

# McCrory, Arkansas Trailer-Banishment Ordinance: Arkansas Manufactured Housing Association Article



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McCrory, Arkansas enacted a number of months ago a Trailer-Banishment Ordinance ("Ordinance") which would have banned mobile homes failing to meet a dollar value test.

A Class Action Complaint was subsequently filed in the United States District Court of the Eastern District of Arkansas challenging the ordinance on constitutional grounds.

I serve as General Counsel to the Arkansas Manufactured Housing Association ("AMHA"). An article I authored for the AMHA Spring publication provides background on certain land use issues associated with manufactured housing along with a discussion of the legal challenge to the McCrory Ordinance.

## I. Manufactured Housing Land Use Issues

Manufactured homes are sometimes unfairly perceived as inferior or less aesthetically pleasing than site-built housing. As a result of such perceptions, local governments on occasion utilize their zoning regulatory authorities to attempt to eliminate, isolate or minimize manufactured housing. The ability of an Arkansas municipality to undertake such discriminatory measures is limited to some extent by both federal and Arkansas laws.

The AMHA article describes the key federal and Arkansas laws addressing manufacturing housing.

## II. Federal HUD Code

The National Manufactured Housing Construction and Safety Standards Act ("Federal Act") requires the United States Department of Housing and Urban Development ("HUD") to promulgate and periodically revise regulations addressing various aspects of production of manufactured houses.

The federal regulation promulgated pursuant to the Federal Act is known as the HUD Code. This code has a unique status as the only federal residential building code. It applies uniform construction and safety standards to both single or multi-section "manufactured houses." These building standards have been subjected to federal regulation, in part, to establish practical, uniform, and to the extent possible, performance based federal construction standards for these structures. The Arkansas Manufactured Homes Standards Act requires that the Arkansas Manufactured Commission do what is necessary to comply with the Federal Act.

The importance of the Federal Act is that the HUD Code sometimes conflicts with local governments, regulation of manufactured housing. Municipalities' oversight activities usually include construction and/or siting of both site-built and manufactured housing through building standards or zoning codes.

The HUD Code expressly prohibits state and local governments from enacting construction or safety standards that differ from its provisions. This statutory provision's purpose is to promote the uniformity and comprehensiveness of the HUD Code. State and local governments do retain the right to establish standards for both stabilizing and support systems of manufactured homes and the foundations on which those manufactured homes are installed.

Note not all local requirements affecting manufactured housing are preempted by the HUD Code. Examples are zoning codes. The federal courts have held that the HUD Code preempts only construction and safety standards and does not apply to local zoning ordinances that regulate the placement of dwellings in a community.

### III. Arkansas Housing Accessibility Act

The limitations on the ability of the HUD Code to ensure that areas in a community were provided for manufactured housing led to the enactment a number of years ago of the Arkansas Affordable Housing Accessibility Act ("Accessibility Act"). The Arkansas statute arguably provides a state mandate for similar treatment of manufacturing housing from a zoning standpoint. The Accessibility Act provides that Arkansas communities must treat manufactured homes and any other form of residential housing equally.

The Federal HUD Code plays a key role in the implementation of the Accessibility Act. This is due to the fact that the Arkansas statute prohibits municipalities from establishing ordinances or regulations incorporating standards for manufactured home construction for safety not identical to the HUD Code. Further, Arkansas municipalities are prohibited from establishing an ordinance or code that includes standards for manufactured home installation inconsistent with the state standards for installation set forth under Ark. Code Ann. § 20-25-106 and the design of the manufacturer.

The Accessibility Act also requires that local zoning ordinances permit the placement of manufactured homes on individually owned lots in at least one or more residential districts or zones within the municipality. The local codes are not allowed to impose regulations or conditions on manufactured homes that prohibit placement of manufactured homes or that are inconsistent with the regulations or conditions imposed on other single-family dwellings permitted in the same residential district or zone. Regional regulations or conditions for the placement of manufactured homes within their jurisdiction as to issues such as perimeter foundation enclosures; connection to the utilities; building setbacks, etc. can be established.

### IV. McCrory, Arkansas Ordinance

Despite the previously referenced federal and Arkansas statutory provisions, communities in Arkansas and elsewhere still occasionally seek ways to ban or make difficult the siting of manufactured housing within their borders.

The McCrory Ordinance disallowed the presence of any mobile home worth less than \$7,500 to remain within the City limits. It also proposed a levy or fine of up to \$500 per day for noncompliance. A resident was required to establish by a certified appraiser or a bill of sale a value of \$7,500 or more for the structure.

As previously noted, a Class Action Complaint was filed in the United States District Court. A national nonprofit organization named Equal Justice Under Law based in Washington, D.C. and John D. Coulter of the Little Rock law firm of McMath Woods P.A. filed the Complaint on behalf of two individuals who were described as "an engaged couple living in McCrory below the federal poverty line in a trailer worth approximately \$1,500."

The Plaintiffs argued that the McCrory Ordinance was unconstitutional because:

1. Violates substantive due process by infringing on Plaintiffs' fundamental right not to be forcibly expelled from their place of residence

2. Discriminates on the basis of wealth status without any rational connection to a legitimate government interest in violation of the Equal Protection Clause
3. Criminalizes property and thus violates the constitution's proscription against criminalization of status
4. Imposes excessive fines in violation of the Eighth Amendment for violators of the Ordinance whose only offense is being poor
5. Violates procedural due process by imposing punishment without any process whatsoever

McCrory's City Council scheduled an emergency meeting shortly after the Complaint was filed to revoke the Ordinance. The Ordinance was rescinded and is no longer in place.

I understand McCrory has filed a Motion to Dismiss arguing the lawsuit is moot. Equal Justice Under law disagrees that the lawsuit is moot and is requesting a judgment that would prohibit McCrory from resuming this activity. The organization will presumably seek reimbursement of their attorney fees and costs when the litigation is concluded.

[A copy of the AMHA article which provides further detail on these issues can be downloaded below.](#)