sup>29</sup> <https://rocusa.org/whats-a-roc/>

<sup>30</sup> <https://www.manufacturedhousing.org/impact-zoning/> (available only to members).

<sup>31</sup> Barewin 1990: An American Planning Association report reveals that local governments follow a state legislature's lead in enacting progressive zoning ordinances. The 1985 report revealed that sixty percent of the 121 communities that permit manufactured housing in residential districts are located in states which have passed legislation that prohibits the exclusion of manufactured homes built in compliance with the HUD Code.

<sup>32</sup> **HUD 2011:** States that most strongly promoted HUD-Code usage captured the highest share of shipments over the 2000 to 2005 period. Furthermore, the gap between strong states and other states has grown over time. At the state level, this suggests that requirements to enact accommodating local standards appear to be having an influence on shipment activity at least at the state level.

### III. Model Legislation

#### A. Examples of model jurisdictions

##### 1. HUD Scan

In 2011, HUD conducted cases studies of five jurisdictions to examine how supportive the laws were of MH. According to HUD: Oakland is one of the premier success stories of the use of manufactured housing in urban infill. Washington recently passed state legislation enabling broader use of manufactured housing after a near three-decade-long advocacy effort and the success of several well-publicized subdivisions. The Pima County (AZ) case illustrates the complexities of placing manufactured units in the expanding suburbs of a high-growth urban area. Owensboro (KY) illustrates the ongoing challenges of developing and marketing manufactured housing even within a state with a long reliance on manufactured housing in rural areas and a record of state legislative support.

##### 2. Vermont

According to Barewin (1990), Vermont is the most progressive state in ensuring equality. Its statute provides that "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." Iowa and Minnesota require equal treatment of manufactured homes and conventional homes. However, these latter ordinances have loopholes which the Vermont statute avoids.<sup>33</sup>

##### 3. California

California has statewide laws creating some parity between MH and site-built homes.<sup>34</sup> To ensure architectural compatibility with surrounding homes Government Code Section 65852.3 establishes that specified architectural standards "may be imposed (by local government) on manufactured homes even if similar requirements are not imposed on conventional single-family dwellings." The provision also requires that local governments "shall allow the installation of manufactured homes" built on compliant foundations "on lots zoned for conventional single family dwellings." Finally, Government Code Section 6582.4 forbids a local government from establishing "any administrative permit, planning or development process or requirements" for a manufactured home "which is not identical to those imposed on a conventional single-family residential dwelling on the same lot." Local requirements for setback, side and rear yard requirements, vehicle parking, aesthetic requirements and minimum

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<sup>33</sup> Barewin does not specify what these loopholes are.

<sup>34</sup> California Manufactured Housing Association 2006; materials on file with the author.

square footage may be imposed on MH, provided that such standards are also applied to conventional single family dwellings.

Because of the availability of vacant lots in areas served by developed streets and utilities and because of a forward-looking City Council that adopted favorable ordinances lifting restrictions on the development of urban lots with manufactured homes, Oakland has seen a very large investment of private capital that has contributed to revitalization of many declining neighborhoods. The majority of manufactured housing units in Oakland are single-family homes placed on scattered single lots.<sup>35</sup>

#### 4. Oregon

Oregon recently amended its state statute to add ORS 197.314, “Required siting of manufactured homes” which includes in part an affirmative obligation: “...[W]ithin urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes .... A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in [this law]...”<sup>36</sup>

#### 5. Washington.

In an effort to provide for affordable homeownership and rental housing, the Washington state legislature since 2004 has required cities and counties to regulate manufactured homes built to federal manufactured housing construction standards no differently than they regulate other types of homes. Previously, Washington cities and counties seemingly had the authority to regulate the location of manufactured homes through zoning and even to ban them entirely.

Nevertheless, cities and counties may under this legislation require that these manufactured homes: (1) be new manufactured homes (but see below); (2) be set on a permanent foundation; (3) comply with any local design standards that may apply to all other homes in the neighborhood in which the manufactured home is to be located; (4) be thermally equivalent to the state energy code; and/or (5) otherwise meet requirements for a "designated manufactured home". (Because a "designated manufactured home" under that definition is one that includes at least two sections,

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<sup>35</sup> <https://www.eastbaytimes.com/2021/06/01/city-leaders-proposal-would-allow-rvs-mobile-homes-to-occupy-private-properties-in-residential-areas/>

<sup>36</sup> Oregon Revised Statutes 197.314, “Required siting of manufactured homes” accessed at [ORS 197.307 \(Effect of need for certain housing in urban growth areas\)](#).

cities and counties may still regulate "single-wide" manufactured homes differently than other types of homes.)

Many local manufactured housing ordinances in this state have been on the books for a number of years and do not necessarily reflect the current state of the law or of the industry. The Washington Manufactured Housing Association has developed "model" regulations for local governments to adopt.<sup>37</sup>

#### 6. Find Land Tool

Clayton Homes has an interactive tool on its website to find land. "By entering your zip code, you will be able to see a list of available lots in your area that are appropriate for a manufactured home. I know what you're thinking... What does "appropriate" actually mean? Manufactured homes must be placed in MH ZONES, which is a fancy way of saying property that is zoned for off-site built housing. If you're using traditional property search tools, these zones are often not taken into consideration, which can be frustrating for you when trying to find the perfect piece of land for your Clayton Built® home. Our Find Land tool automatically searches through land listings in areas that are MH ZONED."<sup>38</sup>

### B. Attributes of successful model practice

#### 1. Equal Treatment

Barewin states: "The main function of a progressive state code is to ensure that municipal zoning ordinances treat conventional homes and permanently attached manufactured homes equally. An express provision of equality or a ban on the per se exclusion of manufactured housing will deter discrimination. For instance, the Tennessee code expressly provides that no local government can use its zoning power to exclude the placement of manufactured homes on land designated for residential use."

However, according to Barewin, equal treatment statutes may be insufficient without stronger language: "Thus, an equality-of-treatment provision fails to ensure that ordinances will not effectively exclude manufactured housing. The state code should provide that no municipality may impose regulatory standards which have the effect of discriminating against manufactured homes."<sup>39</sup>

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<sup>37</sup> Municipal Research and Services Center, accessed from <https://mrsc.org/Home/Explore-Topics/Planning/Housing/Local-Land-Use-Regulation-of-Manufactured-Housing.aspx>.

<sup>38</sup> <https://www.claytonhomes.com/studio/why-you-should-invest-in-land-for-your-manufactured-home/>

<sup>39</sup> Barewin 1990.

Oregon, as noted above, provides a constructive example in this regard, requiring localities to include manufactured housing in single-family residential zones subject to certain caveats enumerated in the legislation.<sup>40</sup>

## 2. Home Classification

The first step here is to ensure that manufactured homes are defined separately from mobile homes, bringing statutory language up to date in recognition of the classification of a manufactured home that meets HUD Code.

Barewin recommends that any state code should broadly define "single-family dwelling" to include forms of manufactured housing. Many current local ordinances define "mobile homes" independently from "dwellings," distinguishing manufactured homes using a "mobility standard." This standard defines prefabricated housing by whether it is intended to be mobile at the place of manufacture.<sup>41</sup> In fact, most courts uphold statutes which define prefabricated homes as mobile, despite removal of the wheels and placement on a permanent foundation. These separate definitions relieve courts from determining whether a mobile home is a dwelling or a trailer.

Barewin goes on to say: "Any new state code should abandon the mobility standard and expand the definition of dwelling to include prefabricated homes of relative permanence and built to HUD Code standards, including both single- and double-width homes. In this manner, municipalities define manufactured homes by their characteristics at the site at which they are located, rather than by their condition prior to placement."<sup>41</sup>

## 3. Land Titling Statutes

Approximately three-quarters of the states have statutes that set forth a procedure to convert a manufactured home from personal to real property and document that conversion. Generally, the procedure involves surrendering the certificate of title or manufacturer's certificate of origin and then filing an affidavit in the local county land records. Typically, the manufactured home must be permanently affixed to the land, a concept often specifically defined. Many states also require that the homeowner own the land in addition to the home. Other states allow a home to be converted to real property if it is permanently affixed to land that the owner is renting, typically requiring that the lease be for a minimum specified period of time.<sup>42</sup> A model Uniform Manufactured Housing Act, adopted by the committee on uniform laws, provides recommended language for allowing changes in title to real property. A study by the Corporation For Enterprise Development and the National Consumer Law Center reviews

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<sup>40</sup> Oregon Revised Statutes 197.314, "Required siting of manufactured homes."

<sup>41</sup> Barewin 1990.

<sup>42</sup> See [CFED and NCLC](#).

the uniform act as well as the status of titling laws in 50 states.<sup>43</sup> The ability to change title from personal property to real property may have land use and zoning implications.

#### 4. Strategy

A local developer with experience in advocating for MH in three different local jurisdictions noted that any permit or zoning action that triggers a public hearing can generate headwinds. This becomes especially difficult if the local zoning code still refers to mobile homes and has not created a separate category for MH that complies with HUD Code or International Building Code. He recommends de-emphasizing that the new housing is MH, which may be associated with negative attributes in the public mind. Instead, he highlights that the homes are fee simple, on a permanent foundation, and eligible for conventional mortgages backed by Freddie Mac and Fannie Mae.<sup>44</sup>

HUD describes the strategy used in Washington State to liberalize state and local laws relating to MH. Beginning in 1976, the Washington (State) Manufactured Housing Association or WMHA began a county-by-county campaign to educate policy makers and the general public about HUD-Code homes. WMHA faced long-term perceptions of manufactured housing as poor quality and not up to the standards of traditional site-built housing. Advocates of manufactured housing in other states can draw from the experiences of the Washington Manufactured Home Association in their successful quest for equal treatment in terms of zoning and land use regulations for HUD-Code manufactured homes, including these strategies:<sup>45</sup>

- Routine meetings with local public officials.
- Hosting plant tours and visits to manufacturers.
- Participating in conferences such as the Governor's Housing Conference and the Washington Association of Cities Conference.
- Retaining the services of a advocates who are well-respected throughout the state for their knowledge of land use and planning.
- Hosting exhibitions and display homes in many venues across the state.
- Developing and distributing brochures and other information packets on why manufactured housing should be treated as any other housing.
- Partnering with other state associations in a multi-state coalition to increase awareness regarding manufactured housing.
- Improving the environmental quality of manufactured housing by supporting programs such as the Management Acquisition Program to help finance energy efficiency features in manufactured homes.

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<sup>43</sup> See [CFED and NCLC](#). See also [https://www.nclc.org/images/pdf/manufactured\\_housing/Titling\\_Reform-How\\_States\\_Can\\_Encourage\\_GSE\\_Invest\\_Manuf\\_Homes.pdf](https://www.nclc.org/images/pdf/manufactured_housing/Titling_Reform-How_States_Can_Encourage_GSE_Invest_Manuf_Homes.pdf)

<sup>44</sup> Private developer telephone conversation with the author, November 16, 2021.

<sup>45</sup> [HUD 2011](#)



- Encouraging best practices in designing and developing with manufactured homes.

Dawkins summarized ways that progressive MH statutes are passed: Planners can promote affordable housing by projecting the potential demand for manufactured housing, devising educational programs to promote community acceptance, encouraging public-private partnerships that support MH provision, reviewing and modifying existing regulations so they treat MH the same as site-built single-family housing, designing incentives to promote affordable redevelopment using MH on vacant infill lots, and modifying regulations to promote MH subdivisions that meet basic design standards for compatibility with their surroundings.<sup>46</sup>

## C. Positive Zoning by itself is not enough

### 1. Market and Other Forces

HUD 2011 concluded that: “Since local regulations influence manufactured housing placement through a variety of channels, local regulators should seek to ensure that the overall permitting system is supportive of manufactured housing placement. Regulations protecting by-right use in traditional single-family districts and infill locations should not be viewed as replacing regulations allowing the development of subdivisions and parks devoted exclusively to manufactured housing. Similarly, states wishing to have the most significant impact on reducing local regulatory barriers should focus on minimizing the cumulative effect of all local regulations, rather than on requiring specific local provisions such as design requirements and by-right allowances.”

The article went further: “Regulatory reforms will help to alleviate some constraints to placing manufactured housing units, but market conditions will ultimately determine if manufactured housing is viable locally. Residents must be willing to pay for manufactured housing units, and financing must be available to those seeking to purchase a manufactured home. Furthermore, the manufactured housing industry’s supply chain (manufacturer-dealer-buyer), and the difficulty of financing units under traditional construction loans until they are secured onsite, can impede the placement of units.”<sup>47</sup>

### 2. Recognizing Negative Legislation

The Manufactured Housing Institute tracks local legislation adverse to manufactured housing. Adverse legislation can include outright bans, zoning barriers, segregated

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<sup>46</sup> Dawkins 2010

<sup>47</sup> [HUD 2011](#)

uses, minimum lot sizes and other requirements.<sup>48</sup> For an explanation of the restrictions imposed by municipal zoning codes, Greensboro Georgia offers an instructive example.<sup>49</sup>

### 3. Recognizing and Confronting NIMBY Objections

Some developers find that zoning requirements can trigger public hearings which in turn provide a convenient venue to raise “Not In My Backyard” (NIMBY) objections to the siting of MH, including traffic, noise, density and other concerns. Concerns may be further elevated if the home is likened to a trailer; if the project is for rental housing; or if the project has subsidies with income limits to increase affordability.<sup>50</sup>

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<sup>48</sup> Document on file with the author.

<sup>49</sup> <https://www.greensboroga.gov/Assets/Files/Trailer%20public%20guidance.pdf>

<sup>50</sup> Private developer telephone conversation with the author, November 16, 2021.

## IV. Zoning Playbook Outline

To help nonprofit developers and advocates influence the local zoning landscape so that it is more favorable to MH, Next Step (subject to funding) will be compiling a Zoning Playbook sharing the steps needed to assess the feasibility of a development site under state and local codes, and to advocate for revisions if the codes are unfavorable to MH. The playbook outline will include the following:

- A. Regulatory Assessment
  - 1. Federal
  - 2. State
  - 3. Local
- B. Planning Assessment
- C. Political Assessment
  - 1. Stakeholder Map
  - 2. Power/Opinion Matrix
- D. Developing a Strategy
- E. Strategy Implementation

## V. Selected Literature Review Summaries

- A. Howard J. Barewin "Rescuing Manufactured Housing from the Perils of Municipal Zoning Laws." *Washington University Journal of Urban and Contemporary Law*, 37, 1990, p.189-214. HeinOnline. (Barewin 1990)

Part I of this Note examines the outdated theories which prompt legislatures to enact ordinances that discriminate against manufactured housing. These theories do not apply to the modern manufactured home. Part II explores judicial treatment of city ordinances. This section focuses on the superficial treatment that the majority of courts give exclusionary ordinances. Part III emphasizes the need for state legislative action and reviews the currently inadequate state statutes. Finally, Part IV describes a progressive state statute and the requisite provisions.

- B. Charles Becker, Timothy Rickert "Zoned out? The determinants of manufactured housing rents: Evidence from North Carolina." *Journal of Housing Economics* 46 (2019) 101626 (Zoned Out 2019).

Zoning is complex. The most basic impetus for zoning that one hears from virtually every park owner and prospective tenant is that of NIMBYism (Not In My Back Yard): local governments wish to discourage those whose property taxes do not cover the costs of public services they consume. MHP owners provide dense, relatively inexpensive housing occupied by low-income residents who contribute relatively little to local government coffers on their own. Not surprisingly, cities like Asheville zone out new MHP developments, though existing developments are grandfathered in Patrick. Since virtually no local government is enthusiastic about attracting poor residents, it is not clear which localities would be most aggressive in restricting parks. A simple model implies that highest income jurisdictions would be most hostile to MHPs.

- C. Consumer Financial Protection Bureau, *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act* (2021). Accessed at <https://www.consumerfinance.gov/data-research/research-reports/manufactured-housing-finance-new-insights-hmda/> (CFPB 2021)

In this report, CFPB (2021) review types of loans and land ownership through an analysis of Home Mortgage Disclosure Act (HMDA) data for 2020, which includes several new data fields applicable to borrowers residing in manufactured homes.

- D. Corporation for Enterprise Development (CFED, now known as Prosperity Now) and the National Consumer Law Center, "Titling Homes," accessed on December 3, 2021, at [https://www.nclc.org/images/pdf/manufactured\\_housing/cfed-titling-homes.pdf](https://www.nclc.org/images/pdf/manufactured_housing/cfed-titling-homes.pdf) (CFED NCLC)

I'M HOME (at the time, a program of CFED) and the National Consumer Law Center (undated) explore the benefits and disadvantages of titling MH as real property, including protection from fraud, loan terms and disclosures, and other differences. The article reviews state statutes to determine which facilitate MH owners to retitle the home from chattel or personal property to real estate. ... Whether a home is classified as real or personal property can significantly affect the home's asset-building potential, mostly due to financing and tax implications, as well how the home and the homeowner will be treated in various situations. In lending as well as in public policy, manufactured homes are often treated as if they are cars rather than a home. They're often issued titles as motor vehicles, rather than real estate. They are commonly assessed with "blue book" values and are often taxed as personal property. This can make manufactured homes more expensive to finance and lead to lower resale values, reducing homeowners' opportunities to enjoy property appreciation and build equity.

- E. Casey J. Dawkins & C. Theodore Koebel. Overcoming Barriers to Placing Manufactured Housing in Metropolitan Communities, 76 J. AM. PLAN. ASS'N 73 (2010) (Dawkins and Koebel 2010)

A variety of regulatory restrictions, including the lack of by-right zoning, as well as permits, snow load standards, fire codes, zoning codes, subdivision regulations, and architectural design standards impede the placement of manufactured housing in metropolitan communities...We suggest that planners emphasize manufactured housing as an affordable housing option, and we offer suggestions for accomplishing this.

- F. Durst, Noah J. and Esther Sullivan. "The Contribution of Manufactured Housing to Affordable Housing in the United States: Assessing Variation Among Manufactured Housing Tenures and Community Types," *Housing Policy Debate* 29:6, 2019 (Durst 2019)

Despite the widespread use of MH, no current research has analyzed the high level of internal variation within MH or documented how this variation impacts housing affordability between MH tenures. Moreover, little is known about the degree of segregation of manufactured homes, which are often clustered in mobile home parks and informal subdivisions.

- G. Renia Ehrenfeucht, “Moving Beyond the Mobile Myth: Preserving Manufactured Housing Communities.” Grounded Solutions 2018 accessed at <https://groundedsolutions.org/sites/default/files/2018-11/Moving%20Beyond%20the%20Mobile%20Myth.pdf> (Grounded Solutions 2018)

The 8.5 million manufactured homes in the U.S. provide housing for more than 20 million people. Almost three million of these households live in an estimated 45,000 to 50,000 manufactured home communities (mobile home parks). In 2000, almost a quarter of all new housing starts were manufactured housing. In 2013, approximately a third of new manufactured houses (about 17,000) were located in manufactured housing communities. The article discusses types of communities; resident protections; and models of community land trust and ROC communities.

- H. Daniel R. Mandelker, “Zoning Barriers to Manufactured Housing”, 37 Wash. U. J. URB. & CONTEMP. L. 189 accessed at [https://landuselaw.wustl.edu/Articles/Article%20Final\\_%20Zoning%20Barriers.pdf](https://landuselaw.wustl.edu/Articles/Article%20Final_%20Zoning%20Barriers.pdf) (Mandelker 2016)

Lessons from Case studies: Regulatory reforms should be seen as enabling rather than causing change—regulatory reform is a necessary but not sufficient condition to promote change...Statutory preemption provided by the National Safety and Construction Act (HUD Code) is limited. It preempts state and local building codes, but does not preempt zoning restrictions in most cases. ... Statutory protections are available in a number of states, but they are limited and may authorize aesthetic standards without recognizing their potential for exclusion. Lack of by-right zoning, architectural standards and lack of buildable land have negative impact on MH homes. Zoning burdens include outright exclusion; exclusion from residential zones; or limiting use to designated MH parks.

- I. U.S. Department of Housing and Urban Development, “Factory-Built Housing for Affordability, Efficiency, and Resilience,” Evidence Matters (Winter/Spring 2020) accessed at <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight1.html> (HUD 2020-1)

One type of factory-built housing, manufactured housing, is already the largest source of unsubsidized affordable housing in the United States. A variety of demand, regulatory, zoning, and other barriers, however, have limited the reach of this promising affordability solution.... Although HUD Code housing is not subject to local building codes, local zoning ordinances pose a significant barrier to the placement of manufactured housing. Some local ordinances prohibit manufactured housing outright, whereas others limit permitted locations or impose additional design

standards.

- J. U.S. Department of Housing and Urban Development, “**Effects of Market Forces on the Adoption of Factory-Built Housing,**” Evidence Matters (Winter/Spring 2020) accessed at <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight2.html#title> (HUD 2020-2)

Factory-built housing has undergone many physical changes that have made it more similar to, and in many ways indistinguishable from, conventional site-built housing. In terms of style and design, factory-built homes are growing in square footage, with larger double- or multisection units now more common than smaller single-section homes. ...Quality improvements in construction and installation practices have increased durability so that the life expectancy of factory-built housing increasingly is comparable to that of site-built or onsite housing. ... Local governments impose land use regulations or zoning requirements to determine the siting, location, design, and construction of housing. Whether intentional or not, these rules can become barriers to housing development when the costs of compliance are too burdensome. The evidence is clear that land use regulations, including excessive impact fees, drive up the cost of land. Those costs, in turn, are shifted to the renter and homeowner in the form of higher rents or housing prices, respectively.

- K. U.S. Department of Housing and Urban Development, “**Regulatory Barriers to Manufactured Housing Placement in Urban Communities,**” accessed at [https://www.huduser.gov/portal//Publications/pdf/mfghsg\\_HUD\\_2011.pdf](https://www.huduser.gov/portal//Publications/pdf/mfghsg_HUD_2011.pdf) (HUD 2011)

Manufactured housing units ...provide an important source of affordable housing within the United States. After adjusting for land costs, the per square foot cost of HUD-Code housing is less than half of standard, site-built housing. ... Despite the affordability advantages of manufactured housing, local zoning, subdivision ordinances, architectural design standards, and other requirements often limit the number of locations within which manufactured housing can be placed, impose additional onsite installation standards and other design requirements which do not pertain to site-built units, and in some cases, prohibit the use of manufactured housing units altogether. This study examines the scope and severity of state and local regulatory barriers to manufactured housing placement within CDBG-eligible communities.

The analysis finds that key barriers to the placement of manufactured housing are regulatory, with permitting requirements, fire codes, zoning codes, subdivision regulations, and architectural design standards all impeding placement. Market

factors such as land cost are also significant. The authors also highlight the role that planners can play in reducing these barriers, particularly those arising in part due to the stigma associated with manufactured housing...

... While regulatory barriers are important impediments to the placement of manufactured units, such barriers are not the only constraint. Regulatory constraints interact with market conditions and local perceptions of manufactured housing to influence manufactured housing supply. These findings suggest that to promote the supply of HUD-Code homes, regulations protecting by-right use in traditional single-family districts and infill locations should not be viewed as replacing regulations allowing the development of subdivisions devoted to manufactured housing.



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