

Legal Q&A

By Heather Mahurin, TML Legal Counsel

What is the difference between a mobile home, a HUD-Code manufactured home, and an industrialized or modular home?

Terms like “trailer home,” “double-wide,” “mobile home,” “modular home,” and “manufactured home” are often used interchangeably to describe the same type of structure. However, the federal and state regulatory schemes governing these types of housing make critical distinctions between these categories. Federal and state laws have recognized three specific types of structures: mobile homes, HUD-Code manufactured homes, and industrial (or modular) homes.

The Texas Manufactured Housing Standards Act (MHSA) is codified in the Texas Occupations Code, which provides definitions of both mobile and HUD-code manufactured home. A “mobile home” is defined as a “structure that was constructed *before* June 15, 1976, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet.” TEX. OCC. CODE § 1201.003(20).

A “HUD-code manufactured home” is defined as a “structure constructed *on or after* June 15, 1976 according to the rules of the United States Department of Housing and Urban Development, built on a permanent chassis, designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities, transportable in one or more sections, and in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet.” *Id.* § 1201.003(12).

A “Manufactured home” is defined as “a HUD-code manufactured home or a mobile home.” *Id.* § 1201.003(18).

Another chapter in the Occupations Code defines an “industrialized” or “modular” home as a structure “designed for the occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent site; and designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.” *Id.* § 1202.002.

How can a city determine the type of home?

A city should use the exact definitions set forth in chapters 1201 and 1202 of the Texas Occupations Code when enacting any city ordinance related to these types of dwellings. A HUD-Code manufactured home displays a red certification label on the exterior of each section. This label serves as the manufacturer’s certification that the section is built in accordance with Federal Housing and Urban Development standards. A modular home will have a blue decal

issued by the Texas Department of Licensing and Regulation signifying that the home has been built to comply with the International Residential Code.

Can a city regulate mobile homes?

Yes. A city can prohibit the installation of a mobile home for use or occupancy as a residential dwelling within its corporate limits. TEX. OCC. CODE § 1201.008. Because mobile homes constructed before June 15, 1976, are not certified as being in compliance with HUD standards, cities may completely prohibit these dwellings by city ordinance. A city can also determine if there are appropriate locations for mobile homes within the city and enact a city ordinance to reflect that decision.

Can a city regulate HUD-code manufactured homes?

Yes. The Texas Occupations Code expressly allows a city to determine areas of the city that are appropriate for the placement of HUD-Code manufactured homes. *Id.* One method that cities use to control placement is a specific use permit. Other cities designate certain areas—through zoning or otherwise—in which HUD-code manufactured homes can be placed. (Note: a city cannot require a permit for the installation of a HUD-Code manufactured home by a licensed retailer or installer. *Id.*)

Can a city decide there is no area of the city appropriate for HUD-Code manufactured homes?

To date, this question has not been specifically addressed through statutes or case law. However, the Texas attorney general has concluded that a city does not have the power to forbid these structures altogether. Tex. Att’y Gen. LO-97-002 (1997). Additionally, the statute provides that a city “*shall* permit the installation of a HUD-Code manufactured home for use as a dwelling in any area determined appropriate by the municipality.” TEX. OCC. CODE § 1201.008 (emphasis added). This choice of language furthers the argument that a city may not be able to completely prohibit HUD-Code manufactured homes.

Can a city regulate unoccupied and unsafe manufactured homes?

Yes. If a city decides that a mobile home or HUD-Code manufactured home poses a threat to public health and welfare, the city is within its power to regulate the homes as a public nuisance. Tex. Att’y Gen. LO-98-093 (1998). Specifically, the attorney general has concluded that the state statutes are intended to govern the installation and construction of manufactured housing. *Id.* The statutes do not, though, restrict the ability a city has to regulate unoccupied structures and structures that subsequent to their construction and installation have become a threat to public health and welfare. *Id.*

Can a city regulate industrialized or modular homes?

Yes, with certain limitations. A city may not prohibit an industrialized or modular home from being placed in an area zoned for single-family housing. A city can, however, enforce general

city ordinances on industrialized or modular homes just as it enforces ordinances on homes or buildings constructed on-site. These include enacting or maintaining land use and zoning requirements, building setback requirements, side and rear yard requirements, site planning and development and property line requirements, subdivision control, and landscape architectural requirements. TEX. OCC. CODE § 1202.251.

In addition, a city can adopt an ordinance that requires an industrialized home to have a “value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet” of where the industrialized housing is proposed to be located and have “exterior siding, roofing, roof pitch, foundation fascia, and fenestration” that is compatible with single-family homes located within 500 feet of the lot. TEX. OCC. CODE § 1202.253. A city can also adopt an ordinance that requires industrialized homes to comply with certain city aesthetic standards that are applicable to single-family dwellings or require that the industrialized home be securely fixed to a permanent foundation. *Id.*

What happens if a city enacts an ordinance to prohibit mobile homes and there is an area of the city that contains existing mobile homes?

A city can establish zoning districts under its general police power to protect public health, safety, and general welfare. TEX. LOC. GOV'T CODE § 211.003; *City of Corpus Christi v. Allen*, 254 S.W.2d 759, 761 (Tex. 1953). These zoning restrictions, however, may not be made retroactive. *Id.* Any ordinance enacted must relate to the future rather than to existing buildings and uses of land. *Id.* An ordinance may not operate to remove existing buildings and uses that are nonconforming. *Id.* A “nonconforming use” is a use of land that existed legally when a zoning restriction became effective and has continued to exist. *City of University Park v. Benners*, 485 S.W.2d 773, 777 (Tex. 1972), *app. dism'd*, 411 U.S. 901, *reh'g denied*, 411 U.S. 977 (1973).

Can a city ever get rid of these structures?

One way cities have attempted to remove nonconforming uses is through the process of amortization. Amortization allows a nonconforming use to continue for a reasonable period of time to permit the owner to recoup his investment in the property. Amortization serves as adequate compensation in these instances, satisfying state constitutional provisions prohibiting the unconstitutional taking of property without adequate compensation. *See* Tex. Const. art. I, § 17. Texas courts have approved the termination of nonconforming uses provided that adequate time is allowed to recover an owner's investment in the property. *Swain v. Board of Adjustment of the City of University Park*, 433 S.W.2d 727, 735 (Tex.Civ.App.-Dallas 1968, writ ref'd n.r.e.), *cert. denied*, 396 U.S. 277, *reh'g denied*, 397 U.S. 977 (1970).

Another way a nonconforming use can be terminated is through abandonment. Abandonment requires: (1) intent to abandon; and (2) an overt act or failure to act which carries the implication of abandonment. *See Turcuit v. City of Galveston*, 658 S.W.2d 832, 834 (Tex.App.-Houston [1st Dist.] 1983, no writ). A municipal ordinance can dictate the required period of nonuse required to be considered abandoned, and many cities already have ordinances containing this language.

Amortization is a complex legal process that should not be undertaken without the guidance of an experienced land use attorney.

Any city that considers “phasing out” manufactured homes should be aware that state law provides some protections to owners of the homes. The Texas Occupations Code provides that:

1. If a mobile home is replaced by a HUD-Code manufactured home in the municipality, the municipality shall grant a permit for use of the manufactured home as a dwelling in the municipality; and
2. Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

TEX. OCC. CODE § 1201.008. Essentially, the above provisions mean that a mobile home may be replaced once by a HUD-Code manufactured home, and a HUD-Code manufactured home may be replaced once with a newer and same sized or larger HUD-Code manufactured home.

What if a city has an ordinance prohibiting mobile homes and the city annexes a portion of land containing mobile homes?

The homes in the newly-annexed area would be considered nonconforming if they existed prior to annexation into the city. *Id.* This situation is different from the situation mentioned above, however. The Texas Local Government Code provides that a city cannot prohibit a person from “continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time.” TEX. LOC. GOV’T CODE § 43.002. Because of the existence of this statute, local ordinances that allow amortization of uses that are nonconforming may not be valid for annexed areas.

What state agencies regulate mobile homes, HUD-code manufactured homes, and industrialized or modular homes?

The construction of mobile homes is not regulated by a state agency. Thus, cities are able to prohibit them completely.

HUD-code manufactured homes are regulated by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs. These manufactured homes are provided with a red label certifying the structure meets the standards specified by the Texas Department of Housing and Community Affairs. More information on HUD-Code manufactured homes is available at <http://www.tdhca.state.tx.us>.

Industrialized homes are regulated by the Texas Department of Licensing and Regulation. This agency provides a modular home with the blue decal signifying that the home has been built to the model code standards required. More information on industrialized homes is available at <http://www.tdlr.state.tx.us/index.htm>.