

PROBLEMS ASSOCIATED WITH ZONING
FOR MANUFACTURED HOMES
ON RESIDENTIAL LOTS



Bulletin No. 85-1

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

April 1984

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Assembly Concurrent Resolution No. 31—Committee on Government Affairs

FILE NUMBER.....119

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study zoning problems resulting from placement of manufactured homes on residential lots.

WHEREAS, There should be planned and orderly zoning for the placement of manufactured homes in the cities and counties of this state; and

WHEREAS, There are certain zoning problems with the placement of manufactured homes on residential lots; and

WHEREAS, A complete study of these problems should be undertaken by the legislature to develop and recommend appropriate legislation; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to conduct a study of the problems connected with the placement of manufactured homes on residential lots in this state; and be it further

Resolved, That the results of the study and any recommendations for legislation be reported to the 63rd session of the legislature.

REPORT OF THE LEGISLATIVE COMMISSION
TO THE MEMBERS OF THE 63RD SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 31 of the 62nd session of the Nevada legislature. Assembly Concurrent Resolution No. 31 directed the legislative commission to study the problems associated with placement of manufactured homes on residential lots in the state.

In order to conduct the study, the legislative commission appointed a subcommittee with the following members:

Senator Donald R. Mello, Chairman
Assemblyman Charles C. Perry, Jr., Vice Chairman
Assemblyman Bruce R. Bogaert

The subcommittee was originally authorized to hold only a single meeting. Because of the interest exhibited at the meeting and the necessity of carefully considering its recommendations, the subcommittee requested and was granted funds for a second meeting.

This report presents the subcommittee's recommendations as they were approved by the legislative commission. A brief discussion of the major issue and the factors associated with this issue is also included. All supporting documents and minutes of meetings are on file with the legislative counsel bureau.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
April 1984

* * * * *

LEGISLATIVE COMMISSION

Senator James I. Gibson, Chairman

Senator Thomas J. Hickey	Assemblyman Louis W. Bergevin
Senator Robert E. Robinson	Assemblyman Joseph E. Dini, Jr.
Senator Randolph J. Townsend	Assemblyman John E. Jeffrey
Senator Sue Wagner	Assemblyman Michael O. Malone
	Assemblyman David D. Nicholas
	Assemblyman John M. Vergiels

SUMMARY OF RECOMMENDATIONS

The subcommittee made one basic recommendation as follows:

Direct each local government which has a zoning ordinance or a building code:

1. To hold a public hearing relative to regulation of manufactured housing within its jurisdiction;
2. To examine its zoning ordinance and building code to ensure that:
 - (a) Manufactured homes are not excluded from its territory;
 - (b) There are adequate sites to meet the demands within the jurisdiction; and
 - (c) The restrictions within the zoning ordinance and building code are serving the purposes for which they were developed; and
3. To report its actions and conclusions to the legislative commission on or before April 1, 1986.

REPORT TO THE 63RD SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY PROBLEMS ASSOCIATED WITH ZONING FOR
MANUFACTURED HOMES ON RESIDENTIAL LOTS

I. INTRODUCTION

The 1983 legislature adopted Assembly Concurrent Resolution No. 31 which directed the legislative commission to study problems associated with placement of manufactured homes on residential lots in the state. The subcommittee which conducted the study held two meetings. The initial meeting consisted of a hearing to gather information. The second meeting was a work session to analyze the information, consider alternative courses of action, and adopt a recommendation. Input for the study was received from research and legal staff, representatives of the manufactured housing industry, local governments in the state, and associations representing owners of manufactured homes.

II. DEFINITIONS

In the field of manufactured housing, several related terms have similar definitions. These terms include "manufactured home," "mobile home," "modular home," "factory-built home," and "stick-built home."

Chapters 489 and 361 of the Nevada Revised Statutes (NRS) are the primary sources of relevant definitions and regulatory procedures within the Nevada law. The definition of "manufactured home" is as follows:

489.113 "Manufactured home" defined.

1. "Manufactured home" means a structure which is:

- (a) Built on a permanent chassis;
- (b) Designed to be used with or without a permanent foundation as a dwelling when connected to utilities;
- (c) Transportable in one or more sections; and
- (d) Eight feet or more in body width or 40 feet or more in body length when transported, or, when erected on site, containing 320 square feet or more.

2. The term includes:

- (a) The plumbing, heating, air-conditioning and electrical systems of the structure.
- (b) Any structure:
 - (1) Which meets the requirements of paragraphs (a) to (c), inclusive, of subsection 1; and
 - (2) With respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the

standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 et seq.).

3. The term does not include any structure built in compliance with the requirements of chapter 461 of NRS. (Added to NRS by 1983, 775)

As inferred by this definition, manufactured homes traditionally are built in compliance with the standards in the National Manufactured Housing Construction and Safety Standards Act of 1974 (known as the HUD Code). Although not stipulated by law, mobile homes are also usually constructed in conformity with the HUD Code.

Conversely, NRS 461.170 adopts the standards of the Uniform Building Code (UBC) to apply to "factory-built housing" and a "modular building" which are regulated under this chapter.

"Stick-built" homes are built onsite without using prefabricated sections or modular compartments. Most local governments in Nevada have adopted the UBC to regulate construction of stick-built units within their jurisdictions.

III. DISCUSSION OF ISSUES

Testimony at the public hearing focused the subcommittee's attention on the primary area of conflict.

A. MAJOR ISSUE

It became evident that the major issue in the study was not the quantity of manufactured housing which is being allowed in the state, but rather it was the location of the manufactured homes.

According to the 1980 Census, Nevada ranks fourth highest among the states in the United States relative to the percentage of the housing stock which is manufactured housing. Twenty-two percent of the dwelling units in Nevada are manufactured homes.

There are, however, restrictions placed by the local governments upon where the manufactured housing may be located within the community. These restrictions are established through zoning ordinances and procedures.

B. ZONING RESTRICTIONS AND BUILDING CODES

Many of the local entities in Nevada restrict manufactured housing to specific zones or areas within the community.

Especially in the urban portions of the state, manufactured units are not allowed on individual lots within all subdivisions.

In previous years, manufactured homes, or trailer houses, were not allowed in traditional subdivisions because they were not visually compatible with the stick-built housing, and they tended to lower the property values in the neighborhoods. However, modern manufactured homes can be built in such a way that they are visually compatible with stick-built homes.

Currently, the most controversial difference between the two types of housing appears to be the different codes under which they are built. As previously described, manufactured homes have traditionally been built to meet the United States Department of Housing and Urban Development's (HUD) Code. Stick-built housing has been constructed to the specifications of the Uniform Building Code. Most Nevada localities have adopted the UBC for construction of homes to be located on individual lots within residential subdivisions in their jurisdictions.

C. PREVIOUS LEGISLATIVE ACTIVITY

Legislation which would have allowed manufactured housing constructed under the HUD Code to be located on all residential lots in the state was introduced, and defeated, during the 1981 and 1983 regular legislative sessions. These proposals would have required local governments to allow manufactured homes on all residential lots. However, the local governments would have been able to review the manufactured units individually to ensure visual compatibility within the neighborhoods where they were to be located.

Senate Bill 656 passed the senate in 1981, but it was not reported out of the assembly committee on government affairs. In 1983, Assembly Bill 368 initially was reported out of the assembly committee on government affairs, but subsequently was rereferred to the committee and indefinitely postponed. Assembly Concurrent Resolution No. 31 which established the present study was adopted in its stead. Copies of S.B. 656 from 1981 and A.B. 368 from 1983 are contained in Appendix A of this report.

Assembly Bill 368 from 1983 was based generally upon a California law. This law is located in section 65852.3 of the California Government Code. A copy of the statute is included as Appendix B.

IV. SURVEY OF PUBLISHED MATERIALS

As part of the study, the legislative staff was directed to prepare a concise summary of published materials relative to court cases associated with zoning for manufactured housing. The two recognized sources of information on this topic are:

American Planning Law - Land Use and the Police Power, compiled by Norman Williams, Jr., professor of law at the Vermont Law School and professor of urban planning and law at the University of Arizona; and

American Law of Zoning 2d, compiled by Robert M. Anderson, professor of law and legislation in the College of Law at Syracuse University.

The cases listed in these sources are quite varied and based upon differing circumstances. Although the details of the cases are different, some general conclusions are evident. The majority of court cases have upheld the local governments' zoning relative to mobile homes, unless the entities were attempting to completely exclude these types of units from their jurisdictions. Generally, ordinances which restrict mobile homes to locations within specified districts or mobile home parks have been upheld, although at least one notable case in Michigan (Robinson Township vs. Knoll) was concluded in opposition to the local zoning actions.

In his 1982 article in the Wayne Law Review entitled "'Mobile' Homes? - Public or Private Controls," Robert Schwartz states:

In the field of public land control, the overwhelming majority of jurisdictions have consistently upheld ordinances that make a distinction between mobile homes and site-built homes in the face of constitutional challenges. The majority position is that a zoning ordinance may restrict mobile homes from single family residential districts.

Even though he points out that the courts have not forced localities to allow manufactured housing on residential lots, Mr. Schwartz expresses his opinion that state legislatures should provide for this action in cases where the manufactured units meet specified criteria. He suggests legislation that is similar to California's law and A.B. 368 from Nevada's 1983 legislative session. However, he does not address the crucial issue of building codes.

V. SUBCOMMITTEE RECOMMENDATIONS

At the subcommittee's initial meeting, representatives of the manufactured housing industry requested that legislation similar to Nevada's A.B. 368 from 1983 and the California law be reevaluated. Most of the testimony from the hearing addressed the concept contained in these measures. Adoption of this concept would establish a requirement that manufactured homes be allowed on residential lots throughout the state if the units meet specified criteria relative to visual compatibility within the neighborhoods.

A. POSITIONS OF PROPONENTS AND OPPONENTS

Proponents of legislation which would require that manufactured housing built to HUD Code be allowed on all residential lots proposed several arguments in support of their position. They discussed instances in which the selling prices of lots zoned for manufactured homes are higher than the prices of comparable lots for stick-built houses. They emphasized the high quality of construction under the HUD Code, and the potential compatibility of manufactured housing in a traditional, stick-built neighborhood. The proponents also contended that the local zoning practices preclude manufactured housing from attaining its true potential in meeting the citizens' needs for affordable housing.

The opponents of this type of legislation argued that the local entities in the state currently allow a significant amount of manufactured housing within designated portions of their areas. The local governments, therefore, are not exclusionary in their zoning practices. They contended that the cities and counties through their locally elected officials should continue to be allowed to develop the types of communities in which their citizens desire to live. The opponents also argued that allowing manufactured housing in all neighborhoods would effectively create discrimination against the people who bought homes built according to the locally adopted UBC. Furthermore, they cited instances in which manufactured homes built to the UBC specifications presently are being allowed in traditional, stick-built neighborhoods.

B. ALTERNATIVES CONSIDERED

Three alternative courses of action were considered. They were as follows:

1. Direct the local governments to reevaluate their zoning relative to manufactured housing in order to ensure that:
 - a. Their practices are not exclusionary;

- b. They are allowing an adequate area for development of manufactured housing with respect to the private market forces which are active within the community; and
- c. They are creating an environment in which manufactured housing is allowed to play a reasonable role in providing adequate, affordable housing for the local citizens.

Adoption of this course of action would leave the major decisions relative to zoning within the jurisdiction of the local governments. It would indicate that proponents of legislation requiring that manufactured housing be allowed on all residential lots did not make a strong enough case to offset the fact that the full legislature rejected similar legislation on two previous occasions.

The action would, however, acknowledge that there may be instances in which the local governments have not considered all of the relevant issues while establishing and carrying out their zoning procedures. It, therefore, would direct them to reassess the situation within their localities and modify their zoning appropriately.

2. Place in the statutes statewide guidelines relative to location of manufactured housing on residential lots. Enact legislation similar to Nevada's A.B. 368 of 1983 and the California law, but eliminate the reference to the HUD Code and specify that the local entities may use criteria relative to building codes in determining whether to allow a manufactured unit on a piece of property.

This action would direct the local governments to allow manufactured housing units which meet certain criteria into subdivisions which traditionally had been reserved for stick-built homes. However, it would allow the local entities to retain the UBC. Thus, they could require that manufactured homes which are to be placed on subdivision lots be constructed to the specifications of the UBC.

In most Nevada localities, manufactured homes built to the UBC specifications are regulated the same as if they were traditional stick-built units. However, any of the localities which presently restrict the location of manufactured houses strictly because of the system by which they are built would be precluded from doing so in the future.

3. Enact legislation similar to Nevada's A.B. 368 of 1983 and the California law (section 65852.3 of the California Government Code) and retain in the law the reference to the HUD Code.

Adoption of this course of action would require the local governments to revise their ordinances to allow manufactured houses built to the HUD Code on all residential lots. Criteria which are designed to ensure visual compatibility would be used in determining whether a specific unit could be placed on a given lot.

The arguments in favor and opposition to this action are discussed separately under the title "Positions of Proponents and Opponents."

C. SUBCOMMITTEE RECOMMENDATION

The subcommittee chose to recommend a modified version of Alternative No. 1. In summary, the recommendation was as follows:

Direct each local government which has a zoning ordinance or a building code:

1. To hold a public hearing relative to regulation of manufactured housing within its jurisdiction;
2. To examine its zoning ordinance and building code to ensure that:
 - (a) Manufactured homes are not excluded from its territory;
 - (b) There are adequate sites to meet the demands within the jurisdiction; and
 - (c) The restrictions within the zoning ordinance and building code are serving the purposes for which they were developed; and
3. To report its actions and conclusions to the legislative commission on or before April 1, 1986.

The bill drafted to effectuate this recommendation is contained in Appendix C.

VI. LIST OF SELECTED REFERENCE MATERIALS

Anderson, Robert M., "Mobile Homes and Mobile Home Parks," in Volume 2 of American Law of Zoning 2d, pages 545-588, and pages 161-177 of the Cumulative Supplement, 1983.

Blair, Frederick H., Jr., "Regulating Mobile Homes," Planning Advisory Service Report Number 360, American Planning Association, 1981.

Nevada Legislative Counsel Bureau, "Legislative History of Senate Bill 656 from the 1981 Legislative Session," "Legislative History of Assembly Bill 368 from the 1983 Legislative Session," and "Legislative History of Assembly Concurrent Resolution No. 31 from the 1983 Legislative Session."

Schwartz, Robert L., "'Mobile' Homes? - Public and Private Controls," Wayne Law Review, Volume 29, Number 1, Fall 1982, pages 177-201.

Williams, Norman, Jr., "Mobile Homes," in Volume 2 of American Planning Law - Land Use and the Police Power, pages 447-531, and pages 82-93 of the Cumulative Supplement, 1982.

All of these materials and the minutes of the subcommittee meetings are available through the legislative counsel bureau's research library.

APPENDICES

APPENDIX A - Nevada Senate Bill 656 from 1981

Nevada Assembly Bill 368 from 1983

APPENDIX B - Section 65852.3 of the California Government Code

APPENDIX C - Suggested Legislation - Bill Draft Request S-67
which requires local hearings on zoning
ordinances and building codes restricting
manufactured housing.

APPENDIX A

NEVADA SENATE BILL 656 FROM 1981
NEVADA ASSEMBLY BILL 368 FROM 1983

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. B. 656

SENATE BILL NO. 656—COMMITTEE ON
GOVERNMENT AFFAIRS

MAY 8, 1981

Referred to Committee on Government Affairs

SUMMARY—Prohibits certain discrimination against manufactured dwellings in local planning and zoning. (BDR 22-1946)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to planning and zoning; prohibiting certain discrimination against manufactured dwellings; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. Chapter 278 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 1. *A commission shall not prepare or adopt a master plan or any*
4 *standards which would preclude a manufactured dwelling from being put*
5 *on a permanent foundation on a lot in any area planned for single-family*
6 *dwellings.*
7 2. *A governing body shall not enact any zoning ordinance which pre-*
8 *vents the location of manufactured dwellings as permanent residences in*
9 *areas designated for single-family residences.*
10 3. *A governing body shall apply to manufactured dwellings and the*
11 *lots on which they are to be placed the same requirements which are*
12 *applied to conventional single-family dwellings, including requirements*
13 *for:*
14 (a) *Setback of buildings;*
15 (b) *Side space and rear yards;*
16 (c) *Enclosures, access and vehicle parking;*
17 (d) *Architectural and aesthetic considerations; and*
18 (e) *Minimum square footage.*
19 *Any architectural requirements imposed on manufactured dwellings,*
20 *exclusive of those for additional enclosures, must be limited to require-*
21 *ments relating to overhang of roofs and material used for exterior roofing*
22 *or siding.*
23 4. *As used in this section "manufactured dwelling" means any resi-*
24 *dential dwelling which meets:*

- 1 *(a) The requirements of the building and construction codes listed in*
- 2 *NRS 461.170 and bears the appropriate approval insignia required by*
- 3 *NRS 461.190; or*
- 4 *(b) Construction and safety standards which have been established by*
- 5 *the Secretary of Housing and Urban Development pursuant to 42 U.S.C.*
- 6 *§ 5403 and are effective on the date of passage of this act.*



ASSEMBLY BILL No. 368—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 17, 1983

Referred to Committee on Government Affairs

SUMMARY—Prohibits certain discrimination against manufactured homes in local planning and zoning. (BDR 22-587)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to the use of land; prohibiting certain discrimination against manufactured homes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Chapter 278 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 1. *A commission or governing body shall provide for reasonable*
4 *requirements regulating the characteristics and placement of manufac-*
5 *tured homes situated on real property within a city or county, includ-*
6 *ing requirements for:*
7 (a) *Size;*
8 (b) *Preparation of the site;*
9 (c) *Accessory structures;*
10 (d) *Siding, roofing and other materials;*
11 (e) *Foundations and installation; and*
12 (f) *Setbacks, yards and lot coverage,*
13 *if such requirements are not more stringent for manufactured homes*
14 *than for other single-family residences.*
15 2. *The use of a manufactured home may be prohibited if it fails to*
16 *satisfy reasonable requirements adopted pursuant to subsection 1, but*
17 *not solely because it is a manufactured home.*
18 3. *As used in this section "manufactured home" means any*
19 *residential dwelling which meets construction and safety standards*
20 *which have been established by the Secretary of Housing and Urban*

- 1 2. The placement of a new manufactured home on a lot for single-
2 family residences may be prohibited if it:
3 (a) Fails to satisfy reasonable requirements adopted pursuant to
4 subsection 1; or
5 (b) Does not favorably compare with other homes built in the area,
6 but not solely because it is a manufactured home.
7 3. As used in this section "manufactured home" means any resi-
8 dential dwelling to be placed on a permanent foundation which meets
9 construction and safety standards which have been established by the
10 Secretary of Housing and Urban Development pursuant to 42 U.S.C.
11 § 5403 and are effective on January 1, 1984.
12 Sec. 2. This act shall become effective January 1, 1984.

APPENDIX B

SECTION 65852.3 OF THE CALIFORNIA GOVERNMENT CODE

CALIFORNIA GOVERNMENT CODE

§ 65852.3. Mobilehomes; installation on lots zoned for single-family dwellings

A city, including a charter city, county, or city and county shall not prohibit the installation of mobilehomes certified under the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401, et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on lots zoned for single-family dwellings. However, a city, including a charter city, county, or city and county may designate lots zoned for single-family dwellings for mobilehomes as described in this section, which lots are determined to be compatible for such mobilehome use. A city, including a charter city, county, or city and county may subject any such mobilehome and the lot on which it is placed to any or all of the same development standards to which a conventional single-family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking and architectural, aesthetic requirements, and minimum square footage requirements. 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 material, and siding material. In no case may a city, including a charter city, county, or city and county apply any development standards which will have the effect of totally precluding mobilehomes from being installed as permanent residences.

(Added by Stats.1980, c. 1142, p. 3691, § 1.5, operative July 1, 1981.)

Historical Note

Sections 1, 3 of Stats.1980, c. 1142, p. 3691, provides:

"Section 1. The Legislature finds and declares that manufactured housing, which includes mobilehomes, offers Californians	an additional opportunity to own and live in decent, safe, and affordable housing on a permanent basis.
	"Sec. 3. This act shall become operative July 1, 1981."

Library References

Zoning and Planning ⇐72.

C.J.S. Zoning and Land Planning § 55.

APPENDIX C

SUGGESTED LEGISLATION

SUMMARY--Requires local hearings on zoning ordinances and building codes restricting manufactured housing. (BDR S-67)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to manufactured housing; requiring local governments to hold hearings on restrictions imposed by zoning ordinances and building codes; requiring reports to the legislative commission; and providing other matters properly relating thereto.

WHEREAS, The legislature has in the past been presented with proposals to alleviate problems which result from restrictive zoning and building regulations which affect manufactured housing; and

WHEREAS, The legislature has delegated to local governing bodies the power to regulate the use of land and the construction of buildings thereon within their jurisdictions; and

WHEREAS, The legislature is reluctant to interfere with local governing bodies in their exercise of this delegated power but recognizes that there are interested persons whose views on these problems must be heard; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The governing body of each city and county which has a zoning ordinance or a building code shall:

1. Hold a public hearing at which persons may appear and present testimony regarding the regulation of manufactured housing by the zoning ordinance and building code; and

2. Examine and evaluate its zoning ordinance and building code to ensure that:

(a) Manufactured homes are not excluded from its territory;

(b) There are adequate sites for manufactured homes to meet the demand for such sites within its territory; and

(c) The restrictions within the zoning ordinance and building code are serving the purposes for which they were developed.

Sec. 2. On or before April 1, 1986, the governing body of each city or county which holds a hearing under section 1 of this act shall prepare and transmit to the legislative commission a report indicating:

1. When the public hearing was held and the results of the hearing;

2. Any changes in its zoning ordinance or building code regarding manufactured housing which were made as a result of the public hearing or the evaluation under section 1 of this act; and

3. If there were no changes in its zoning ordinance or building code regarding manufactured housing, an analysis of its zoning ordinance and building code as they relate to the matters presented at the hearing or evaluated.