RESCUING MANUFACTURED HOUSING FROM THE PERILS OF MUNICIPAL ZONING LAWS

INTRODUCTION

Rising housing costs in the United States[1] have prompted some home buyers to choose mobile homes as an affordable alternative to site-built homes.[2] Unfortunately, new mobile home owners[3] encounter municipal ordinances which exclude mobile homes from single-family zoning areas, often confining them to mobile home parks.[4] City councils enact these ordinances because of historical prejudices against mobile homes.[5] However, advanced technology involved in mobile

1. The average price of a new home in November, 1988, was $138,900. *Current Developments*, HOUS. & DEV. REP. 797 (BNA Jan. 23, 1989).

2. United States Bureau of the Census: Construction Reports (Nov. 1986) reported the average price of a single-width manufactured home in 1985 was $21,800.

3. A total of 232,800 manufactured homes were sold in 1987. *Current Developments*, HOUS. & DEV. REP. 797 (BNA Jan. 23, 1989).

4. One such ordinance provides:

> The city council . . . hereby finds and declares that the indiscriminate placement of mobile homes and trailers on individual building lots in the residential zones of the city threatens irreparable damage to residential property values within the city. The city council further finds and declares that, in order to protect residential property values, to preserve the intent of the city's comprehensive plan, and to promote the general safety and welfare of the City of Lewiston and the residents thereof, mobile homes shall be located only within mobile home parks, mobile home subdivisions, and mobile home planned unit developments, except in emergency situations, as hereinafter provided.

City of Lewiston v. Knieriem, 107 Idaho 80, 82-83, 685 P.2d 821, 823-824 (1984).

5. *See* Note, *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 YALE L.J. 702, 702-03 (1962):

> Community fear of blight can be traced to the low quality of both the early trailers and their parking facilities. Economic conditions of the 'thirties, followed by war-

homes, or manufactured housing,[6] renders these prejudices obsolete. To set a precedent in municipal legislatures and courtrooms, state legislatures should draft progressive provisions to discourage restrictive mobile home zoning ordinances and to ease the burden of expensive housing.

Part I of this Note examines the outdated theories which prompt legislatures to enact ordinances that discriminate against manufactured housing.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.

PART I: THE UNFAIRNESS OF LOCAL ORDINANCES

To justify discriminatory zoning ordinances, city officials claim that mobile homes are unsafe and dangerous. By exercising state police

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time housing shortages and rapid relocations of the labor force, pressed many thousands of unattractive trailers into permanent use. Often these units were without running water or sanitary facilities. There were no construction standards to insure even minimum protection against fire or collapse. They were parked in areas which were usually crowded, poorly equipped, and generally unsuited to residential use. As a result, conditions in these parks seldom exceeded minimum health and sanitation standards. The specter of such parks teeming with tiny trailers made community apprehension understandable. But substantial improvements in the quality of both mobile homes and park facilities may have undermined the bases for this antipathy today. The mobile home currently produced is an attractive, completely furnished, efficiently spacious dwelling for which national construction standards have been adopted and enforced by the manufacturers' associations.

Id.

6. A "manufactured home," as defined by 42 U.S.C. § 5402 (1974), is a:

structure, transportable in one or more sections, which, in the 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 contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with standards established under this chapter.

42 U.S.C. § 5402(6).

power, municipalities can regulate health and safety interests.[7] One concern is that manufactured homes are not durable. The necessity of being transported, plus unit setup and takedown, subjects manufactured homes to possible degradation.[8] Fire safety is another area of concern.[9]

The National Manufactured Housing Construction and Safety Standards Act,[10] however, has addressed[11] and minimized health and safety problems with manufactured housing.[12] Research by the Department of Housing and Urban Development suggests that compliance with HUD standards in the Act significantly reduces degradation by seventy-five percent on all the tested models.[13] Consequently, the

7. *See, e.g.*, Davis v. City of Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 702 (Fla. en banc), *cert. denied*, 346 U.S. 867 (1953); Village of Matherville v. Brown, 34 Ill. App. 3d 298, 339 N.E.2d 346 (1975); Colby v. Hurtt, 212 Kan. 113, 509 P.2d 1142 (1973); Warren v. Municipal Officers of Gorham, 431 A.2d 624 (Me. 1981); Wright v. Michaud, 160 Me. 164, 200 A.2d 543 (1964); Town of Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364 (1960); Courtland Township v. Cole, 66 Mich. App. 474, 239 N.W.2d 630 (1976); State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460 (Mo.), *cert. denied*, 404 U.S. 851 (1971); Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959); People v. Clute, 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (1965), *aff'd*, 18 N.Y.2d 999, 224 N.E.2d 734 (1966); Mobile Home of Chattanooga v. Hamilton County, 552 S.W.2d 86 (Tenn. Ct. App. 1976), *cert. denied*, 431 U.S. 956 (1977); City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex.), *cert. denied*, 489 U.S. 1087 (1982); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978); Town of Stonewood v. Bell, 270 S.E.2d 787 (W.Va. 1980) (courts held that ordinances which regulate manufactured housing locations bear a substantial relationship to public health, safety, and general welfare).

8. T. NUTT-POWELL, MANUFACTURED HOUSES: MAKING SENSE OF A HOUSING OPPORTUNITY 23 (1982). HUD focused its durability research upon transportation impacts. *Id.*

9. *Id.* at 25-30. Congress' primary motivation for passing the HUD Code was the perception that manufactured housing was more vulnerable to fires than site-built homes. *Id.*

10. 42 U.S.C. §§ 5401-26 (1982 & Supp. V 1987).

11. 42 U.S.C. § 5401. "The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes." *Id.*

12. *See* 2 A. RATHKOPF & D. RATHKOPF, THE LAW OF ZONING AND PLANNING § 19.03 n.11 (rev. ed. 1988); D. KMIEC, ZONING AND PLANNING DESKBOOK § 5.04[3] (rev. ed. 1988).

13. NUTT-POWELL, *supra* note 8, at 25. For example, HUD researchers predicted that a manufactured home not in compliance with HUD standards would degrade 2.8% after travelling 487 miles. A manufactured home in compliance with HUD standards only degraded a predicted .70%. *Id.*

guidelines extend the manufactured home's useful life to thirty years.[14] The HUD Code similarly reduces the effect that wind[15] and temperature[16] have upon the durability and safety of mobile homes.

The HUD Code alleviates the concern about fires by eliminating the use of aluminum electrical wiring,[17] a frequent cause of mobile home fires.[18] The HUD Code also requires smoke alarms, fire-resistant materials, and structural modifications designed to diminish the incidence and severity of fires. Statistics reveal that manufactured homes, complying with HUD Code standards, have fever fires and fire fatalities per home than site-built homes.[19]

Under the guise of the police power, municipalities cite the unaesthetic appearance of manufactured housing as another reason for exclusion.[20] But this prejudice, based upon the presumption of physical inferiority, is erroneous.[21] Courts have held that manufactured homes are often indistinguishable from conventional homes.[22]

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14. *Id.* at 24-25.

15. Manufactured homes built to HUD Code standards probably perform better under severe wind conditions, depending upon whether the manufactured homes have permanent foundations or wind-stabilization systems. *Id.* at 30-35.

16. *Id.* at 35-37. For instance, the HUD Code limits the amount of chimney flue heat loss to 25%. *Id.* at 35.

17. *Id.* at 27.

18. *Id.* at 26. Electrical fires are the second most common type of fire in manufactured homes. *Id.*

19. *Id.* at 26. In 1980, studies show that between 1976 and 1978, manufactured homes encountered 378.9 fire incidents and 3.44 fatalities per 100,000 homes. Site-built homes encountered 534.5 fire incidents and 4.20 fatalities per 100,000 homes. *Id.*

20. Bourgeois v. St. Tammany, 628 F. Supp. 159, 161 (E.D. La. 1986) (police power covers aesthetic as well as health and safety concerns); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460, 463 (Mo.), *cert. denied*, 404 U.S. 851 (1971) (impossible to separate aesthetic reasons from health and safety considerations); Town of Chesterfield v. Brooks, 126 N.H. 64, 69, 489 A.2d 600, 604 (1985) (aesthetic values are a proper consideration for New Hampshire towns when passing zoning regulations). *But see* In re Girsh, 437 Pa. 237, 244, 263 A.2d 395, 398 (1970) (protecting the aesthetic nature of the municipality is not sufficient justification for exclusionary zoning); City of Milford v. Schmidt, 175 Neb. 12, 19, 120 N.W.2d 262, 266 (1963) (exercise of police power cannot be invoked on purely aesthetic grounds).

21. Robinson Township v. Knoll, 410 Mich. 293, 316, 302 N.W.2d 146, 152 (1981).

22. *See id.* at 313, 302 N.W.2d at 150 (the mobile home today compares favorably with site-built housing in attractiveness); Gates v. Howell, 204 Neb. 256, 263, 282 N.W.2d 22, 26 (1979) (unable to distinguish mobile homes from any other residence unless previously advised); Koester v. Hunterdon County Board of Taxation, 79 N.J. 381, 388, 399 A.2d 656, 659 (1979) (mobile homes are being constructed to look like conventional homes); Yeager v. Cassidy, 20 Ohio Misc. 251, 256, 253 N.E.2d 320, 323

Legislatures advance other rationales to support the discriminatory ordinances. Traditionally, the transience associated with manufactured home owners has created negative attitudes about owners of manufactured homes.[23] However, the stationary quality of today's manufactured home contradicts this stereotype. One source estimates that due to complications in moving a manufactured home,[24] sixty-nine percent of manufactured homes are never moved after their initial siting and an additional nineteen percent are moved only once.[25] Other experts assert that ninety-seven percent of manufactured homes never move after their initial siting.[26]

Taxation presents another area of unequal treatment. In the past, mobile homes failed to generate comparable tax revenues in relation to site-built homes because cities classified mobile homes as personal property rather than real property.[27] In addition to generating less revenue, mobile homes require greater municipal services than site-built homes because of the higher densities in mobile home locations.[28] Currently, however, most states have updated their tax laws to treat manufactured housing as realty, especially when the home is "affixed" to the land.[29]

Finally, legislatures base zoning restrictions on the declining prop-

(1969) (mobile homes may be more attractive in appearance and design than conventional homes).

23. 2 R. ANDERSON, THE AMERICAN LAW OF ZONING § 14.01, at 666 (1986). "[T]he regulation of mobile homes . . . has been influenced by a stereotype which depicts a mobile home court as a gypsy camp which shelters a breed of drifter with neither pride nor interest in the community." *Id.*

24. RATHKOPF & RATHKOPF, *supra* note 12, at § 19.03. Purchasing a lot, installing utility lines and sewage drains, attaching to a foundation, and removing mobility equipment are difficulties in moving manufactured homes. *Id.*

25. *Id.* at § 19.03 n.7.

26. Many jurisdictions are slowly realizing that 97% of "mobile" homes are placed on sites permanently. KMIEC, *supra* note 12, at § 5.04[3]. *See also* NUTT-POWELL, *supra* note 8, at 3 n.2.

27. R. Bartke & H. Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491, 519-20 (1970). Antiquated legislation still treats mobile homes as vehicles for taxation purposes.

28. *See, e.g.*, Horizon Concepts v. City of Balch Springs, 789 F.2d 1165, 1168 (5th Cir. 1986) (court upheld an ordinance which recited that manufactured home developers can "build out" an area, placing a greater burden on cities providing proper facilities).

29. KMIEC, *supra* note 12, at § 5.04[3]. Only Connecticut, Rhode Island, and New Mexico treat all manufactured homes as personalty for tax purposes. *Id.*

erty values caused by the presence of manufactured housing.[30] The public's negative attitude about manufactured homes causes the decrease in property values.[31] Manufactured housing has improved beyond these outdated perceptions, but the public, legislatures, and judges have failed to take notice.[32] An increased awareness of the positive aspects of today's manufactured housing and its availability as an untapped solution to the housing problem would eliminate these biases.

The primary attraction of manufactured housing is its affordability.[33] The President's Commission on Housing recommended manufactured homes as a significant source of affordable housing in contrast to the sharply rising costs of site-built housing.[34] The Commission attributed an increase in the market demand for manufactured housing to improvements in the product and low prices.[35]

Unfortunately, the low cost of manufactured homes perpetuates the society's bias against them because they are primarily marketed to people with low or moderate income. Without recognizing the recent changes in manufactured housing, government officials manipulate zoning ordinances to confine manufactured homes and their owners to out-of-sight areas.[36] This discrimination manifests itself through the exclusion of manufactured home owners from cities.[37]

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30. Cooper v. Sinclair, 66 So. 2d 702, 705 (Fla.), *cert. denied*, 346 U.S. 867, 74 S. Ct. 107, 98 L. Ed. 377 (1953) (zoning ordinance designed to conserve the value of buildings); Colby v. Hurtt, 212 Kan. 113, 116, 509 P.2d 1142, 1145 (1973) (police power includes conserving the value of property); Town of Manchester v. Phillips, 343 Mass. 591, 595, 180 N.E.2d 333,336 (1962) (town may reasonably consider that mobile homes are detrimental to adjacent property values); State v. Larson, 292 Minn. 350, 357, 195 N.W.2d 180, 184 (1972) (a primary reason municipalities segregate mobile homes is loss of property values to neighboring conventional homes); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460, 462 (Mo.), *cert. denied*, 404 U.S. 851 (1971) (indiscriminate location of mobile homes undermines conservation of property values).

31. Robinson Township v. Knoll, 410 Mich. 293, 328, 302 N.W.2d 146, 157 (1981) (Coleman, C.J., dissenting). The perception of manufactured homes as different from conventional homes, whether valid or not, can have a significant effect on property values.

32. *See supra* notes 7-26 and accompanying text.

33. *See supra* notes 1-2.

34. THE REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING 85 (1982).

35. *Id.* at 203.

36. O. Delogu, *Local Land Use Controls: An Idea Whose Time has Passed*, 36 ME. L. REV. 261, 282 (1984). Local legislatures base many ordinances on a hidden agenda, including economic segregation and exclusion. *Id.*

37. Note, *Restrictive Zoning of Mobile Homes: The Mobile Home is Still More "Mobile" Than "Home" Under the Law*, 21 IDAHO L. REV. 141 (1985).

The New Jersey Supreme Court addressed this type of economic exclusion in *Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel (Mt. Laurel I)*[38] and *Southern Burlington County N.A.A.C.P v. Township of Mt. Laurel (Mt. Laurel II)*.[39] In these cases, lower-income citizens attacked the Mt. Laurel land use system on the ground that the municipality unlawfully excluded low and moderate income families.[40] The court first stated that a zoning ordinance is unconstitutional unless it provides the opportunity for a fair share of the region's need for low and moderate income housing.[41] To accomplish this goal, the court required New Jersey municipalities to take affirmative action in providing realistic housing opportunities.[42] Noting that manufactured homes are significantly less expensive than site-built housing,[43] the court held that municipalities must provide zoning for low-cost manufactured homes if they could not otherwise provide for sufficiently affordable housing.[44] Citing the technological advances in mobile homes,[45] the court overturned a New Jersey case[46] which upheld an absolute ban on mobile homes.[47]

PART II: JUDICIAL TREATMENT OF ORDINANCES

Local ordinances often confine manufactured homes to mobile home parks.[48] Others ban manufactured homes from single-family residen-

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> It is undoubtedly an easy matter for the nation's elite to decide for the less affluent that they simply should not live in mobile homes . . . The elite see no appreciable difference between the trailer house of yesterday and the prefabricated homes of today which are, of course, necessarily mobile until they arrive at their destination. Although times have changed, and mobile homes can no longer be equated with trailer houses, the elite do not change.

Id. at 157 (quoting City of Lewiston v. Knieriem, No. 13792, slip op. at 12 (Idaho May 12, 1983) (Bistline, J., dissenting)).

38. 67 N.J. 151, 336 A.2d 713 (1975).

39. 92 N.J. 158, 456 A.2d 390 (1983).

40. *Mt. Laurel I*, 67 N.J. at 158, 336 A.2d at 716.

41. *Mt. Laurel I*, 67 N.J. at 187, 336 A.2d at 731-732.

42. *Mt. Laurel II*, 92 N.J. at 261, 456 A.2d at 442.

43. *Id.* at 274-275, 456 A.2d at 450.

44. *Id.* at 275, 456 A.2d at 450.

45. *Id.*

46. Vickers v. Gloucester, 37 N.J. 232, 181 A.2d 129 (1962).

47. However, the court gave municipalities the discretion to regulate or even exclude mobile homes depending upon the facts. *Mt. Laurel I*, 92 N.J. at 276, 456 A.2d at 450.

48. Courts have upheld ordinances which confine manufactured homes to mobile

tial areas,[49] while some ordinances exclude manufactured homes from the municipality altogether.[50] The Supreme Court articulated constitutional guidelines for zoning ordinances in *Village of Euclid v. Amber Realty*.[51] The Court stated that a zoning ordinance is unconstitutional if it is arbitrary and unreasonable, and offers no substantial relation to the public health, safety, morals, or general welfare.[52] Secondly, the Court gave local and state regulations a presumption of validity.[53] Consequently, the party attacking the ordinance carries the heavy burden of proving the ordinance is not related to the public health, safety, or welfare.[54] Thus, zoning ordinances often survive constitutional challenges.[55] Exclusionary ordinances preclude manufactured homes

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home parks. *See, e.g.*, Board of County Comm'rs, v. Mountain Air Ranch, 132 Colo. 364, 563 P.2d 341 (1977); Cooper v. Sinclair, 66 So. 2d 702 (Fla.), *cert. denied*, 346 U.S. 867 (1953); City of Lewiston v. Knieriem, 107 Idaho 80, 685 P.2d 821 (1984); Village of Matherville v. Brown, 34 Ill. App. 3d 298, 339 N.E.2d 346 (1975); Colby v. Hurtt, 212 Kan. 113, 509 P.2d 1142 (1973); Warren v. Municipal Officers of Gorham, 431 A.2d 642 (Me. 1981); Town of Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364 (1960); State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460 (Mo.), *cert. denied*, 404 U.S. 851 (1971); Riverview Park, Inc. v. Town of Hinsdale, 113 N.H. 693, 313 A.2d 733 (1973); Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959); People v. Clute, 18 N.Y.2d 999, 224 N.E.2d 734, 278 N.Y.S.2d 231 (1966); Clackamas County v. Ague, 27 Or. App. 515, 556 P.2d 1386 (1976); State v. Albro, 102 R.I. 410, 231 A.2d 1 (1967); Mobile Home City v. Hamilton County, 552 S.W.2d 86 (Tenn. Ct. App.), *cert. denied*, 431 U.S. 956 (1977); City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex. 1982); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978). *See also* RATHKOPF & RATHKOPF, *supra* note 12, at § 19.04 (most common method municipalities use to exclude manufactured homes from single family residences is to confine them to parks).

49. Common methods involve defining "dwelling" so as to exclude manufactured homes or by imposing size standards. RATHKOPF & RATHKOPF, *supra* note 12, at § 19.04.

50. ANDERSON, *supra* note 22, at § 14.04,. Only two of forty-four municipalities in Westchester County, New York, permit manufactured homes within the municipality.

51. 272 U.S. 365 (1926).

52. *Id.* at 395.

53. *Id.* at 388. Legislative judgment controls on a debatable issue.

54. *See* City of Brookside v. Comeau, 633 S.W.2d 790, 792-93 (Tex. 1982). The party challenging the ordinance bears an extraordinary burden to show that no conclusive or even controversial reason exists which would authorize the municipality's passage of the ordinance.

55. *See, e.g.*, Davis v. City of Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 702 (Fla.), *cert. denied*, 346 U.S. 867 (1953); Village of Matherville v. Brown, 34 Ill. App. 3d 298, 339 N.E.2d 346 (1975); City of Colby v. Hurtt, 212 Kan. 113, 509 P.2d 1142 (1973); Warren v. Municipal Officers of Gorham, 431 A.2d 624 (Me. 1981); Wright v. Michaud, 160 Me. 164, 200 A.2d 543 (1964); Town of Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364 (1960); Courtland Township v. Cole, 66 Mich.

from locating anywhere within the municipality.[56] Courts examine exclusionary ordinances more carefully than other types of manufactured housing regulations.[57] The courts often invalidate exclusionary ordinances because manufactured homes provide a source for affordable housing[58] or manufactured homes represent a legitimate use of the land.[59] Courts occasionally strike down legislation that limits manufactured homes to unreasonably small areas of land.[60]

Notwithstanding the strict treatment of exclusionary ordinances, most courts uphold other types of regulations,[61] justifying the deci-

App. 474, 239 N.W.2d 630 (1976); State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460 (Mo.), *cert. denied*, 404 U.S. 851 (1971); Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959); People v. Clute, 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (1965), *aff'd*, 18 N.Y.2d 999, 224 N.E.2d 734, 278 N.Y.S.2d 231 (1966); Mobile Home City of Chattanooga v. Hamilton County, 552 S.W.2d 86 (Tenn. Ct. App. 1976), *cert. denied*, 431 U.S. 956 (1977); City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex.), *cert. denied*, 459 U.S. 1087 (1982); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978); Town of Stonewood v. Bell, 270 S.E.2d 787 (W.Va. 1980).

56. *See* MANDELKER, LAND USE LAW § 1.09 (1988) (exclusionary land use controls restrict lower income groups from a community).

57. *See* Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959); *In re* Shore, 107 Pa Commw. 522, 528 A.2d 1045 (1987). *But see* Village of Columbiana v. Keister, 5 Ohio App. 3d 81, 449 N.E.2d 465 (1981) (court upheld ordinance banning manufactured homes from municipality).

58. *See, e.g.* Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 92 N.J. 158, 456 A.2d 390 (1983). *See also* Lakeland Bluff, Inc. v. County of Will, 114 Ill. App. 2d 267, 279, 252 N.E.2d 765, 770 (1969) (the need for lower income housing, though not determinative, is a factor in invalidating an exclusionary ordinance).

59. Brown v. Dougherty County, 250 Ga. 658, 300 S.E.2d 509 (1983) (landowner demonstrated a compatible use, shifting burden to municipality to justify zoning scheme); City of Sparta v. Brenning, 45 Ill.2d 359, 259 N.E.2d 30 (1970) (municipality has no authority to prohibit absolutely the use of a trailer upon any parcel of land); Czech v. City of Blaine, 312 Minn. 535, 253 N.W.2d 272 (1977) (denial of petition for mobile home park use was an unconstitutional taking); Board of Supervisors of Upper Frederick Township v. Moland Development Co., 19 Pa. Commw. 207, 339 A.2d 141 (1975) (township ban on a legitimate land use, such as trailer parks, is unconstitutional).

60. *See, e.g.*, Environmental Communities of Pennsylvania v. North Coventry Township, 49 Pa. Commw. 167, 412 A.2d 650, (1980) (ordinance restricting manufactured home use to 1.5% of the municipality's land is exclusionary and invalid); Nickola v. Township of Grand Blanc, 394 Mich. 589, 232 N.W.2d 604 (1975) (allotting one-tenth of one percent of municipality for manufactured home use is exclusionary and invalid).

61. Courts have upheld nonexclusionary yet restrictive zoning ordinances. *See, e.g.*, Davis v. City of Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 702 (Fla.), *cert. denied*, 346 U.S. 867 (1953); Village of Matherville v. Brown, 34 Ill. App. 3d 298, 339 N.E.2d 346 (1975); City of Colby v. Hurtt, 212 Kan. 113, 509 P.2d

sions by relying on unfounded prejudices. In *City of Lewiston v. Knieriem*[62] the court stated the prevailing view that mobile homes warrant separate regulation from other dwellings and thus can be confined to mobile home parks or excluded from residential districts.[63] Relying upon the ordinance's presumption of validity,[64] the preservation of property values, and general safety and welfare considerations,[65] the court upheld the ordinance regulating manufactured home location.[66]

In *City of Brookside Village v. Comeau*[67] the Texas Supreme Court found a valid exercise of the municipality's police power[68] when it reviewed an ordinance which permitted manufactured housing only in mobile home parks.[69] The court relied upon a Georgia decision holding that mobile homes present special health and safety problems.[70] The court insisted that any similarities between manufactured homes and site-built homes were insufficient to overcome the ordinance's presumption of validity.[71]

Some courts have recognized the advancements and benefits of manufactured housing and have restrained municipalities from enforcing discriminatory manufactured housing regulations. *Robinson Township v. Knoll*[72] is the landmark decision exemplifying this new direction.

1142 (1973); Warren v. Municipal Officers of Gorham, 431 A.2d 624 (Me. 1981); Wright v. Michaud, 160 Me. 164, 200 A.2d 543 (1964); Town of Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364 (1960); Courtland Township v. Cole, 66 Mich. App. 474, 239 N.W.2d 630 (1976); State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460 (Mo.), *cert. denied*, 404 U.S. 851 (1971); Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959); People v. Clute, 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (1965), *aff'd*, 18 N.Y.2d 999, 224 N.E.2d 734, 278 N.Y.S.2d 231 (1966); Mobile Home City of Chattanooga v. Hamilton County, 552 S.W.2d 86 (Tenn. Ct. App. 1976), *cert. denied*, 431 U.S. 956 (1977); City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex.), *cert. denied*, 459 U.S. 1087 (1982); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978); Town of Stonewood v. Bell, 270 S.E.2d 787 (W.Va. 1980).

62. 107 Idaho 80, 685 P.2d 821 (1984)

63. *Id.* at 83, 685 P.2d at 824.

64. *Id.*

65. *Id.* at 84, 685 P.2d at 824-825.

66. *Id.* at 84, 685 P.2d at 825.

67. 633 S.W.2d 790 (Tex.), *cert. denied*, 459 U.S. 1087 (1982).

68. *Id.* at 792.

69. *Id.* at 793 (citing BROOKSIDE VILLAGE ORDINANCE 78 (1974)).

70. *Id.* at 794 (citing Nichols v. Pirkle, 202 Ga. 372, 43 S.E.2d 306 (1947)).

71. *Id.* at 795. The court notes that if manufactured homes are technologically equal to site-built homes, the legislature should act rather than the judiciary. Id.

72. 410 Mich. 293, 302 N.W.2d 146 (1981).

Robinson Township, a Michigan city, invoked a local ordinance[73] to remove the Knoll's manufactured home from the residential district. The *Robinson* court overturned *Township of Wyoming v. Herweyer,*[74] which had upheld a statute confining mobile homes to mobile home parks. The *Robinson* court held that the per se exclusion of manufactured homes from areas not designated as mobile home parks had no reasonable basis under the police power, and was therefore unconstitutional.[75] The *Robinson* court found that distinctions between manufactured homes and site-built homes are nonexistent due to improvements in the size, quality, and appearance of mobile homes.[76] Consequently, the court held that the discriminatory ordinance had no reasonable basis to the township's police power.[77]

Despite its broad holding, the *Robinson* court allows municipalities the freedom to exclude manufactured homes from residential areas.[78] Municipalities may still regulate the size, appearance, quality of manufacturing, or the manner of on-site installation, so long as the exclusions are based on reasonable standards designed to assure favorable comparison of manufactured homes with site-built homes.[79] This undercuts *Robinson's* advocacy of equality by allowing Michigan municipalities to treat manufactured homes differently. In addition, this loophole substantially diminishes the persuasiveness and precedential value of the *Robinson* principles.

As a consequence, subsequent Michigan decisions[80] have upheld or-

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73. ROBINSON TOWNSHIP ZONING ORDINANCE § 307.1 provides:
Mobile Homes Where Permitted: Mobile homes are considered as dwelling units an dare not permitted as an accessory use to a permitted principle use and are permitted only in approved mobile home parks.
Id. at 308 n.2, 302 N.W.2d at 148 n.2.

74. 321 Mich. 611, 33 N.W.2d 93 (1948).

75. *Robinson*, 410 Mich. at 310, 302 N.W.2d at 149.

76. *Id. Contra* Clark v. County of Winnebago, 817 F.2d 407, 409 (7th Cir. 1987); Grant v. County of Seminole, 817 F.2d 731, 736 (11th Cir. 1987); Cirrituck County v. Willey, 266 S.E.2d 52, 53 (N.C. Ct. App. 1980).

77. *Robinson*, 410 Mich. at 310, 302 N.W.2d at 149.

78. *Id.*

79. *Id.*

80. Some courts have avoided the *Robinson* precedent and upheld ordinances regulating manufactured housing locations. Gackler Land Co. v. Yankee Springs Township, 427 Mich. 562, 398 N.W.2d (1986); Howard Township Board of Trustees v. Waldo, 168 Mich. App. 565, 425 N.W.2d 180 (1988); Pauter v. Comstock Charter Township, 163 Mich. App. 670, 415 N.W. 232 (1987); Bunker Hill Township v. Goodnoe, 125 Mich.App. 794, 337 N.W.2d 27 (1983).

dinances which confine manufactured homes to mobile home parks. In *Gackler Land Co. v. Yankee Springs Township*[81] an owner of a manufactured home challenged an ordinance which permitted any "dwelling" in residential areas. The regulation defined "dwelling" by stating minimum size standards, effectively excluding single-wide manufactured homes.[82] The Michigan Supreme Court found that the standards applied to all homes and did not treat manufactured homes as though they were materially different from site-built homes.[83] Secondly, the *Gackler* court held that the size standards attempted to assure favorable comparisons of manufactured homes with site-built homes.[84] Other Michigan courts applying the same reasoning, have also upheld discriminatory ordinances.[85]

Other state courts have relied on *Robinson* to strike down restrictive legislation of mobile homes. In *Luczynski v. Temple*[86] the court, citing *Robinson*, recognized the superiority of today's manufactured home over the trailers of thirty years ago.[87] The court noted that manufactured homes are an inexpensive, safe, and aesthetically acceptable alternative to site-built housing.[88] The court declared unconstitutional a statute restricting manufactured homes to mobile home parks.[89] The court also adopted the *Robinson* qualification regarding equal treatment of manufactured homes. The court stated that New Jersey municipalities can legitimately exclude manufactured homes from an area so long as the standards in municipal ordinances are designed to assure that manufactured homes will compare favorably with other housing.[90]

81. 427 Mich. 562, 398 N.W.2d 393 (1983).

82. *Id.* at 569, 398 N.W.2d at 395. The ordinance defined "dwelling" as follows: "1. It complies with the minimum square footage requirements [720 square feet]. 2. It has a minimum width along any exterior side elevation of 24 feet and a minimum internal height of seven and one-half feet." *Id.* at 568, 398 N.W.2d at 395.

83. *Id.* at 570, 398 N.W.2d at 396.

84. *Id.*

85. *See supra* note 80; Tyrone v. Crouch, 426 Mich. 642, 397 N.W.2d 166 (1986) (affirming the invalidity of an ordinance applying dimension standards only to manufactured homes).

86. 203 N.J. Super. 377, 497 A.2d 211 (N.J. Super. Ct. Ch. Div. 1985). *See also* Bourgeois v. St. Tammany, 628 F. Supp. 159, 163 (E.D.La. 1986) (some mobile homes are not inferior to site-built homes).

87. *Lucynski* at 383, 497 A.2d at 214.

88. *Id.* at 384, 497 A.2d at 215.

89. *Id.*

90. *Id.*

PART III: THE NECESSITY OF STATE ACTION

As previously discussed, local legislatures and courts have failed to accommodate the modern manufactured home despite improvements in manufacture, their lower cost and the need for affordable housing. The most effective and immediate remedy is for states to enact progressive enabling legislation regarding manufactured home use. Housing is no longer merely a local issue.[91] The President's Report,[92] which advocates local housing deregulation, declares that states appear increasingly prepared to preempt local authority by using manufactured housing to solve the housing-cost problem.[93] Because *Euclid* protects these ordinances with a strong presumption of validity, courts also suggest that state legislatures respond to the problem.[94]

States should bear the burden of correcting local ordinances, because municipal zoning legislation depends upon the state.[95] Local governments are not independent or sovereign. Local government's power to enact zoning ordinances derives from the state's police power, through state enabling statutes.[96] A local government's zoning measure is valid only if it falls within the purpose of the state's enabling legislation.[97]

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91. PRESIDENT'S REPORT, *supra* note 34, at 237. *See also* M. Sellman, *Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing*, 20 URB. LAW. 73, 74 (1988) (housing is more than a local issue as states reassert their role in local land use planning).

92. PRESIDENT'S REPORT, supra note 34.

93. *Id.* at 236. *See also* O. Delogu, *The Misuse of Land Use Control Powers Must End: Suggestions for Legislative and Judicial Responses*, 32 ME. L. REV. 29, 32 (1980) (state legislatures need to develop inclusionary mechanisms designed to curtail municipal inclinations to exclude).

94. *See* City of Lewiston v. Knieriem, 107 Idaho 80, 84 n.3, 685 P.2d 821, 825 n.3 (1984); Warren v. Municipal Officers of Gorham, 431 A.2d 624, 630 (Me. 1981); Mobile Home City of Chatanooga v. Hamilton County, 552, S.W.2d 86, 89 (Tenn. Ct. App. 1977); City of Brookside Village v. Comeau, 33 S.W.2d 790, 795 (Tex. 1982) (courts deferred to the legislature the power to eliminate location restrictions in manufactured housing zoning ordinances).

95. Delogu, *supra* note 93, at 30 (local governments do not exist to legislate local wishes, aspirations, mores, biases, conceptions of the good life, aesthetic values, or political predilections as they are possessed of limited jurisdiction and powers). *See also* Luczynski v. Temple, 203 N.J. Super. 377, 381, 497 A.2d 211, 213 (1985).

96. 1988 ZONING AND PLANNING LAW HANDBOOK § 3.04(1) (N. Gordon ed. 1988) (states delegate police power, including the power to zone, in two ways: home rule power and enabling statutes).

97. *Id.* at 105.

Because states grant the power, they can impose limitations on it.[98] Consequently, state legislatures can apply various degrees of influence upon decision-makers.

An American Planning Association report reveals that local governments follow a state legislature's lead in enacting progressive zoning ordinances.[99] 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.[100]

State legislatures should also inject simplicity and uniformity into local zoning schemes. The complexity of current local regulations creates unnecessary costs.[101] Excessive regulations account for up to twenty-five percent of the total cost of a home.[102] As one commentator observes, simplified state regulation would liberate developers, homebuilders and homeowners from "potential pitfalls, risks, or uncertainties inherent in the development gauntlet and regulatory maze that local governments have fashioned under the rubric of police powers."[103]

Currently, state legislatures have handled this issue inadequately.

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98. Delogu, *supra* note 93, at 30 (local governments are creatures of the state, analogous to state agencies).

99. *See* W. SANDERS, REGULATING MANUFACTURED HOUSING, AMERICAN PLANNING ASSOCIATION, PAS Report No. 398, at 4 (1986).

100. *Id.*

101. Sellman, *supra* note 91, at 77 n.18.

> 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. (quoting S. SEIDEL, HOUSING COSTS AND GOVERNMENT REGULATIONS: CONFRONTING THE REGULATORY MAZE 304 (1978)). *See* PRESIDENT'S REPORT, *supra* note 34, at 178. (regulations which often exclude low income families unnecessarily increase housing costs).

102. KMIEC, *supra* note 12, at § 2.06 (citing U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, THE PRESIDENT'S NATIONAL URBAN POLICY REPORT 64 (1984)). For example, growth controls in California account for 27% of the increase in real housing costs between 1972 and 1979. A similar situation occurred in Boulder, Colorado. *Id.*

103. Sellman, *supra* note 91, at 79.

Less than a third of the states have addressed exclusionary treatment of manufactured housing.[104] Fewer states enforce equal statutory treatment of site-built homes and manufactured homes.[105] 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."[106] Iowa and Minnesota require equal treatment of manufactured homes and conventional homes.[107] However, these latter ordinances have loopholes which the Vermont statute avoids.[108]

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104. *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. STATE. ANN. § 19-2938 (1981); ME. REV. STAT. ANN. tit.30, § 4965 (West 1973 & Supp. 1986); MINN. STAT. ANN. § 394.25 (West 1968 & Supp. 1989); NEB. STAT. ANN. § 15-902 (1987); N.H. REV. STAT. ANN § 674:32 (1986 & Supp. 1988); N.J. STAT. ANN § 40:55D-100 (West 1983 & Supp. 1987); N.M. STAT. ANN. § 3-21A-3(2)(A) (1978); OR. REV. STAT. § 197.295 (1985); TENN. CODE ANN. § 13-24-201 (1987); VT. STAT. ANN. tit. 24, § 4406(4)(A) (1975 & Supp. 1989); 1986 MICH. PUB. ACTS 299.

105. IOWA CODE ANN. §§ 414.28 & 358A.30 (West 1976 & Supp. 1986); MINN. STAT. ANN. §§ 394.25 (West 1968 & Supp. 1989); VT. STAT. ANN. tit. 24, § 4406(4)(A)(1975 & Supp. 1989).

106. VT. STAT. ANN. tit. 24, § 4406 (4) (1975 & Supp. 1989). *See also* RATHKOPF & RATHKOPF, *supra* note 12, at § 19.06 n.2 (the statute's policy is further strengthened by the Vermont Agency of Development and Community Affairs; the agency interpreted the statute to require the elimination of all distinctions between housing based solely on methods of construction).

107. IOWA CODE ANN. § 358A.30 (West 1983 & Supp. 1989); IOWA CODE ANN 414.28 (West 1976 & Supp. 1989) prohibits cities and counties from enacting:

> 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.

Id.

The Minnesota legislature enacted MINN. STAT. ANN § 462.357(1) (West 1963 & Supp. 1989) which provides that "no regulation may prohibit . . . manufactured housing built in conformance with [the HUD Code] that comply with all other zoning ordinances promulgated to this section."

108. *See* Sellman, *supra* note 91, at 84-85. Iowa's statutory provisions allow private restrictions on manufactured housing locations to remain intact. Secondly, the Iowa provisions only apply to permanently-sited manufactured homes. *Id.* MINN. STAT. ANN § 462.357(1) (West 1963 & Supp. 1989) permits local governments to impose their

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. For example, California legislation asserts that "no city . . . shall . . . prohibit the installation of mobile homes certified under the [HUD Code] on a foundation system on lots zoned for single-family dwellings."[109] 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, minimum square footage, roofing, and siding standards.[110]

The remainder of the state enabling statutes fall within the range of the Vermont and California statutes.[111] Most existing state legislation falls within several categories. The statutes either specify that manufactured homes must be allowed in all single-family residential areas,[112] allowed in some residential areas,[113] or merely prohibited completely.[114] The common element in the enabling statutes is that local municipalities enjoy various degrees of freedom to exercise their biases against manufactured housing.[115] One example is a New Hampshire

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own standards provided the regulations are uniform for each class of buildings, but the regulations in one district may differ from those in other districts.

109. CAL. GOV'T CODE § 65852.3 (West 1983 & Supp. 1989).

110. *Id.*

111. *See, e.g.*, INDIANA CODE § 36-7-4-1106 (Supp. 1987). The Indiana statute instructs municipal legislatures to subject all dwelling units, including manufactured homes, to the same standards and requirements. Indiana allows municipalities to impose aesthetic and structural regulation, although § 36-7-4-1106(b) limits aesthetic and structural standards to roofing and siding features. The Indiana code also provides that municipalities "may not totally preclude all [double-width] manufactured homes . . . from being installed as permanent residences on any lot on which any other type of dwelling unit may be placed. *Id.*

112. RATHKOPF & RATHKOPF, *supra* note 12, at § 19.06 n.3. Rathkopf lists Colorado, Iowa, Maine, New Jersey, and South Dakota as states which employ this type of regulation. *Id.*

113. The Florida, Georgia, Michigan, Minnesota, Oregon, New Hampshire, and New Mexico statutes impose this type of regulation. *Id.* at § 19.06 n.4.

114. The Kansas, Nebraska, Nevada, Tennessee, and Virginia statutes fall within this category. *Id.* at § 19.06 n.5.

115. Sellman, *supra* note 91, at 86-97. The author thoroughly discusses the state laws regulating manufactured housing. *Colorado*: COLO. REV. STAT. § 30-28-115 (1986) permits local governments to enact:

> any zoning, developmental, 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-

statute[116] which bars municipalities from totally excluding manufactured housing. The statute, however, provides that "[a] municipality which adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in some,

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back standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the county.

Id. at (3)(b)(II). *Florida*: Florida's Department of Community Affairs gives broad powers to local legislatures. Fla. Stat. Ann. § 553.38 (West 1972 & Supp. 1986) provides 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). *See also* RATHKOPF & RATHKOPF, *supra* note 12, at § 19.06 n.4 (concluding that the Florida statute is definitionally restrictive since "manufactured building" does not include mobile homes built to HUD Code standards). *Kansas*: KAN. STAT. ANN. § 19-2938 (1981) prohibits the "arbitrary exclusion" of manufactured housing by a municipality. The statute does not attempt to limit local municipality's freedom nor encourage the use of inclusionary zoning. Local governments exclude manufactured housing as they see fit, simply by manipulating the definition of "arbitrary exclusion." *Maine*: The Maine statute, ME. REV. STAT. ANN. tit. 30, § 4965.2 (West 1973 & Supp. 1986), allows local governments to establish design criteria, including roof design and the use of exterior siding in an effort to appear "residential." *Michigan*: 1986 MICH. PUB. ACTS 299, § 7(6) of Act No. 419 of the Public Acts of 1976 grants to local legislatures the power to impose reasonable standards on manufactured housing to ensure that they compare favorably to site-built housing, exposing manufactured housing to local government discretion. Michigan's statute is especially disappointing in light of *Robinson Township*. *See supra* note 72. *Nebraska*: NEB. REV. STAT. § 15 - 902 (1983) provides that a municipality's

> 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.

Id. This clause gives local authorities discretion to impose their own restrictive ordinances. *New Jersey*: N.J. STAT. ANN. § 40:55D-104 (West 1983 & Supp. 1986) applies its pro-manufactured home provisions only to manufactured homes over twenty-two feet in width. Thus, local municipalities can effectively confine single-width manufactured homes to mobile home parks. *Oregon*: OR. REV. STAT. § 197.307(4) (a-c) allows municipalities to set approval standards under which a particular housing type is permitted outright, to impose special conditions upon approval of a specific development or to establish approval procedures. *Tennessee*: Like the New Jersey statute, TENN. STAT. ANN. § 13-24 201 (Supp. 1986) applies its equality provisions to only double-wide manufactured homes. § 13-24-202 provides that manufactured residential dwellings shall have the same general appearance as required for site-built homes.

116. N.H. REV. STAT. ANN. § 674.32 (1986).

but not necessarily all, residential areas."[117] Thus, in *Town of Chesterfield v. Brooks,*[118] a manufactured home owner challenged a municipal ordinance[119] which prohibited him from locating a manufactured home on his own land. The New Hampshire Supreme Court upheld the ordinance by stating it was in compliance with the state statute.[120]

PART IV: THE STATE CODE PROVISIONS

The proposed state code must send an assertive, unambiguous signal to municipalities that discriminatory measures against mobile homes are invalid. State legislatures can implement the provisions through a state enabling act[121] or the provisions can form the basis for separate legislation.[122] The code should illuminate recent advances in mobile home regulation. The code must also implement specific tools to ensure that the policies are enforced.

First, the legislature should adopt a statute with policies and premises upon which future local ordinances can rely. The legislatures should acknowledge the problem of finding affordable housing and recognize their duty to alleviate the problem.[123] Following the New Jersey Supreme Court's example in *Mt. Laurel II,* legislatures should order municipalities to provide housing opportunities for low and fixed income families.[124] The code ought to specify that manufactured hous-

117. *Id.* The statute also imposes appearance criteria, including lot size, frontage requirements, and space limitations. *Id.*

118. 126 N.H. 64, 489 A.2d 600 (1985).

119. *Id.* at 65, 489 A2d. at 601. (citing CHESTERFIELD, N.H. ZONING AND BUILDING ORDINANCE § 413).

120. *Chesterfield,* 126 N.H. at 67, 489 A.2d at 602. The court, however, invalidated the ordinance on state equal protection grounds: the ordinance applied greater set-back requirements to manufactured homes than it did to conventional homes. *Id.* at 71, 489 A.2d at 605.

121. *See, e.g.,* KMIEC, *supra* note 12, at § 2.07(4)(a). Kmiec proposes a "Model State Land Use Enabling Statute" designed to curtail local limitations on developmental zoning.

122. *See, e.g.,* Sellman, *supra* note 91, at 99-101. The author proposes a model state code, entitled *The Affordable Housing Act,* solely providing for favorable treatment of manufactured housing. *Id.*

123. *Id.* at 99. In Sellman's *The Affordable Housing Act,* section 1 asserts that "the Legislature finds and declares that a need for affordable housing exists for citizens and that its citizens have a right to affordable housing." *Id.*

124. Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel (*Mt. Laurel II*), 92 N.J. 158, 261, 456 A.2d 390, 450 (1983). *See supra* notes 38-47 and accompanying text.

ing fulfills that need.[125] Further, the code should recognize the equality of manufactured housing and conventional housing, especially those manufactured homes that comply with the HUD Code.[126] The code should also recognize the recent health and safety advances in the manufactured housing industry.[127] These premises provide guidelines for local ordinances and judicial review.

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.[128]

As the post-*Robinson* Michigan cases[129] illustrate, a *per se* equality statement does not eliminate the problem. Municipal ordinances, while following the *Robinson* ban on *per se* discrimination of mobile homes, applied minimum-space and other requirements to manufactured and conventional homes that qualify as a single-family dwelling.[130] Several Michigan courts[131] have allowed municipalities to impose these regulations under the *Robinson* "reasonable standards to assure favorable comparison" test.[132] For instance, three ordinances imposed minimum space and dimension requirements.[133] Another or-

125. *See, e.g.*, Sellman, *supra* note 91, at 99. "The legislature has determined that manufactured housing provides state homeowners with an affordable source of decent, safe, and sanitary housing on a permanent basis." *Id.*

126. *See supra* notes 15-19 and accompanying text.

127. *See, e.g.*, Sellman, *supra* note 91, at 99. "The legislature further finds that in the last decade the improved design, appearance and significant technological advances of manufactured housing built HUD Code standards, makes manufactured housing equivalent to conventional, site-built single family dwellings . . ." *Id.*

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

129. *See infra* notes 131-134 and accompanying text.

130. *See generally* Tyrone Township v. Crouch, 426 Mich. 642, 397 N.W.2d 166 (1986) (the Michigan Supreme Court invalidated an exclusionary ordinance which applied size requirements to manufactured homes but not to conventional homes).

131. Gackler Land Co. v. Yankee Springs Township, 427 Mich. 562, 398 N.W.2d 393 (1986); Howard Township Board of Trustees v. Waldo, 168 Mich. App. 565, 425 N.W.2d 180 (1988); Pauter v. Comstock Charter Township, 163 Mich. App. 670, 415 N.W.2d 232 (1987); Bunker Hill Township v. Goodnoe, 125 Mich. App. 794, 337 N.W.2d 27 (1983).

132. Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981).

133. HOWARD TOWNSHIP ZONING ORDINANCE No. 88 requires all dwellings to have a minimum width of 24 feet and minimum first floor space of 840 square feet. 168

dinance, upheld by the Michigan Supreme Court,[134] imposes nine criteria for dwelling status, including space, dimension, and aesthetic standards.[135] Other ordinances, using width requirements of over fourteen feet, effectively exclude all single-width manufactured homes from residential areas.[136]

Thus, an equality-of-treatment provision fails to ensure that ordinances will not effectively exclude manufactured housing.[137] The state code should provide that no municipality may impose regulatory standards which have the effect of discriminating against manufactured homes.[138] The provision should parallel the Vermont statute's direc-

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Mich. App. at. 569, 425 N.W.2d at 182. COMSTOCK TOWNSHIP ZONING ORDINANCE § 2.01.28(2) requires that all dwellings have a core living space of 20 feet by 20 feet. 163 Mich. App. at 671, 415 N.W.2d at 232-33. THE BUNKER HILL TOWNSHIP ZONING ORDINANCE requires that all dwellings have 720 square feet and a minimum width of 14 feet. 125 Mich. App. at 795, 337 N.W.2d at 28.

134. Gackler Land Co. v. Yankee Springs Township, 427 Mich. 562, 398 N.W.2d 393 (1986).

135. *Id.* at 568, 398 N.W.2d at 395. The ordinance imposed the following requirements upon a dwelling:

> 1. It complies with the minimum square footage requirements [720 square feet]. . . .
>
> 2. It has a minimum width along any exterior side elevation of 24 feet and a minimum internal height of seven and one-half feet.
>
> 3. It is firmly attached to a solid foundation constructed on the site in accordance with the township building code, which shall be a fully enclosed basement or crawl space. . . .
>
> 4. It does not have exposed wheels, towing mechanisms, under carriage or chassis.
>
> 5. The dwelling is connected to a public sewer and water supply or to such private facilities approved by the local health department.
>
> 6. The dwelling contains storage area(s) . . . equal to not less than 15% of the interior living area of the dwelling.
>
> 7. The dwelling is aesthetically compatible in design and appearance to conventionally on-site constructed homes. . . .
>
> 8. The dwelling contains no additions of rooms . . . not constructed with similar materials. . .and workmanship as the original structure.
>
> 9. The dwelling complies with all pertinent building and fire codes.

Id.

136. YANKEE SPRINGS TOWNSHIP ORDINANCE, *id.;* HOWARD TOWNSHIP ORDINANCE, *supra* note 133.

137. *See* RATHKOPF & RATHKOPF, *supra* note 12, at § 19.04(d). "Dimensional requirements such as floor area or lot size restrictions, also serve to exclude manufactured homes from single family zones. These restrictions have been upheld if they applied equally to conventional homes." *Id.*

138. *See* Delogu, *supra* note 93, at 64. The "intent-to-exclude" test is a barrier

tive for equality.[139]

Municipal planners phrase the community's real objectives in oblique language that courts, presuming constitutional validity, allow wide discretion.[140] An ordinance's semantics should not determine whether the ordinance is exclusionary. Often, courts find ordinances constitutional simply because the ordinance applies to both manufactured homes and site-built homes,[141] though the ordinance may have an exclusionary effect.[142] The state code should provide that a landowner can establish a presumption of invalidity by showing an ordinance's *effect* is to exclude.[143]

The state code should broadly define "single-family dwelling" to include forms of manufactured housing. Most current local ordinances define "mobile homes" independently from "dwellings,"[144] distinguishing manufactured homes using a "mobility standard."[145] This standard defines prefabricated housing by whether it is intended to be mobile at the place of manufacture.[146] In fact, most courts uphold

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behind which those bent on exclusion may hide. In contrast the "effects" test is pragmatic and deals realistically with the results of municipal actions and policies.

139. VT. STAT. ANN. tit. 24, § 4406(4)(A) (1975 Supp. 1989).

140. Delogu, *supra* note 36, at 288. Municipalities abuse their police power, acting in accordance with populist rhetoric without good faith or respect for the constitution. *Id.*

141. *See, e.g.*, Gackler Land Co. v. Yankee Springs Township, 427 Mich. 562, 398 N.W.2d 393 (1986). *Cf.* Town of Chesterfield v. Brooks, 126 N.H. 64, 489 A.2d 600 (1985) (application of greater setback requirements to manufactured homes but not conventional homes violates state equal protection clause).

142. *Gackler*, 427 Mich. at 569, 398 N.W.2d at 396. The ordinance excludes all single-width manufactured homes.

143. *See* Delogu, *supra* note 93, at 64. (if municipalities cannot rebut the presumption with a convincing need or rationale, the ordinance should fail).

144. RATHKOPF & RATHKOPF, *supra* note 12, at § 19.04(d) n.24 (citing City of Cordele v. Hill, 250 Ga. 628, 300 S.E.2d 161 (1983)) (an ordinance regulating mobile homes did not apply to double-width homes which arrived at the site needing completion); Kirk v. Town of Westlake, 421 So. 2d 473 (La. App. 1982) (despite a mobile home meeting the definition of dwelling, the court interpreted it to mean trailer); Cain v. Powers, 100 N.M. 184, 668 P.2d 300 (1983) (mobile home generally means trailer house for purposes of a restrictive covenant); Cripe v. Zoning Hearing Bd. of Meadville, 78 Pa. Commw. 202, 467 A.2d 92 (1983) (mobile home on a permanent foundation did not qualify as a dwelling).

145. *See* J. Brown & M. Sellman, *Manufactured Housing: The Invalidity of the "Mobility" Standard*, 19 URB. LAW. 367 (1987).

146. *Id.* at 370.

> Perhaps the most unjustifiable . . . means of regulation has been the manipulation of the manufactured home's delivery to its permanent site. Many statutes, ordi-

statutes which define prefabricated homes as mobile, despite removal of the wheels and placement on a permanent foundation.[147] These separate definitions relieve courts from determining whether a mobile home is a dwelling or a trailer.[148]

In *Heath v. Parker*,[149] subdivision lot owners brought an action to enforce a restrictive covenant prohibiting "trailers" from locating in the subdivision. The court found for the defendants, who owned a manufactured home.[150] The court used its own definition of trailer, as a "vehicle designed to be hauled," in concluding that the manufactured home was not a trailer.[151] Further, the court denounced the mobility standard, stating that the initial design of the manufactured home does not control.[152] The court took the initiative in *Heath* because the covenant did not originally define "trailer." Municipal ordinances, on the other hand, define "dwelling" and "manufactured home," often labelling the latter as a trailer. These definitions bind the courts.[153]

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nances, and court decisions reflect the time-worn perception that if a dwelling is delivered on wheels, it cannot satisfy the acceptable standards of traditional housing. The historical basis for this irrational stereotype of manufactured housing is directly attributable to its predecessors, the 'trailer' or 'mobile' home resting on cinder blocks . . . on the outskirts of town.

Id.

147. *See* ANDERSON, *supra* note 23, at § 14.03. Courts have held that the mobile home remains a mobile home notwithstanding removal of the wheels and placement on a permanent foundation. Oakdale v. Benoit, 342 So. 2d 691 (La. App. 1977), *cert. denied,* 344 So. 2d 670 (1977) (placing a mobile home on concrete blocks is not sufficient to classify it as a dwelling); Cripe v. Zoning Hearing Bd., 78 Pa. Commw. 202, 467 A.2d 92 (1983) (zoning ordinance still applies to a mobile home, despite removing the wheels and placing a mobile home on a foundation); City of Asheboro v. Auman, 26 N.C.App. 87, 214 S.E.2d 621 (1975) (removal of a mobile home's transportable equipment does not change its essential nature); Columbia County v. Kelly, 25 Or. App. 1, 548 P.2d 163 (1976) (although mobile home does not fall under definition of mobile home once its wheels are removed, it still falls under the exclusionary zoning regulation).

148. *Id.* at § 14.03. Courts have difficulty determining the extent to which a trailer loses its character as a vehicle when it is placed upon an immobile foundation.

149. 93 N.M. 680, 604 P.2d 818 (1980).

150. *Id.* at 682, 604 P.2d at 820.

151. *Id.* at 681, 604 P.2d at 819.

152. *Id.* at 682, 604 P.2d at 820.

153. *See* Town of Helena v. Country Mobile Homes, Inc. 387 So. 2d 162 (Ala. 1980) (Court upheld an ordinance distinguishing excluded mobile homes from permitted factory-built homes). *But see* Geiger v. Zoning Hearing Board of Township of North Whitehall, 510 Pa. 231, 507 A.2d 361 (1986) (court invalidated an ordinance distinguishing excluded mobile homes from permitted modular homes on the number of sections they have).

The 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.[154] 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.[155] Excluding manufactured homes simply on the basis of their mode of delivery is unreasonable where manufactured homes are substantially the same as conventional, one-family dwellings.[156]

The state code will assist mobile home owners in judicial challenges against ordinances.[157] The legislature can direct the courts to tighten the *Euclid* standard for review of municipal ordinances.[158] Rather than the broad police power standard promoting health, safety, and general welfare,[159] several authorities recommend that municipalities demonstrate that challenged zoning ordinances serve a "vital and pressing" government interest.[160] This recommendation would bring a local government's regulatory authority within reasonable limits by focusing zoning regulations solely on the prevention of harms.[161] The statute would preclude municipalities from excluding manufactured

154. *Cf.* Your Home, Inc. v. City of Portland, 483 A.2d 735, 738 (Me. 1984) (the court indicates that relative permanence is not a necessity to establish a dwelling; plumbing, heating, and wiring must also be considered).

155. *See* Bourgeois v. St. Tammany, 628 F. Supp. 159, 163 (E.D. La. 1988) (ordinance which addresses manufactured home characteristics as they exist at the time of delivery, and not as they exist on the land, is invalid); Robinson Township v. Knoll, 410 Mich. 293, 321, 302 N.W.2d 146, 154 (1981) (both conventional homes and prefabricated homes are movable, thus invalidating any distinctions based upon mobility); Heath v. Parker, 93 N.M. 680, 682, 604 P.2d 818, 820 (1980) (the fact that a manufactured home initially designed to be transported and can be subsequently moved is not controlling).

156. SANDERS, *supra* note 99, at 9. The American Planning Report labels distinctions based on mobility as "regulatory abuse." *Id.* at 4.

157. KMIEC, *supra* note 12, at § 2.07(4). Although Kmiec wants to ease access to the courts, he warns that this may subject municipalities to frivolous lawsuits.

158. Village of Euclid v. Amber Realty, 272 U.S. 365 (1926).

159. *Id.* at 395.

160. *See* PRESIDENT'S REPORT, *supra* note 34, at 199-202 (advocating local zoning deregulation); *see also* D. Kmiec, *Protecting Vital and Pressing Governmental Interests — A Proposal for a New Zoning Enabling Act*, 30 WASH. U. J. URB. & CONTEMP. L. 19 (1986).

161. KMIEC, *supra* note 12, at § 2.07(4). Kmiec suggests that municipalities should limit their legislation to vital and pressing interests, even if the states fail to redraft their enabling legislation. *Id.*

homes based on obsolete stereotypes. A new state code should require that new local zoning ordinances promote vital and pressing government interests.[162] Consequently, manufactured home owners could successfully challenge regulations which involve merely aesthetic or other subjective preferences unrelated to health and safety.

A second remedy available to manufactured home owners in challenging exclusionary or "quasi-exclusionary" zoning ordinances would shift the burden of validity to the municipality, once a manufactured home owner demonstrates exclusion in any type of hearing.[163] The *Euclid* court granted the presumption of constitutionality to allow cities the freedom to incorporate public welfare goals into city planning.[164] By hiding behind the presumption of validity, municipalities enacted manufactured housing ordinances which defeat these goals.[165]

Manufactured homes deserve more respect than local municipalities give to them. Affordable housing is an overwhelming problem across the country. Municipalities increase the problem by eliminating the solutions. Unfortunately, local legislatures have reinforced the prejudices against manufactured housing by consistently excluding this manufactured housing from desirable areas. To reverse the trend, state legislatures need to enact pro-manufactured housing legislation, forc-

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162. The courts may take matters into their own hands. In City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), the Supreme Court invalidated an ordinance requiring special use permits for group homes for the mentally retarded. The Court intensified its scrutiny of the requirement, holding that the ordinance did not have a rational relationship to a legitimate government purpose.

163. KMIEC, *supra* note 12, at § 2.07(4).

> In all proceedings [administrative hearings, governing bodies, judicial reviews], the political subdivision shall bear the burden of proving by a preponderance of the evidence the existence of a vital and pressing government interest . . . and the manner in which such regulation promotes that interest.

Id.

164. *See* PRESIDENT'S REPORT, *supra* note 34, at 200.

> At the time *Euclid* was decided, zoning was appropriate governmental response to the need to separate noncompatible land uses within the community. In today's more complex environment, zoning has been employed to do far more. It is used not only to separate land uses but also to exclude people from the community.

Id.

165. *See* Delogu, *supra* note 93, at 74. The author states that municipal officials have no great constitutional insights on which to give privileged status to the constitutional interpretations of their ordinances, and suggesting that their interpretations may be more suspect than a federal or state legislatures' interpretations. *Id.*

ing municipalities to accept manufactured housing for what it is: a safe, affordable, attractive housing alternative.

*Howard J. Barewin**

* J.D. 1990, Washington University.