

LEGISLATIVE BILL 511

Approved by the Governor April 4, 1994

Introduced by Will, 8; Pedersen, 39; McKenzie, 34

AN ACT relating to manufactured homes; to amend sections 14-402, 15-902, 19-902, 23-114, 23-174.01, and 71-6407, Reissue Revised Statutes of Nebraska, 1943, and section 71-1557, Revised Statutes Supplement, 1993; to prohibit certain zoning ordinances, resolutions, or regulations limiting the location of manufactured homes; to redefine a term; to prohibit state or political subdivision regulations inconsistent with federal law; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 14-402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-402. (1) For any or all of ~~such the~~ purposes listed in section 14-401, the city council may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 14-401 to 14-418. Within such districts ~~at the city council~~ may regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations ~~in applicable to~~ one district may differ from those ~~in applicable to~~ other districts.

(2)(a) The city council shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health or the United States Department of Housing and Urban Development. The city council may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city council may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health. At least one such district in the municipality shall include both land zoned for manufactured-home subdivisions and individually owned lots in such manufactured-home subdivisions. A political subdivision or a municipality may prescribe reasonable and necessary requirements of the site development for manufactured homes, as defined in section 71-4603, in such districts in accordance with local standards.

Sec. 2. That section 15-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

15-902. (1) Every city of the primary class shall have power in the area which is within the city or within three miles of the corporate limits of the city and outside of any organized city or village to regulate and restrict: (a) The location, height, bulk, and size of buildings and other structures; (b) the percentage of a lot that may be occupied; (c) the size of yards, courts, and other open spaces; (d) the density of population; and (e) the locations, and uses of buildings, structures, and land for trade, industry, business, residences, and other purposes. Such city shall have power in this area to divide the area zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, even though but regulations for applicable to one district may differ from those applicable to other districts. At least one district in the city shall provide for the use of land for manufactured-home courts and individually owned lots in manufactured-home courts. The city may prescribe reasonable and necessary requirements of the site development for manufactured homes; as defined in section 71-4603, in such districts in accordance with local standards. Such 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. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

(2)(a) The city shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health or the United States Department of Housing and Urban Development. The city may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health.

Sec. 3. That section 19-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-902. (1) For any or all of the purposes designated in section 19-901, the ~~local legislative body~~ city council or village board may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914, ~~and within such districts it and~~ may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the districts. At least one district in the municipality shall provide for the use of land for manufactured-home courts and individually owned lots in manufactured-home courts. The municipality may prescribe reasonable and necessary requirements of the site development for manufactured homes, as defined in section 71-4603, in such districts in accordance with local standards. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in applicable to one district may differ from those in applicable to other districts.

(2)(a) The city council or village board shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health or the United States Department of Housing and Urban Development. The city council or village board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council or village board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city council or village board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health.

(4) Subdivision regulations and building, plumbing, electrical, housing, fire, or health codes or similar regulations and the adoption thereof shall not be subject to sections 19-901 to 19-915.

Sec. 4. That section 23-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-114. (1) The county board shall have power: (a) To create a planning commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; (b) to make, adopt, amend, extend, and implement a county comprehensive development plan; and (c) to adopt a zoning resolution, which shall have the force and effect of law.

(2) The zoning resolution may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for

agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county.

(3)(a) The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The county board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health.

(5) Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property.

(6) The ~~7~~ PROVIDED, the powers created conferred by this section shall not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, its regulations the ordinance or amendment shall supersede these any resolution or regulation of the county.

Sec. 5. That section 23-174.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-174.01. Every county in which is located a city of the primary class shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village; and over which such city or village is exercising such jurisdiction, to regulate and restrict (1) the location, height, bulk, and size of buildings and other structures, (2) the percentage of a lot that may be occupied, (3) the size of yards, courts, and other open spaces, (4) the density of population, and (5) the locations, and uses of buildings, and structures, and land for trade, industry, business, residences and other purposes. Such county shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village, and over which such city or village is exercising such jurisdiction, to divide the county zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section, and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All ~~7~~ PROVIDED, that ~~all~~ such regulations shall be uniform for each class or kind of buildings

throughout each district, even though ~~but~~ regulations ~~for~~ applicable to one district may differ from those applicable to other districts. Such 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. The provisions of section 23-114 which relate to manufactured homes shall apply to such zoning regulations. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

Sec. 6. That section 71-1557, Revised Statutes Supplement, 1993, be amended to read as follows:

71-1557. As used in the Nebraska Uniform Standards for Modular Housing Units Act, unless the context otherwise requires:

(1) Modular housing unit shall mean any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units not fabricated on the final site for the dwelling unit, which units are movable or portable until placed on a permanent foundation and connected to utilities. Modular housing units shall be taxed as real estate; ~~The term modular housing unit shall not include a manufactured home as defined in section 71-4603.~~

(2) Living unit shall mean any portion of a modular housing unit which contains living facilities including provisions for sleeping, eating, cooking, and sanitation for no more than one family;

(3) Seal shall mean a device or insignia issued by the Department of Health to be displayed on the exterior of the modular housing unit to evidence compliance with departmental standards;

(4) Dealer shall mean any person other than a manufacturer who sells, offers to sell, distributes, or leases modular housing units primarily to persons who in good faith purchase or lease a modular housing unit for purposes other than resale;

(5) Manufacturer shall mean any person who manufactures or produces modular housing units;

(6) Person shall mean any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing modular housing units; and

(7) Department shall mean the Department of Health.

Sec. 7. That section 71-6407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6407. Nothing in the Building Construction Act shall be construed to authorize any state agency or political subdivision to regulate the construction of farm buildings or other buildings or structures when such regulation is otherwise prohibited by law. Nothing in the act shall be construed to authorize any state agency or political subdivision to have any authority either to establish or to continue in effect, with respect to any manufactured home built pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, any standard regarding construction or safety which is not identical to standards promulgated by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, and the regulations promulgated by the United States Department of Housing and Urban Development under the federal law when there is in effect a standard of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, or the regulations applicable to the same aspect of performance of such manufactured home.

Sec. 8. This act shall become operative on January 1, 1995.

Sec. 9. That original sections 14-402, 15-902, 19-902, 23-114, 23-174.01, and 71-6407, Reissue Revised Statutes of Nebraska, 1943, and section 71-1557, Revised Statutes Supplement, 1993, are repealed.