

CITY OF SONOMA

CITY COUNCIL SPECIAL MEETING

Wednesday October 7, 2015
3:00 p.m.

**Sonoma Veterans Memorial Building
126 First Street West
Sonoma CA 95476**



City Council
David Cook, Mayor
Laurie Gallian, Mayor Pro Tem
Madolyn Agrimonti
Gary Edwards
Rachel Hundley

AGENDA

1. CALL TO ORDER

2. STUDY SESSION

Item 2A: Study Session (Second) for Continuation of Process to Review Update to Mobilehome Rent Control Ordinance
Staff Recommendation: Provide direction to staff.

3. ADJOURNMENT

I do hereby certify that a copy of the foregoing agenda was posted on the City Hall bulletin board on October 1, 2015. GAY JOHANN, ASSISTANT CITY MANAGER/CITY CLERK

Copies of all staff reports and documents subject to disclosure that relate to any item of business referred to on the agenda are normally available for public inspection the Wednesday before each regularly scheduled meeting at City Hall, located at No. 1 The Plaza, Sonoma CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the City Council regarding any item on this agenda after the agenda has been distributed will be made available for inspection at the City Clerk's office, No. 1 The Plaza, Sonoma CA during regular business hours.

If you challenge the action of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described on the agenda, or in written correspondence delivered to the City Clerk, at or prior to the public hearing.

In accordance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (707) 933-2216. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**SUPPLEMENTAL
MEMORANDUM**

TO: The Honorable David Cook, Mayor, and Councilmembers

FROM: ~~Jeffery Walter, City Attorney~~

RE: Study Session (Second) for Continuation of Process to Review Update to Mobilehome Rent Control Ordinance

STUDY SESSION: October 7, 2015

Recommendation:

The procedures recommended for this second study session are envisioned to complete the review of the issues surrounding the proposals for the updates to the City's Mobilehome Rent Control Ordinance. If, after (or during) the presentation by the City Attorney, hearing final arguments from mobilehome owners' and park owners' representatives, and taking testimony from the public, sufficient clarity has been provided to the Council, it is recommended that the Council take straw votes on the significant, recommended changes to the rent control ordinance. This will facilitate staff's drafting of amendments to be presented to the Council at a future, regularly scheduled Council meeting for introduction and adoption.

Review of First Study Session and Recommended Procedures for Second Study Session

The first study session held on April 29, 2015 was conducted in a manner that allowed the City Attorney to provide a general summary of the chief provisions of the City's current rent control ordinance after which Council engaged in questions. This was followed by 30 minute presentations made by the residents' legal counsel (William Constantine) and the Park owners' legal counsel (Bradley Yusim). Sufficient time was also included for rebuttal comments and sur-rebuttal comments. In addition, public comment was also taken.

The remaining outstanding portion of the meeting was to focus on the Decision Matrix which had been prepared by the City Attorney as a basis for Council direction. The Decision Matrix exhibits, in abbreviated form, the more significant changes that the homeowners and park owners, respectively, are proposing to be made to the City's rent control ordinance. Due to the late hour of the prior meeting, Council opted to adjourn and continue the meeting and direct that the Decision Matrix be the opening item at a future study session. In essence, the public comment portion of the discussion concerning the proposed amendments was concluded. And it was acknowledged that the next (the second) study session would be devoted, in the main, to the Council taking straw votes on the various decision points outlined in the City Attorney's Decision Matrix.

To assure that the Decision Matrix is reviewed in totality and to allow for sufficient time for presentation and discussion by the Council, the following schedule for this second study session is recommended:

- CALL THE MEETING TO ORDER, INTRODUCE COUNCIL AND STAFF
- CITY ATTORNEY TO EXPLAIN PROCESS OF CONTINUING DISCUSSION
- REQUEST CITY ATTORNEY TO GIVE BRIEF OVERVIEW OF STATUS OF ORDINANCE AND PROVIDE ANY UPDATES SINCE PRIOR STUDY SESSION
- ENTERTAIN GENERAL QUESTIONS FROM COUNCIL
- PRESENTATION OF DECISION MATRIX BY CITY ATTORNEY/STRAW VOTE OF COUNCIL
- POSITION STATEMENT ON COUNCIL'S STRAW VOTES AND DECISION MATRIX BY RESIDENTS' ATTORNEY OR OTHER REPRESENTATIVES – 10 MINUTES
- POSITION STATEMENT ON COUNCIL'S STRAW VOTES AND DECISION MATRIX BY PARK OWNERS' ATTORNEY OR OTHER REPRESENTATIVES – 10 MINUTES
- COUNCIL DISCUSSION AND FINAL DIRECTION (STRAW VOTES) TO CITY ATTORNEY AND STAFF
- CLOSING PUBLIC COMMENTS 2-3 MINUTES PER SPEAKER, DEPENDING UPON NUMBER OF PUBLIC SPEAKERS.

Attachments:

1. Decision Matrix
2. Staff Report & Attachments from April 29, 2015

DECISION MATRIX

Issue **Yes** **No** **Yes with Modification**

HOMEOWNERS' PROPOSED AMENDMENTS			
<p>1. Disbanding the Rental Review Board as the decision maker on rent increase applications, and, instead, assigning that responsibility to the City Manager, whose decision is based solely on experts' evaluations without hearing, and is appealable to an independent hearing officer selected through the State's Office of Administrative Hearings.</p>			
<p>A. Applicable to fair return petition.</p>			
<p>B. Applicable to service reduction petition.</p>			
<p>C. Applicable to capital improvement pass-through petition.</p>			
<p>2. Authorizing the city manager to retain experts to assist the city manager in making decisions on individual rent increase applications and requiring the applicant to advance funds to pay for such experts. It appears that the proposed revisions allow the applicant to recoup those costs in the form of rent increases if the applicant is successful in achieving the results sought in its application.</p>			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
3. Setting up a process whereby the residents, in response to the filing of a rent increase application, can make a settlement offer to the applicant-park owner agreeing to accept a certain rent increase. If that offer is not accepted by the park owner and the application is prosecuted to a final decision that is less than the settlement amount, then the park owner is not entitled to recover its expenses incurred in prosecuting its rent increase application after the offer was made by the residents and the residents' costs in defending the application incurred after the offer was made are recoverable against the park owner.			
4. A corresponding right on the part of the park owners to offer a settlement proposal is established. Unclear as to recovery of park owners' legal and other expenses if park owner achieves award greater (but less than petitioned for award) or less than settlement offer.			
A. Applicable to fair return petition.			
B. Applicable to service reduction petition.			
C. Applicable to temporary capital improvement pass-through petition.			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
5. Requiring that each park’s residents annually elect a resident as the residents’ representative. This representative is vested with the authority to speak on behalf of and bind the residents to certain decisions made by the representative.			
A. What decisions should the representative be able to make on behalf of residents.			
6. Reduce vacancy control limitation of increasing rent to 10% above prior rents to no more than 5% of pre-existing rent.			
7. Expanding the definitions and provisions governing what constitutes income and expenses in the context of a petition seeking rental increases in order to MNOI.			
8. Requiring park owners to file “complete” applications for rent increases before time periods begin running and as a condition to the City’s obligation to process the application.			
9. Except where settlement offers have been made by the homeowners or park owner, requiring that the legal and expert fees and other costs incurred by a park owner in processing a successful rent increase application be passed through to the residents, provided that they are amortized over 5 years, with interest.			
10. Amortizing park owners’ legal costs and expert fees over 5 years, with interest.			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
11. If a decision granting a rent increase petition is delayed beyond 120 days (180 days?), City required to grant retroactive rent increase covering the delay period. It is to be amortized over 5 years with interest.			
12. Adding a provision expressly authorizing residents to petition for rent reductions in those situations where the park has reduced services or amenities as defined in the proposed revisions.			
13. Imposition of a supplemental administrative fee, chargeable to residents, but to be collected by park owners. If residents do not pay supplemental administrative fee, it appears that the City must pursue collection against the non-paying resident, not the park owner.			
14. In response to a park owner's request for a temporary rent increase to pay for a capital improvement, residents are given 15 days to submit protests signed by 50% plus one of the affected residents and the city clerk is given the same time period to determine whether to issue her preliminary approval, disapproval or conditional approval of same. The residents are proposing to enlarge this time period to 30 days.			
PARK OWNERS' PROPOSED AMENDMENTS			
1. Increase annual automatic rent increase from 80% to 100% of the CPI and eliminate the 5% cap.			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
2. Eliminate vacancy control, thus permitting park owners to charge market rents to new owners of in-place mobile homes.			
3. Amend the MNOI formula to increase permitted rent increases in NOI from 80% of the CPI change to 100% in the change of the CPI. See, SMC Section 9.80.050(C). [Note: It appears that the ordinance proposed by the homeowners does not include the 80% limitation.]			
4. Amend Resolution No. 57-1998 to change the amortization period for sewer systems from 50 to 15 years and for water distribution systems from 50 to 25 years.			
5. Clarify the types of expenses that do not meet the definition of “Capital Improvements” set forth on page 2(B) of Resolution No. 57-1998.			
6. Amend SMC Section 9.80.065(C) to eliminate the homeowners’ right to protest a rent increase for necessary capital improvements (defined at SMC Section 9.80.020(B)(1)).			
7. Amend Resolution No. 57-1998 which excludes identified types of in-place sales of mobile homes from those types of in-place sales for which the landlord can increase the rent to the new owner by 10% such that the only exclusion from this limited form of vacancy control is a transfer to a spouse.			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
8. Add a section that would allow park owners to pass through to homeowners any fees or charges that a majority of the homeowners' request or agree should be passed through.			
9. If the City amends the ordinance to permit the City to charge a park owner for the services of an expert retained by the City to analyze a park owner's rent increase application, the park owner's attorney is recommending that a section be added that would allow the park owner to "immediately" pass through such cost to the homeowners on a pro rata basis.			

MEMORANDUM

TO: The Honorable David Cook, Mayor, and Councilmembers
FROM: Jeffrey Walter, City Attorney 
RE: Proposed amendments to Rent Control Ordinance

STUDY SESSION: April 29, 2015

Recommendation:

After (or during) the presentation by the City Attorney, hearing arguments from mobilehome owners' and park owners' representatives, and taking testimony from the public, the Council should ask questions about the proposed changes to the City's rent control ordinance, and if sufficient clarity has been provided to the Council, it is recommended that the Council take straw votes on the significant, recommended changes to the rent control ordinance. This will facilitate staff's drafting of amendments to be presented to the Council at a later, Council meeting for introduction and adoption.

Background

General Summary of Chief Provisions of Current Rent Control Ordinance

The City has adopted an ordinance controlling rents charged by owners of mobilehome parks to mobilehome owners who rent pads (spaces) located at those parks. Generally speaking, except as described below, the rents that can be charged for those spaces cannot exceed the rates charged on January 1, 1992. Under the ordinance, the three, most utilized methods available to increase those rents are: (a) every year since 1992, rents have been allowed to automatically adjust upwards in an amount not to exceed 80% of the change in the CPI (but capped at 5%), (b) in addition to the automatic, annual rent increase, the park owners are permitted to seek rent increases to pay for capital improvements to their parks, and (c) in addition to the annual, automatic rent increase and any capital improvement rent increases, the park owners are permitted to seek rent increases to maintain the net operating income ("MNOI") enjoyed by the parks in 1992. The ordinance presumes that the net operating income ("NOI") earned by a park in 1992 (prior to the advent of rent control) provided the owner with a fair and reasonable rate of return. The MNOI procedures are aimed at assuring that if the annual automatic increases allowed under the ordinance are insufficient to maintain the same NOI a park generated in 1992, the park owner may apply to the City for an increase in rent to maintain that NOI. NOI is defined as the gross income earned by the park, less the operating expenses of the park.

Rent increase petitions filed by park owners are decided by a Rental Review Board appointed by the Council.

The City's rent control ordinance also provides that a park owner can increase the rent charged for renting a space whose coach is sold in place to a new owner or where the space becomes vacant due to the lawful termination of the space's lease or the voluntary removal of the mobilehome from that space, among other reasons. However, that new rent cannot exceed 10% of the rent in effect at the time of the sale or vacancy. This is sometimes referred to as "partial vacancy control."

To further explain and implement the rent control ordinance, the City Council adopted Resolution No. 57-1998 in September 1998. Among other things, this Resolution (a) sets forth the procedures to be followed in implementing the annual, automatic rent increase, (b) defines capital improvements and the interest that is to be passed on to residents as part of any decision to temporarily increase rents to pay for such improvements, (c) sets forth amortization periods during which capital improvement pass-through rent increases may be in effect, and (d) identifies certain types of transfers of mobilehome ownership that do not trigger the park owner's right to increase the space rent by 10%. A copy of that Resolution is attached.

The issues of whether an annual, automatic rent increase should be permitted, and the amount of that increase, as well as the question whether the ordinance should include vacancy control provisions are often at the center of the dispute between park owner and park residents. In a 2011 study conducted by Ken Baar for the City of Marina (Mr. Baar was retained by the City of Sonoma in the 1990's to develop the City's original rent control ordinance), Mr. Baar reports that 90 jurisdictions in California then had rent control. 35 ordinances authorized annual increases equal to 100% of the CPI. 323 authorized 70-90% of the CPI. 7 did not authorize any annual increases. 10 included floors on annual increases. About 40% of the ordinances contained ceilings on annual increases.

With respect to the in-place sales of mobilehomes, Mr. Baar reports that 43 ordinances did not permit any increase in rent upon such a sale of a mobilehome. 30 ordinances allowed limited increases in rent. And 12 ordinances placed no controls on the rent charged to a new owner of an in-place mobilehome.

In 2014, Mr. Baar produced a survey of Northern California jurisdictions' rent control ordinances. It is attached.

Summary of Some of the Proposed Revisions to Ordinance

A. By the Homeowners. Some of the revisions proposed by the homeowners to the ordinance include:

1. Disbanding the Rental Review Board as the decision maker on rent increase applications, and, instead, assigning that responsibility to the City Manager, whose decision is based solely on experts' evaluations without hearing, and is appealable to an independent hearing officer selected through the State's Office of Administrative Hearings.

2. Authorizing the city manager to retain experts to assist the city manager in making decisions on individual rent increase applications and requiring the applicant to advance funds to pay for such experts. It appears that the proposed revisions allow the applicant to recoup those costs in the form of rent increases if the applicant is successful in achieving the results sought in its application.

3. Setting up a process whereby the residents, in response to the filing of a rent increase application, can make a settlement offer to the applicant-park owner agreeing to accept a certain rent increase. If that offer is not accepted by the park owner and the application is prosecuted to a final decision that is less than the settlement amount, then the park owner is not entitled to recover its expenses incurred in prosecuting its rent increase application after the offer was made by the residents and the residents' costs in defending the application incurred after the offer was made are recoverable against the park owner.

4. Requiring that each park's residents annually elect a resident as the residents' representative. This representative is vested with the authority to speak on behalf of and bind the residents to certain decisions made by the representative.

5. Reducing the amount of increased rent the park owner can charge a new resident-tenant who purchases a coach-in-place or who brings a coach into the park to fill a vacancy. Instead of being allowed to charge a rent 10% higher than the pre-existing rent, the park owner is allowed to charge an increase not exceeding 5% of the pre-existing rent.

6. Expanding the definitions and provisions governing what constitutes income and expenses in the context of a petition seeking rental increases in order to MNOI.

7. Requiring park owners to file "complete" applications for rent increases before time periods begin running and as a condition to the City's obligation to process the application.

8. Except where settlement offers have been made by the homeowners or park owner, requiring that the legal and expert fees and other costs incurred by a park owner in processing a successful rent increase application be passed through to the residents, provided that they are amortized over 5 years, with interest.

9. Adding a provision expressly authorizing residents to petition for rent reductions in those situations where the park has reduced services or amenities as defined in the proposed revisions.

10. Expanding the sections dealing with administration fees, their collection and their calculations.

B. By the Park Owners. Some of the revisions proposed by the park owners to the ordinance include:

1. Increase annual automatic rent increase from 80% to 100% of the CPI and eliminate the 5 % cap.

2. Eliminate vacancy control, thus permitting park owners to charge market rents to new owners of in-place mobile homes.

3. Amend the MNOI formula to increase permitted rent increases in NOI from 80% of the CPI change to 100% in the change of the CPI. See, SMC Section 9.80.050(C).

4. Amend Resolution No. 57-1998 to change the amortization period for sewer systems from 50 to 15 years and for water distribution systems from 50 to 25 years.

5. Clarify the types of expenses that do not meet the definition of “Capital Improvements” set forth on page 2, at ¶(B) of Resolution No. 57-1998.

6. Amend SMC Section 9.80.065(C) to eliminate the homeowners’ right to protest a rent increase for necessary capital improvements (defined at SMC Section 9.80.020(B)(1)).

7. Amend Resolution No. 57-1998 which excludes identified types of in-place sales of mobile homes from those types of in-place sales for which the landlord can increase the rent to the new owner by 10% such that the only exclusion from this limited form of vacancy control is a transfer to a spouse.

8. Add a section that would allow park owners to pass through to homeowners any fees or charges that a majority of the homeowners’ request or agree should be passed through.

9. If the City amends the ordinance to permit the City to charge a park owner for the services of an expert retained by the City to analyze a park owner’s rent increase application, the park owner’s attorney is recommending that a section be added that would allow the park owner to “immediately” pass through such cost to the homeowners on a pro rata basis.

Decision Matrix

Attached is a matrix showing, in abbreviated form, the more significant changes that the homeowners and park owners, respectively, are proposing to be made to the City's rent control ordinance. Hopefully, this tool will aid the Council in determining which changes it may wish to pursue and/or consider further.

Next Steps

Drafting and analyzing rent control ordinances is a complicated process. After this special study session, the Council may come to the opinion that further study and research are necessary before it can make a decision. Or, it may determine that some of the proposed changes are worth pursuing, but others are not, and some may require further examination. An additional study session may be appropriate. How the Council may wish to further address these issues is left to the sound discretion of the City Council.

Attachments

Preliminary Comments - What is not Attached and Why

The residents' attorney (William Constantine) submitted his first draft revisions to the City's rent control ordinance to the City for the latter's consideration in November 2011. Thereafter, and on two separate occasions, Mr. Constantine submitted to the City further revisions to his original proposal, the last one being delivered in March 2014. And it is that last iteration that is attached to this report and upon which the attached Decision Matrix is based. As I mentioned in my report to the Council for its March 2, 2015, meeting, the attorneys for the homeowners and park owners have exchanged letter briefs setting forth arguments and counter-arguments (along with exhibits and case authority) in support of and in opposition to their various suggested changes to the City's rent control ordinance. The debate has been robust. All told, they produced about four inches of material. Much (but not all) of these materials were provided to the Council at its March 2, 2015, meeting. If desired by the Council copies of these papers can be made and provided to the Council, but it is anticipated that the significant points that these parties may wish to make will be re-articulated and further explained during the Council's upcoming study session.

The Attachments and Brief Explanations

1. Residents' Attorney's (Mr. Constantine's) Proposed Changes and Modifications to Rent Control Ordinance (as of March 12, 2014). This document has been prepared in blue line change and strike out format. The black material shows the City's existing ordinance. The blue material shows the changes Mr. Constantine is recommending. The blue strike out material shows changes that Mr. Constantine is proposing to his previous proposal(s). The black strike out material shows Mr. Constantine's suggested deletions from the existing rent control ordinance.

2. Resolution No. 57-1998. This Resolution was adopted in September 1998 by the City Council to explain, interpret and implement the City's Rent Control Ordinance.
3. Mr. Baar's 2014 survey of Northern California jurisdictions' rent control ordinances.
4. Decision Matrix. This document is prepared for the Council to be used as a checklist to identify the more significant changes to the City's Rent Control Ordinance that are being proposed by the homeowners' and park owners' representatives.
5. Letter from Bradley Yusim dated June 6, 2012, in which Mr. Yusim Sets Forth Specific Verbiage that He is Proposing be Utilized in Amending the City's Rent Control Ordinance.

VII. Consumer Protection

Chapter 9.80

MOBILEHOME PARK SPACE RENT PROTECTION*

Sections:

Article I. General Provisions

9.80.010 Findings and purpose.

~~9.80.020 Definitions for Article I.~~

~~9.80.030 Mobilehome park rental review board.~~

~~9.80.035 Rental increase applications.~~

~~9.80.040 Base rent.~~

~~9.80.045 Automatic annual rental increases.~~

~~9.80.050 Permitted rental increases required to maintain net operating income.~~

~~9.80.060 Rebutting base year net operating income fair return presumption.~~

9.80.065 Pre-approved temporary rental increases for specified capital improvements. *Now moved 9.80.090*

9.80.070 Full and partial vacancy decontrol – Establishment of new base rent. *Now moved 9.80.060*

~~9.80.080 Fees. *Now moved 9.80.210 Administrative Service Fee.*~~

~~9.80.090 Permissible reasons for terminating or refusing to renew a tenancy *Now moved*~~

~~9.80.100 Refusal of tenant **tenant - homeowner** to pay illegal rent *Now moved*~~

~~9.80.120 Remedies *Now moved*~~

~~Article II. Administration Fees *Now moved*~~

~~9.80.130 Definitions for Article II. *Now moved*~~

~~9.80.140 Registration – Required. *Now moved*~~

~~9.80.150 Fees. *Now moved*~~

~~9.80.160 Late payment – Fee. *Now moved*~~

9.80.020 Definitions.

9.80.030 Applicability of chapter.

9.80.035 Exemptions from this chapter.

9.80.040 Permissible rent increases.

9.80.045 Automatic annual increases based on increases in the Consumer Price Index.

9.80.050 Allowable rent following the expiration of an exempt lease.

9.80.060 Full and partial vacancy decontrol – Establishment of new base rent. .

9.80.070 Fair return standard.

9.80.080 Procedures for review of fair return petitions.

9.80.090. Pre-approved temporary rental increases for specified capital improvements

9.80.100 Rent reductions for service reductions.

9.80.110 Waivers.

9.80.120 Information to be supplied by the park owner to tenant - homeowner and prospective tenant - homeowner .

9.80.125 Information to be provided by the city to the public.

9.80.130 Designated Tenant -Homeowner Representatives.

9.80.140 Rights of prospective tenant - homeowners.

9.80.150 Annual registration and other notices required from owner.

9.80.160 Retaliation prohibited.

9.80.170 Excessive rents or demands therefor.

9.80.180 Excessive rents—Refusal to Pay and Remedies

9.80.185 Permissive Reasons for Terminating or Refusing to Renew a Tenancy

9.80.190 Rules and guidelines.

9.80.200 Authority of city council to bring civil action to compel compliance.

~~9.80.80 Fees~~ 9.80.210 Administrative Service Fee.
9.80.215 Supplemental Administrative Service Fee.
9.80.220 Appeal of decisions pursuant to this chapter.

Article II. Collection and Payment of Administration Service Fees

~~9.80.130~~ 9.80.230 Definitions for Article II.
~~9.80.140~~ 9.80.240 Registration – Required.
~~9.80.150~~ 9.80.250 Payment of Administration Fee.
~~9.80.160~~ 9.80.260 Late payment – Fee.
9.80.270 Collection and Payment of Supplemental Administrative Fee.
9.80.280 Spaces Excluded from Paying Supplemental Administrative Fee.
9.80.290 Amount of the Supplemental Administrative Fee.
9.80.300 Severability.
APPENDIX A

9.80.010 Findings and purpose.

The city council has recognized and finds that:

A. Captive Nature of Mobile Home Park Tenancies. As a practical matter, the mobile homes in Sonoma’s mobile home parks are “immobile” homes. Very few mobile home parks in the area will accept mobile homes that are more than a few years old. The cost of moving and setting up a mobile home in a park is substantial. Mobile homes are rarely moved after they are placed in mobile home parks. When mobile home park residents move they sell their mobile homes in place.

Special characteristics of mobile home park tenancies in urban areas generally include the following:

1. The “historical” investments of the mobile home owner (tenants) in mobile homes in mobile home parks generally exceed those of the landlord park owners.
2. The physical relocation of mobile homes is costly.
3. Relocation within metropolitan areas is practically impossible because there are virtually no vacant spaces in mobile home parks.
4. Park owners generally will not permit older mobile homes to be moved into their parks when they do have vacant spaces for rent.
5. The supply of mobile home park spaces in urban areas in California is either frozen or declining. Mobile home park construction in urbanized areas of California virtually ceased by the early 1980’s as alternative land uses became more profitable and land use policies continually tightened restrictions on the construction of new mobile home parks.

The investments of mobile home park residents in their mobile homes are “sunk” costs. The benefits of these investments can only be realized by continuing occupancy in the mobile home or by an “in-place” sale of the mobile home.

In 2001, the California Supreme Court concluded:

BACKGROUND:

THE MOBILEHOME OWNER/MOBILEHOME PARK OWNER RELATIONSHIP

“This case concerns the application of a mobilehome rent control ordinance, and some background on the unique situation of the mobilehome owner in his or her relationship to the mobilehome park owner may be useful. “The term ‘mobilehome’ is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. [Citation.] A mobile home owner typically rents a plot of land, called a ‘pad,’ from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile homeowner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.” (Yee v. Escondido (1992) 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153.) Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances—typically a greater investment in his or her space than the mobilehome park owner. [cite omitted] The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners.” (Galland v. Clovis, 24 Cal.4th 1003, 1009 (2001))

Court opinions and academic reviews have repeatedly noted the captive nature of mobile home park tenancies. For example, in one case the Florida Supreme Court concluded that mobile home owners face an “absence of meaningful choice” when their space rents are increased:

“Where a rent increase by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial rental agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving. The “absence of meaningful choice” for these residents, who find the rent increased after their mobile homes have become affixed to the land, serves to meet the class action requirement of procedural unconscionability.” Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121, 1124 (Fla.), cert. denied, 493.

In response to the special situation of tenant - homeowners, California has adopted landlord-tenant laws which provide special protections for them. (California Civil Code Section 798.)

In addition, approximately ninety jurisdictions in California have adopted some type of rent control of mobile home park spaces. Typically the rent control ordinances tie annual allowable rent increases to the percentage increase in the Consumer Price Index (CPI)—All Items. Most of the ordinances do not permit additional rent increases (vacancy decontrol) or limit rent increases to ten percent or less when a mobile home is sold in place. Under all ordinances, park owners are entitled to petition for additional rent increases in order to obtain a fair return.

The state of California has recognized, by the adoption of special legislation regulating tenancies of mobilehome owners in mobilehome parks, that there is a significant distinction between tenants of mobilehome parks and other dwelling units, and the council likewise has recognized that tenants of mobilehome parks, unlike apartment tenants or residents of other rental stock, are in the unique position of having made a substantial investment in a residence, the space for which is rented or leased as distinguished from owned. The physical removal and relocation of a mobilehome from a rented or leased space within a mobilehome park can be accomplished only at substantial cost and inconvenience with the concurrent ability to find another location, and, in many instances, the removal requires a separation of the mobilehome unit from appurtenances which

have been made permanent, thus creating severe damage and depreciation in value to the mobilehome. As a result of the absence of vacant spaces and park restrictions on accepting mobilehomes that are not new, it is virtually impossible for mobilehome owners to move their mobilehomes from one park to another park within the city.

B. The city council finds and declares that the existing mobilehome parks in the city are the only lands designated for mobilehome parks by the 1985-2005 Sonoma General Plan and no new sites for mobilehome parks are anticipated; that the average value of a mobilehome (\$47,527) is less than 20 percent of the average value of a home in Sonoma, making mobilehomes an important source of affordable housing for the community; that 30 percent of the households below the poverty level in the city are aged 65 and over; that the median age of mobilehome park residents is 76 years; that 54 percent of mobilehome residents are single-person households, most (64 percent) headed by females; and that based on five years of experience in administering a very low-income senior rental development and reviewing the applications of prospective tenants, the incomes of the predominant residents of mobilehomes (i.e., senior citizens) is likely to fall into the very low (50 percent or less of the county median income) category (a gross annual income of \$15,350 or less) as determined by the U.S. Government Department of Housing and Urban Development.

C. Studies and hearings have shown that there is presently within the city and surrounding areas a shortage of spaces for the location of mobilehomes, resulting in a low vacancy rate. Space rent increases at the time of sale or other transfer of a mobilehome within a park have been shown to be as great as a 50 percent increase over the pretransfer rent. In some mobilehome parks, rent increases in the past decade have been substantially in excess of the increases in the Consumer Price Index.

D. Rapidly rising and large incremental increases in space rent have resulted in an atypical market depression in the resale value of mobilehomes within the city.

E. Because of the shortage and potential for rapidly rising rates, regulation is necessary to assure that economic hardship to a substantial number of mobilehome park tenants in the city, many of whom are senior citizens on low fixed incomes, does not occur.

F. Pursuant to studies and hearings conducted by the city council and city staff, the city council has determined it necessary and in the public interest to establish a mechanism to assist in the resolution of disputes that may arise from time to time between tenants and management of mobilehome parks regarding the rates charged for the rental or lease of space.

G. Therefore, the city council does accordingly find and declare that it is necessary to establish a means to provide protection to mobilehome park ~~tenants~~ **tenant - homeowners** from unreasonable rent increases, while at the same time recognizing the need of mobilehome park management to receive a fair return and to receive rent increases sufficient to cover increased cost of repairs, maintenance, service, insurance, upkeep, and other amenities.

H. The city council further finds and declares that the adoption of this chapter will not have a significant, substantial or adverse effect on the physical environment of the community because enactment of this chapter involves no deviation from the general plan and no change in the present use of any property within the city. (Ord. 98-6 § 1, 1998).

Current 9.80.020 to 9.80.090 (except for 9.80.045, 9.80.065 and 9.80.090) deleted and replaced or moved and re-numbered with the below provisions of the City of Marina's Rent Stabilization Ordinance

9.80.020 Definitions.

- A. "City manager" shall include the city manager or a person designated by the city manager to perform the functions required by this chapter.
- B. "Consumer Price Index" means the Consumer Price Index—All Items for all urban consumers for the San Francisco-Oakland-San Jose area (base year equals 1982—1984) as reported by the Bureau of Labor Statistics of the United States Department of Labor.
- C. "In-place transfer" means the transfer of the ownership of a mobile home with the mobile home remaining on the mobile home lot following the transfer.
- D. "Landlord" means a mobile home park owner, mobile home owner, lessor or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and the agent, representative or successor of any of the foregoing.
- E. "Mobile home" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- G: F. "Mobilehome park" means any area of land within the city where five or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.
- H: G. "Mobilehome space" means the site within a mobilehome park intended, designed or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith.
- H. "Rent" means any consideration, including any bonus, benefit or gratuity, demanded or received by a landlord for or in connection with the use or occupancy, including housing services, of a rental unit or in connection with the assignment of a lease or in connection with subleasing of the rental unit.

"Rent" shall not include:

1. Utility charges for charges for sub-metered gas and electricity.
 2. Charges for water, refuse disposal, sewer service, and/or other services which are either provided and charged to mobile home residents solely on a cost pass-through basis and/or are regulated by state or local law.
 3. Any amount paid for the use and occupancy of a mobile home unit (as opposed to amounts paid for the use and occupancy of a mobile home space).
 4. Charges for laundry services.
 5. Storage charges.
- H. "Rent increase" means any rent demanded of or paid by a tenant - homeowner or mobile home tenant in excess of rent paid for the rental unit immediately prior to such demand or payment. Rent increase includes any reduction in the services provided to a mobile home resident or transfer of the cost without a corresponding reduction in the moneys demanded for or paid as rent.

I. "Rental agreement" means a written agreement between a landlord and a tenant - homeowner or mobile home tenant for the use and occupancy of a rental unit to the exclusion of others.

J. "Rental unit" means a mobile home or mobile home lot, located in a mobile home park in the city of Sonoma, which is offered or available for rent. Rental unit includes the land, with or without a mobile home, and appurtenant buildings thereto and all housing services, privileges and facilities supplied in connection with the use or occupancy of the mobile home or mobile home lot.

K. "Service reduction" means a decrease or diminution in the basic service level provided by the park since January 1, 1992 including but not limited to services the park owner is required to provide pursuant to:

1. California Civil Code Sections 1941.1 and 1941.2.
2. The Mobile Home Residency Law, California Civil Code Section 798 et seq.
3. The Mobile Home Parks Act, California Health and Safety Code Section 18200 et seq.
4. The landlord's implied warranty of habitability.
5. An express or implied agreement between the landlord and the resident.

Θ. L. "Tenancy" means the right of a tenant to use or occupy a mobilehome park space.

P. M. "~~Tenant~~ Tenant - Homeowner" means a person who has a tenancy in a mobilehome park or who has purchased or is in the process of purchasing or otherwise acquiring a mobilehome that will remain at a particular mobilehome park. (Ord. 98-6 § 1, 1998).

9.80.030 Applicability of chapter.

This chapter shall be applicable to all mobile home park spaces within the city of Sonoma except as provided in Section 5.72.050 of this chapter.

9.80 .035 Exemptions from this chapter.

A. Exemptions Provided by State Law. As of August 2011, the following exemptions from local rent regulations are provided by state law:

1. Spaces that are subject to a lease which exempts that space from rent regulation pursuant to the California Mobilehome Residency Law, California Civil Code Section 798 et seq.
2. New mobile home park spaces which are exempted pursuant to Civil Code Section 798.45.
3. Spaces which are not the principal residence of the tenant - homeowner, which are exempt pursuant to Civil Code Section 798.21.

The purpose of this subsection is to provide information about exemptions based on state law which preempts local law, rather than to provide any basis for an exemption based on this chapter.

B. Units Owned or Operated by Government Agencies. This chapter shall not apply to mobile homes or

mobile home parks owned or operated by any governmental agency or any rental unit whose rent is subsidized pursuant to a public program that limits the rent that can be charged for the mobile home.

C. Mobile Home Parks with Less Than Ten Spaces. This chapter shall not be applicable to spaces in mobile home parks with less than ten spaces.

9.80.040 Permissible rent increases.

No rent in excess of rent in effect on January 1, 1985, may be charged unless authorized by one of the following sections: Section 9.80.045 (Automatic annual increases based on increases in the Consumer Price Index), 9.80.050 (Allowable rent following the expiration of an exempt lease), 9.80 .060 (Rent increases upon in-place transfers of mobile home ownership), 9.80 .070 (Fair return standard), or 9.80 .090 (Rent increases for new capital improvements) of this chapter

9.80.045 Automatic annual increases.

A. Once every 12 months, an owner shall be permitted an automatic rental increase for each space in a percentage amount equal to 80 percent of the percent change in the Consumer Price Index (CPI) between the CPI index in effect in the month the increase is calculated and that published 12 months prior, so that if the CPI in effect at the time of the calculation is the December index, the calculation will be based on the current December index and that published in the prior December; in no instance shall the rental increase permitted pursuant to this section result in a rental increase of greater than five percent per 12-month period over that in effect prior to the rental increase permitted pursuant to this section. (Ord. 98-6 § 1, 1998).

B. Notice of Allowable Annual Rent Increase.

1. Notice by City Manager. The allowable annual rent increase shall be annually calculated by the city manager and posted by February 15th of each year in City Hall and on the city's website, and on a notice board in each mobile home park and shall be mailed to each park owner and to the mobile home owner representative in each park.

2. Notice in Mobile Home Parks. A copy of the clerk's notice shall be posted in a prominent place by each park owner in each mobile home park within three work days after it is received by the park owner.

C. No Decrease if CPI Decreases. In the event that the CPI decreases, no rent decrease shall be required pursuant to this section. In the event that the CPI decreases by more than two percent in any year, said decrease shall be subtracted from the following annual increase(s) allowable pursuant to this section.

D. Banking of Allowable Annual Increases. Increases authorized pursuant to this section may be implemented by the landlord at any future time, subject to the precondition that by January 30th of each year the park owner notify the mobile home owner of each increase allowed pursuant to this section which has not been implemented and notification that the banked increase may be added to the rent at a future date.

E. Compliance with State Law. Rent increases permitted pursuant to this section shall not be effective and shall not be demanded, accepted, or retained until the landlord has given the notice required by state law.

9.80.050 Allowable rent following the expiration of an exempt lease.

In the event a space was previously exempt under a lease pursuant to California Civil Code Section 798.17, the base space rent, for purposes of calculating the annual adjustment, shall be the rent in effect as of the date of expiration of the lease; provided, that space rents can be verified by information required on, and/or documentation submitted with, the annual registration application. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

~~9.80.070~~ **9.80.060 Full and partial vacancy decontrol – Establishment of new base rent.**

A. A mobilehome park owner shall be permitted to charge a new base rent for a mobilehome space whenever a coach-in-place sale or lawful space vacancy occurs.

B. For purposes of this chapter, a lawful space vacancy is defined as follows:

1. A vacancy occurring because of the termination of the tenancy of the affected mobilehome tenant in accordance with the Mobilehome Residency Law, California Civil Code Sections 798.55 through 798.60, as amended, excepting Section 798.59; or

2. A vacancy of the mobilehome space arising from the voluntary removal of a mobilehome from the mobilehome space by the affected ~~mobilehome tenant~~ **tenant - homeowner**. A removal of the mobilehome from the space for the purpose of performing rehabilitation or capital improvements to the space or for the purpose of upgrading the mobilehome shall not constitute a voluntary removal of the mobilehome.

C. For purposes of this chapter, a coach-in-place sale occurs when a mobilehome space occupancy changes as a result of the voluntary sale of the mobilehome and the voluntary termination of the mobilehome tenancy by the seller of the mobilehome.

D. When a new base rent is established following the vacancy of a mobilehome space pursuant to this section, the park owner shall give written notice to the new affected ~~mobilehome tenant~~ **tenant - homeowner** of the 12-month anniversary date for rental increases allowed in this section, and shall give written notice to such affected tenant that the space rent may be subject to stabilized rent increases pursuant to the provisions of this chapter.

E. No rental increase made pursuant to this section resulting from a coach-in-place sale shall be greater than ~~10~~ **5** percent of the rent in effect prior to the increase unless the resulting rent is less than \$350.00 per month, in which case the rent may be increased to \$350.00 per month except that if the monthly rent in effect prior to vacancy is less than \$300.00, the maximum increase in rent shall be \$50.00 per month. No more than one rental increase per space shall be made under this section in any 12-month period. The \$350.00 minimum rent established in this section shall be adjusted annually on the anniversary date of the effective date of the ordinance codified in this chapter which change shall equal a percentage equal to 80 percent of the change in the CPI between the date of the prior change in the minimum rent (or the effective date of the ordinance codified in this chapter as the case may be) and the date of the annual adjustment. (Ord. 98-6 § 1, 1998).

9.80.070 Fair return standard.

A. Presumption of Fair Base Year Net Operating Income. It shall be presumed that the net operating income received by the landlord in the base year provided the park owner with a fair return.

B. Fair Return. A park owner has the right to obtain a net operating income equal to the base year net operating income adjusted by one hundred percent of the percentage increase in the CPI since the base year. It

shall be presumed this standard provides a fair return. The base year CPI shall be the annual average CPI for 1992. The current year CPI shall be the annual average CPI for the calendar year which is used as the current year in the application.

C. Base Year.

Except as provided in this chapter, an owner shall not demand, accept, or retain rent for a mobilehome space exceeding the rent in effect for said space on January 1, 1992. If a previously rented mobilehome space was not rented on January 1, 1992, the owner shall not demand, accept, or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1992. If a mobilehome space is rented for the first time after January 1, 1992, the owner shall not demand, accept, or retain rent for said spaces exceeding the rent first charged for the space. (Ord. 98-6 § 1, 1998).

D. Current Year. The current year shall be the calendar year that precedes the year in which the application is filed.

E. Adjustment of Base Year Net Operating Income. The park owner or tenant - homeowners may present evidence to rebut the presumption of fair return based upon the base year net operating income as set forth in subsection A of this section based on at least one of the following findings:

1. Exceptional Expenses in the Base Year. The park owner's operating expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:

- a. Extraordinary amounts were expended for necessary maintenance and repairs.
- b. Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of services provided.
- c. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

2. Exceptional Circumstances in the Base Year. The gross income during the base year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating base year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

- a. If the gross income during the base year was lower than it might have been because some residents were charged reduced rent.
- b. If the gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.
- c. The pattern of rent increases in the years prior to the base year and whether those increases reflected increases in the CPI.
- d. Base period rents were disproportionately low in comparison to the base period rents of other comparable parks in the city.

e. Other exceptional circumstances, excluding any comparisons of base period rents to rents of other comparable parks located outside of the City or to market rents, which are determined by comparisons of rents from comparable parks located outside of the City .

F. Calculation of Net Operating Income.

1. Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

2. Gross Rental Income.

a. Gross rental income shall include:

i. Gross rents calculated as gross rental income at one hundred percent occupancy, adjusted for uncollected rents due to vacancy and bad debts to the extent such vacancies or bad debt are beyond the control of the landlord. Uncollected space rents in excess of three percent of gross space rent shall be presumed to be unreasonable unless established otherwise and shall not be included in computing gross income.

ii. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit, except as provided in subsection (F)(2)(b) of this section.

b. Gross rental income shall not include:

i. Utility charges for charges for sub-metered gas and electricity.

ii. Charges for water, refuse disposal, sewer service, and/or other services which are either provided and charged to mobile home residents solely on a cost pass-through basis and/or are regulated by state or local law.

iii. Any amount paid for the use and occupancy of a mobile home unit (as opposed to amounts paid for the use and occupancy of a mobile home space).

iv. Charges for laundry services.

v. Storage charges.

3. Operating Expenses.

a. Included in Operating Expenses. Operating expenses shall include the following:

i. Reasonable costs of operation and maintenance.

ii. Management Expenses. It shall be presumed that management expenses have increased by the percentage increase in rents or the CPI, whichever is greater, between the base year and the current year unless the level of management services has either increased or decreased significantly between the base year and the current year.

iii. Utility Costs. Utility costs except utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law.

- iv. Real Property Taxes. Property taxes are an allowable expense, subject to the limitation that property taxes attributable to an assessment in a year other than the base year or current year shall not be considered in calculating base year and/or current year operating expenses.
- v. License and Registration Fees. License and registration fees required by law to the extent these expenses are not otherwise paid or reimbursed by tenants.
- vi. Landlord-Performed Labor. Landlord-performed labor compensated at reasonable hourly rates.
- (A) No landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed.
- (B) There shall be a maximum allowed under this provision of five percent of gross income unless the landlord shows greater services were performed for the benefit of the residents.
- vii. Costs of Capital Replacements. Costs of capital replacements plus an interest allowance to cover the amortization of those costs where all of the following conditions are met:
- (A) The capital improvement is made at a direct cost of not less than one hundred dollars per affected rental unit or at a total direct cost of not less than five thousand dollars, whichever is lower.
- (B) The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefited by the improvement.
- (C) The costs are amortized over a period of not less than thirty-six months.
- (D) The costs do not include any additional costs incurred for property damage or deterioration that result from any unreasonable delay in undertaking or completing any repair or improvement.
- (E) The costs do not include costs incurred to bring the rental unit into compliance with a provision of the Sonoma Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.
- (F) At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.
- (G) The amortization period shall be in conformance with a schedule adopted by the city manager unless it is determined that an alternate period is justified based on the evidence presented in the hearing.
- viii. Legal Expenses. Attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:
- (A) Reasonable fees, expenses, and other costs incurred in the course of successfully pursuing rights under or in relationship to this chapter and regulations adopted pursuant to the chapter including costs incurred in the course of pursuing successful fair return petitions. **The recovery of these said expenses shall be separated out from any MNOI rent increase award and recovered from the residents as a separate, limited time period, passthrough. These expenses shall be amortized and recovered in equal monthly payments over a five-year period, unless the**

city manager concludes that a differing period is more reasonable, and the passthrough payment of these fees shall terminate after the full payment of those fees with interest has been recovered by the park owner at the end of the amortization/ payback period..

(1) Recovery of fees, expenses, and other costs incurred in the course of preparing and presenting a fair return petition, or in responding to a resident service reduction petition under section 9.80.100, shall be limited when a park owner rejects a settlement offer from the residents and then does not ~~recover more~~ achieve an award that exceeds the terms of the proposed settlement, unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of its being made to them and the park owner's award then meets or exceeds the terms of the park owner's settlement offer. The purpose of this limitation is to encourage both park owners and mobile home owners to minimize, to the extent possible, the cost and expense of fair rate of return mobile home space rent and service reduction administrative proceedings by providing a mechanism for the early settlement of fair rate of return those administrative proceedings.

(2) At any time after the filing of a fair rate of return rent application either of the petitions covered under the provisions of subsection (1) above, the designated representative of the residents of the mobile home park, or the mobile home park owner, may serve an offer in writing on the mobile home park owner who has filed that petition opposing party to stipulate to a compromise amount for the fair rate of return rent increase of the award or relief requested in the petition. ~~The designated representative~~ The offering party shall also file a copy of this written settlement offer with the city in a separately sealed envelope and with a statement on the outside of the envelope stating that it is a written settlement offer pursuant to this subsection.

(3) The sealed copy of the written settlement offer that is so filed with the city is not to be opened by the city until it is either accepted by the park owner opposing party or, if it is not accepted by the park owner opposing party, after a final rent increase award or denial has been made on the park owner's petition by either the city manager or by the hearing officer. Upon receiving such offer to compromise, the mobile home park owner opposing party has seven days to accept the offer by filing a written acceptance with the city clerk.

(4) A mobile home park owner is not entitled to recover the portion of its petition expenses, fees, or other costs that are incurred following the submission of a prevailing offer by the residents and the residents may recover reasonable attorneys' fees incurred by the residents after the rejection of a their "prevailing" offer. The designated tenant - homeowners' representative shall be determined to have made a prevailing offer if a their settlement offer has been made and that offer has not been accepted by the park owner within seven days after the making of that offer, and the park owner's rent increase petition award fails to exceed the amount of that settlement offer unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of it being made to them and the park owner's rent increase petition's award then meets or exceeds the amount of the park owner's settlement offer..

(5) Allowable legal expenses which are of a nature that does not recur annually shall be ~~amortized over a reasonable period of time.~~ separated out from any MNOI rent increase award and recovered as a separate special limited time period pass through. These expenses shall be amortized and recovered in equal monthly payments over a five-year period, unless the city manager concludes that a differing period is more reasonable, and shall be eliminated after payment is completed at the end of the amortization / payback period.

ix. Interest Allowance for Expenses That Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses, including but not limited to the special legal expenses pass throughs provided for in subsection viii above; the allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the

rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

b. Exclusions from Operating Expenses. Operating expenses shall not include the following:

i. Mortgage principal or interest payments or other debt service costs.

ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.

iii. Land lease expenses.

iv. Political contributions and payments to organizations which are substantially devoted to legislative lobbying purposes.

v. Depreciation.

vi. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

vii. Unreasonable increases in expenses since the base year.

viii. Expenses associated with the provision of master-metered gas and electricity services.

ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements (e.g., a roof replacement may be a reasonable expense, but if water damage occurred as a result of unreasonable delays in repairing or replacing the roof, it would not be reasonable to pass through the cost of repairing the water damage).

c. Adjustments of Operating Expenses. Base year and/or current operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses. Grounds for such adjustments include, but are not limited to:

i. An expense item for a particular year is not representative;

ii. The base year expense is not a reasonable projection of average past expenditures for that item in the years immediately preceding or following the base year;

iii. The current year expense is not a reasonable projection of expenditures for that item in recent years or of future expenditures for that item;

iv. A particular expense exceeds the normal industry or other comparable standard for the area, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that it is found that the expense is unreasonable it may be adjusted to reflect the normal industry standard;

v. A base year expense is exceptionally low by industry standards and/or on an inflation adjusted basis is

exceptionally low relative to current year expenses although the level or type of service has not changed significantly;

vi. An increase in maintenance or management expenses is disproportionate to the percentage increase in the CPI, while the level of services has not changed significantly and/or is not justified by special circumstances.

G. Rent Increases for Periods Preceding Date That a Park Owner May Implement Rent Increases Pursuant to This Section. In the event that the period for determining the allowable rent increase pursuant to this section exceeds one hundred twenty days, the park owner may recover a retroactive rent charge to cover the time period from the date that the rent increase would have begun if the rent increase decision had been made within one hundred twenty days. In order to avoid undue hardship on the mobile home owners, this retroactive rent charge shall be amortized and paid over a period of five years, unless the City manager or hearing officer determine that different amortization period is more reasonable, and then shall be eliminated at the end of that five-year time period. An interest allowance shall be allowed on this amortized rent charge; the allowance shall be the interest rate on the amount of the amortized retro active rent charge equal to the “average rate” for thirty-year fixed rate on home mortgages plus two percent. The “average rate” shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

H. Per Space Rent Adjustment Pursuant to Fair Return Standard. The allowable rent increase per mobile home park space pursuant to this section shall not be increased as a result of the fact that there are exempt spaces in the park.

I. Assurance of a Fair Return. It shall be presumed that the MNOI standard provides a fair return. Nothing in this chapter shall preclude the city manager or hearing officer from granting an increase that is necessary in order to meet constitutional fair return requirements.

9.80.080 Procedures for review of fair return petitions.

A. Right to Petition. A park owner may petition for a rent increase in order to obtain a fair return. No petition for a fair return rent adjustment may be filed pursuant to this chapter until thirty days after this chapter goes into effect. No petition may be filed in November or December except in cases of exceptional unforeseen circumstances.

B. Limit on Frequency of Petitions. Only one petition pursuant to this section may be filed for a mobile home park within a twelve-month period. An exception to this limitation shall be authorized in the event of extraordinary circumstances that could not reasonably have been foreseen at the time the prior petition was filed.

C. Submission of Petition.

1. Petition Form Required. Such petition shall be on a form prescribed by the city manager.

2. Petition Fee. Upon the receipt of a fair return application, the city manager shall determine if the employment of experts will be necessary or appropriate for a proper analysis of the applicant’s presentation. If the city manager so determines, it shall also determine the anticipated cost of employing any such experts. The resulting figure shall be communicated to the applicant. The application shall not be further processed until the applicant has paid to the city the estimated cost of expert analysis. Any unused portion of the advance payment

for expert analysis shall be refunded to the applicant.

3. Contents of Petition Form. The form may require any information deemed relevant by the administrator. The form shall include, but not be limited to:

- a. A list of the names and addresses of all mobile home park tenants subject to the rent increase.
- b. A statement of the date the rent increase is proposed to be effective.
- c. The rent for each space in the park in the base year, the current year, and the three prior years.
- d. An income and expense statement for the base year, the current year, and the three years prior to the current year.
- e. Evidence documenting the income and expenses claimed by the park owner.
- f. All other documentation and opinion testimony upon which the park owner is relying to justify the rent increase.
- g. A statement of the petitioner's theories in support of the rent increase application.

4. Notice of Petition. The park owner and the city shall provide notice of a petition by:

- a. Sending a hard copy and electronic .pdf copy of the petition to the homeowners' representative;
- b. Providing the city with hard and electronic copies of the petition;
- c. Notifying each tenant household that the petition has been filed on a form provided by the city.

5. Determination That the Petition Is Complete. The city manager will determine if a petition pursuant to this section is complete within thirty days after the petition is submitted. An application will not be deemed complete if the required fees have not be paid. If the application is incomplete, the city manager will inform the petitioner as to what additional information is required.

6. Access to the Petition. The documentation required by this section shall be available for inspection and copying by any person during the normal business hours of the city. The city shall make a copy of all submissions by the park owner and the residents in conjunction with a petition that shall be available in the form of an electronic .pdf file.

7. Cost of Expert Analysis. Upon the receipt of a fair return application, the city manager shall determine if the employment of experts will be necessary or appropriate for a proper analysis of the applicant's petition. Depending upon the complexity of the fair return application, and the park owner's use of experts, the City manager shall retain a certified public accountant to verify the accuracy of the expense and income items stated in the application; an expert in the use and theory of the Fair Return and MNOI methods utilized in this Chapter for determining fair return applications and, if appropriate, a licensed appraiser. If the City manager so determines, the City manager shall also determine the anticipated cost of employing any such experts. The resulting figure shall be communicated to the petitioner. The petition shall not be further processed until the petitioner has paid to the city the estimated cost of expert analysis. Within thirty days after a petition and the required fee, if any, is submitted to the city, the city manager shall determine if the petition is complete. Any

unused portion for payments so collected shall be refunded to the petitioner.

8. Contents of Expert Analysis. Any analysis pursuant to this subsection shall include a determination of:
 - a. Base year and current year rental income;
 - b. Base year and current year operating expenses by category;
 - c. Base year and current year overall operating expenses;
 - d. Base year and current year net operating income;
 - e. The percentage change in net operating income between the base period and the current period;
 - f. The percentage change in the CPI between the base period and the current period;
 - g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;
 - h. The rent adjustment required under an MNOI standard pursuant to chapter.
9. Submission by tenant - homeowners. The tenant - homeowners may submit a written response to the park owner's submission within thirty days after the petition is deemed complete, unless the City manager determines that there is good cause to extend that deadline.

D. Review Procedures.

1. An application for a fair return adjustment shall be decided by the city manager within sixty days of the date that the application has been deemed complete, unless the City manager determines that there is good cause to extend that deadline.

The decision shall be emailed and sent by mail, with proof of mailing to the park owner, the park owner's designated representative for the petition, and a designated representative of the residents.

2. Appeal of City Manager's Decision. The decision of the city manager may be appealed within twenty days to a hearing officer. An appeal by the tenant - homeowners must be signed by tenant - homeowners from a majority of the mobile home spaces that are subject to the city manager's decision. The appealing party shall be required to pay for costs of the appeal process in accordance with any fees set forth by resolution of the city council. The Appeal shall be conducted through a de novo evidentiary hearing, which shall consider the Fair Return Petition, all information, expert opinions and arguments submitted by the park owner to the City manager in support of the Petition; the City manager's decision, and the opinions of the City's independent witness(es) and any additional arguments, upon which the City manager's decision is based; and the briefs, evidence and testimony submitted, under the provisions of this Chapter, in support of or in opposition to the Petition or the City Manager's decision by any of the parties to the proceedings, which are submitted under the provisions contained in subsections 9.80.080 D 6 through 8 of this Section

3. Procedure for Selection of a Hearing Officer.

- a. Qualifications. Hearing officers shall be licensed attorneys of the State Bar of California in good standing,

and shall have no financial interest in mobile homes, mobile home spaces or mobile home parks and shall not have represented mobile home park owners or mobile home park tenant - homeowners in rent setting cases or park closing or park conversions or any disputes between park owners and park residents.

b. A hearing officer shall be selected through the California Office of Administrative Hearings (OAH). In the event that it is not possible to set up a hearing through the OAH, the city manager may elect to contract with another statewide agency that provides arbitration services or may establish a panel in accordance with the following procedure set forth in subsection (D)(3)(c) of this section.

c. In the event that a panel of hearing officers is established, the city manager shall make all reasonable efforts to ensure that there are at least five qualified candidates to form a panel of prospective hearing officers.

The hearing officers shall be selected on a rotational basis from the panel list. A hearing officer shall disqualify himself or herself from serving as hearing officer in a particular matter where he/she has a conflict of interest within the meaning of the Political Reform Act (Government Code Section 87100 et seq.), and shall otherwise comply with the disqualification provisions of Canon 3.E. of the Code of Judicial Ethics. The parties shall be advised in writing of the selected hearing officer, and advised of their right to disqualify the selected hearing officer. In the event of a disqualification, another hearing officer shall be randomly selected from the panel, and a new notice of hearing sent to the parties. Each party shall have the right to disqualify one hearing officer for a particular matter if there are five or fewer hearing officers on the list and may disqualify up to two hearing officers if there are eight or more hearing officers on the list.

4. Time of and Scheduling of Hearing.

a. A hearing on the petition shall commence within thirty days of the selection of a hearing officer unless both parties agree to a different schedule. The hearing shall be completed within fifteen days after it is commenced. These time deadlines may be extended if the hearing officer finds that there is good cause to commence and/or complete the hearing at a later date.

b. The hearing may be scheduled during the normal business hours of the city unless a majority of the residents that are subject to the petition requests that the hearing be scheduled during the evening. The hearing shall be scheduled at a time that it is convenient for the residents' and park owner's representatives.

c. The presentations of each party at the hearing and of the city staff and experts shall be limited to ninety minutes each unless the hearing officer determines that there is good cause to extend that deadline. Each party and the city shall be permitted one hour of cross-examination of expert witnesses, unless the hearing officer determines that there is good cause to extend that deadline. The City shall provide legal counsel to help prepare the City's expert for their presentation under this section, to defend the City's expert witness and to cross examine the expert witnesses of the parties.

5. Notice of Hearing. Written notice of the time, date and place of the hearing shall be given at least ten days prior to the hearing.

6. Requests for Additional Information by Opposing Party.

a. Either party or the city may request that additional specific supporting documentation be provided to substantiate the claims made by a party. The request shall be presented in writing to the hearing officer.

b. The hearing officer may order production of such requested documentation, if the hearing officer

determines the information is relevant to the proceedings.

7. Submission of Reports.

a. Responses may be submitted by the residents or the park owner to the decision of the city manager or report by the city and shall be submitted to the other parties at least ten days prior to the hearing. The submissions shall be in printed and electronic form.

b. Rebuttal reports may be submitted by the park owner, tenant - homeowners and/or city staff and/or a consultant on behalf of the city; it shall be submitted to the parties at least five days prior to a hearing.

c. The parties' Responses, provided for in subsection "a" above, and their and the City's Rebuttal reports, provided in subsection "b" above, shall be considered the pre-hearing briefs of the parties and the City and no other pre-hearing briefs shall be allowed unless requested by the hearing officer for good cause. The submissions shall be in printed and electronic form.

d. For good cause, the hearing officer may accept additional information at the hearing.

8. Conduct of Hearing.

a. The hearing shall be conducted in accordance with such rules and regulations as may be promulgated by the city council and any rules set forth by the hearing officer.

b. The hearing officer shall have the power and authority to require and administer oaths or affirmations where appropriate, and to take and hear evidence concerning any matter pending before the hearing officer.

c. The rules of evidence generally applicable in the courts shall not be binding in the hearing. Hearsay evidence and any and all other evidence which the hearing officer deems relevant and proper may be admitted and considered.

d. Any party or such party's representative, designated in writing by the party, may appear at the hearing to offer such documents, oral testimony, written declaration or other evidence as may be relevant to the proceedings.

e. The hearing officer may grant or order not more than two continuances of the hearing for not more than ten working days each. Additional continuances may be granted only if all parties stipulate in writing or if the hearing officer finds that there is a good cause for the continuance. Such continuances may be granted or ordered at the hearing without further written notice to the parties.

f. A tape recording of the proceedings shall be made by the city manager in a format that is easily made available and is easily usable.

g. The hearing shall be conducted in a manner that ensures that parties have an opportunity to obtain documents and to obtain information about the theories and facts to be presented by the opposing parties in adequate time in advance of the hearing to enable preparation of a rebuttal.

9. Required Findings in Decision. Any decision pursuant to this subsection shall include a determination of:

a. Base year and current year rental income;

- b. Base year and current year operating expenses by category;
 - c. Base year and current year overall operating expenses;
 - d. Base year and current year net operating income;
 - e. The percentage change in net operating income between the base period and the current period;
 - f. The percentage change in the CPI between the base period and the current period;
 - g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;
 - h. The rent adjustment required under an MNOI standard pursuant to Section 5.72.100 and this section.
10. Conditions for Allowance or Disallowance of Rent Increase. The allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.
11. Deadline for Decision. An application for a fair return adjustment shall be decided by the hearing officer within sixty days of the date that the filing of the appeal, including the receipt of fees, has been deemed complete, unless the hearing officer determines that there is good cause for an extension of this period or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer.
12. Notice of Decision. The city manager shall mail copies of the decision to the park owner and all affected mobile home park tenants within three days of the decision. Copies of the decision shall be emailed to the park owner and residents' representative as soon as possible after the decision is made and in all cases within twenty-four hours after the decision is made.
13. Preservation of Record. Any findings pursuant to this section shall be reported to the city in an agenda packet and permanently preserved in the city records, so that they are available in the event of a future rent increase application involving the same mobile home park.
14. Representation of Parties.
- a. The parties in any hearing may be represented at the hearings by a person of the party's choosing. The representative need not be an attorney.
 - b. Written designation of representatives shall be filed with the city manager or hearing officer.
 - c. The written designation of the representative shall include a statement that the representative is authorized to bind the party to any stipulation, decision or other action taken at the administrative hearing.
15. Modification of Decision in the Event of Mathematical or Clerical Inaccuracies. Any party alleging that the hearing officer's statement of decision contains mathematic or clerical inaccuracies may so notify the hearing officer and the other party within fifteen calendar days of the mailing of the decision. The hearing officer may make any corrections warranted, and re-file the statement of decision within ten working days after receiving the allegation of the mathematical error. Upon re-filing of the statement, the decision shall be final.

16. Calculation of Allowable Application Expenses if a Sealed Offer Has Been Submitted. If any sealed settlement offers have been submitted to the city by any parties to the dispute, after the hearing officer determines the allowable rent adjustment pursuant to this section, the hearing officer shall open the sealed offers and make a determination of whether there has been a “prevailing party” and shall announce that determination in the hearing officer’s notice of decision issued pursuant to subsection (D)(12) of this section. Within seven days of their receipt of the notice of decision awarding fees, the prevailing party shall submit a written request and accounting of these fees and serve that request simultaneously on all parties by regular mail and electronic mail. Within seven days of receiving the request by the prevailing party, the opposing party may file an objection to that request. Within seven days of the date that an opposition is submitted or within seven days of the deadline for an opposition, if none is submitted, the hearing officer shall submit a proposed supplemental decision stating the amount of fees included in the award, which shall become final in seven days after the proposed decision, unless either party requests an evidentiary hearing within seven days, in which case a final decision shall be made within seven days after the hearing. If the prevailing party is the tenant - homeowners’ representative, then the park owner shall file an affidavit with the city manager, stating that the award of attorneys’ fees has been paid in full and shall not be permitted to implement a rent increase pursuant to this section until such payment has been made. For good cause, the hearing officer may modify the procedure set forth in this subsection for determining an award for a prevailing party.

E. Overall Period for Review of Fair Return Petition. After a petition is deemed complete, the overall time for a decision of the city manager and conducting a hearing and issuing a final decision by the hearing officer shall not exceed one hundred eighty days, unless the hearing officer determines that there is good cause for extending this deadline or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer.

~~9.80.065~~ **9.80.090 Pre-approved temporary rental increases for specified capital improvements.**

A. An owner shall be permitted to obtain a temporary rental increase to obtain reimbursement for specified capital improvements pursuant to the provisions of this section.

B. The city council shall from time to time adopt an amortization schedule for typical capital improvements subject to the provisions of this section.

C. Prior to making a necessary capital improvement described in the adopted amortization schedule or a necessary capital improvement reasonably similar to the types of improvements described in the adopted amortization schedule, the park owner shall be permitted to seek approval of a temporary rental increase to reimburse the owner for the cost of the capital improvement. The clerk shall provide notice of the application to all affected tenants. The notice shall indicate the proposed capital improvement, the amortization schedule including interest for the capital improvement, and the resulting temporary rental increase proposed. Within 15 calendar days following the mailing date of such notice the clerk shall approve the proposed temporary rental increase; provided, that each of the following findings can be made:

1. That the capital improvement is warranted;
2. That the amortization period is consistent with the amortization schedule;
3. That the interest to be charged is comparable to interest that would be charged on a commercially available loan; and
4. That the rental increase has been fairly and evenly distributed to all affected tenants.

If the ~~clerk~~ **City Manager** makes a contrary determination, he or she shall deny the application, or approve it with conditions required to make the rental increase consistent with the provisions of this section. In the event that 50 percent plus one of the affected ~~tenants~~ **tenant - homeowners** receiving notice of the temporary rental increase protest the application in writing to the ~~clerk~~ **city manager** within the 15-day notice period, ~~the clerk~~ **city manager** shall schedule a public meeting of the ~~board~~ **hearing officer** where all affected ~~tenants~~ **tenant - homeowners** may respond to the proposed capital improvement. At said meeting, it shall be the responsibility of the protestors to provide reasonable, quantifiable evidence as to why the temporary rental increase should not be approved or conditionally approved by the ~~clerk~~ **city manager** pursuant to findings 1 through 4 of this subsection C. No such rental increase shall become effective until the first full month following the filing of a notice of completion of the capital improvement with the clerk. Any rental increase approved pursuant to the provisions of this section shall be itemized separately on any rental statement or billing provided to the affected tenant and shall terminate upon the conclusion of the approved amortization period.

D. A park owner shall be entitled to seek a temporary rent increase in order to make an upgrade capital improvement only if the park owner has:

1. Consulted with the park's ~~tenants~~ **tenant - homeowners** ~~residents~~ prior to initiating construction of the improvements regarding the nature and purpose of the improvements and the estimated cost of the improvements;
2. Obtained the prior written consent of at least one adult ~~resident~~ **tenant - homeowner** from each space of a majority of the mobilehome spaces to include the upgrade as a capital improvement eligible for amortization as a temporary rental increase. (That is, if the park has 50 spaces, the approval of one ~~adult resident~~ **tenant - homeowner** from each of 26 separate spaces would be required.) Evidence of such consent must be presented at the time of filing the application.

E. An increase in rent or a portion of an increase in rent granted by the board pursuant to this section as a result of the costs of capital improvements to the mobilehome park shall be limited to the length of time necessary to allow the park owner to reasonably amortize the cost of a capital improvement, including interest. Such increase granted as a result of the capital improvement shall not continue beyond the time necessary for reasonable amortization of the cost of such improvement. In the event that the capital improvement expenditure is necessitated as a result of an accident, disaster, or other event for which the park owner received insurance benefits, only those capital improvement costs otherwise allowable exceeding the insurance benefits may be calculated as capital improvements.

F. Nothing in this section shall prevent the park owner from making emergency capital improvements required as a result of a disaster or other unpredictable event; in such event, the park owner may make such limited and reasonable capital improvements required to protect the public health and safety and to limit further damage to the park, and to seek a capital improvement rental adjustment for such capital improvement pursuant to the provisions of this section. (Ord. 98-6 § 1, 1998).

9.80.100 Rent reductions for service reductions.

A. **Definition.** "Service reductions" shall mean the elimination or reduction of any service or facility provided as of January 1, 1992. "Service" shall also include physical improvements or amenities.

B. **Submission of Service Reduction Complaint to City Manager.** A service reduction complaint shall be submitted to the city manager alleging in a written form and should state:

1. The affected spaces;
2. The prior level of service established by the park owner for that homeowner's mobile home space and common facilities used by that homeowner;
3. The specific changes in the prior level of services comprising the alleged reduction in service;
4. The date the service reduction was first noticed by the tenant - homeowner ;
5. The date of notice to the park owner of the alleged service reduction, and if such notice was given, whether the notice was given orally or in writing;
6. When and how the park owner responded to the tenant - homeowner 's notice, if notice was given;
7. Whether the condition was improved or corrected, and if so, when and how;
8. The status of the condition as of the date the complaint is signed; and
9. Where such service reduction was the result of a vote of a majority of the affected tenant - homeowners.

C. Submission of Service Reduction Complaint to Hearing Officer.

1. Thirty days after the service reduction complaint is submitted to the city manager, if the dispute is not settled, either one-third of the tenant - homeowners in a park or the park owner may request that the dispute be submitted to a hearing officer.
2. If the hearing officer finds that a material service reduction has occurred, the hearing officer shall determine the resultant percentage reduction in the tenant - homeowners' enjoyment of their homes due to the service reduction.
3. Rent shall be reduced by that percentage or amount. The tenant - homeowners also shall be entitled to a rebate of the following sum: the monthly rent reduction multiplied by the number of months between the date the homeowners notified the park owner of the reduction in service, and the date the city manager determined the rent reduction.
4. A service reduction shall not include the elimination or reduction of a recreational facility or service when such elimination or reduction and rent decrease resulting therefrom have the prior written approval of two-thirds of the homeowners. In such cases no rebate shall be required.
5. No recreational service or facility which has been reduced or eliminated shall be reinstated at any cost to the homeowners without prior written approval of two-thirds of the tenant - homeowners.

D. Consolidation of Service Reduction Complaint with Consideration of Fair Return Petition. In the event that a service reduction claim is filed while a fair return petition is pending, either the city, the park owner, or the tenants may require consideration of a claim pursuant to this section in conjunction with the fair return claim.

9.80.110 Waivers.

- A. Any waiver or purported waiver by a tenant - homeowner or mobile home tenant of rights granted under

this chapter shall be void as contrary to public policy.

B. It shall be unlawful for a landlord to require or attempt to require, as a condition of tenancy in a mobile home park, a tenant - homeowner, a mobile home owner, mobile home tenant, prospective mobile home owner, or prospective mobile home tenant to waive in a lease or rental agreement or in any other agreement the rights granted to a mobile home owner or mobile home tenant by this chapter.

C. It shall be unlawful for a landlord to deny or threaten to deny tenancy in a mobile home park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a mobile home owner or mobile home tenant by this chapter.

9.80.120 Information to be supplied by the park owner to tenant - homeowners and prospective tenant - homeowner .

A. Posting of Chapter. A copy of this chapter shall be posted in the office of every mobile home park and in the recreation building or clubhouse of every mobile home park.

9.80.125 Information to be provided by the city to the public.

The city's web page shall include a copy of this chapter, a summary of this chapter and other issues related to mobile home park space rentals within the city, and a copy of California's Mobilehome Residency Law.

9.80.130 Designated Tenant - Homeowners' Representatives.

The tenant - homeowners of each mobile home park in the city shall annually elect by majority vote, with one vote per space, a designated resident representative to receive all notices required by this chapter. The tenant - homeowners shall advise the city manager of the name, address and phone number of the elected resident representative in writing no later than January 31st of each year and shall promptly notify the city manager of any change of representative.

9.80.140 Rights of prospective tenant - homeowners.

Any prospective tenant - homeowner must be offered the option of renting a mobile home space in a manner which will permit the "tenant-to-be" to receive the benefits of the mobile home space rent stabilization program which includes, but is not limited to, rental of a mobile home space on a month-to-month basis. Such a person cannot be denied the option of a tenancy of twelve months or less in duration.

The park owner shall provide each prospective tenant - homeowner with a photocopy of the written notification (see Appendix A of this chapter) and will provide each prospective tenant with a copy of this chapter.

Any effort to circumvent the requirements of this section shall be unlawful.

9.80.150 Annual registration and other notices required from owner.

A. Due Date. No later than February 1st of each year, each park owner shall file an annual registration statement, on a form provided by the city manager.

B. Contents of Registration Form. The registration forms shall include the name(s), business address(es), and business telephone number(s) of each person or legal entity possessing an ownership interest in the park and the

nature of such interest; the number of mobile home spaces within the park; a rent schedule reflecting the current space rents within the park; a listing of all other charges, including utilities not included in space rent, paid by mobile home owners within the park and the approximate amount of each such charge; the name and address to which all required notices and correspondence may be sent; and other information required by the city manager.

C. Certification of Registration Forms. All registration forms, and any documentation accompanying any registration forms, shall contain an affidavit or declaration, signed by the park owner or a designated agent, with his/her signature notarized, certifying that the information contained therein is true, correct and complete.

D. Notice of Sale of a Park. Upon the sale or transfer of a mobile home park, the seller or transferor shall notify the city manager of the sale or transfer and of the name and address of the buyer or transferee. Within ten days of the sale or transfer of a mobile home park, the buyer or transferee shall provide a new registration form.

E. Notice to Prospective Park Purchasers. The park owner shall provide prospective park purchasers with a copy of this chapter and notice that the following would be a prerequisite to filing a rent increase application pursuant to Sections 9.80.080 and 9.80.090:

1. A statement of the base year income, expenses, and net operating income of the park with a breakdown of income and expenses by category.
2. Documents supporting the amounts reported in the income and expense statement.

9.80.160 Retaliation prohibited.

A. It shall be unlawful for any landlord to evict a tenant - homeowner or mobile home tenant where the landlord's dominant motive in seeking to recover possession of the rental unit is:

1. Retaliation for the tenant - homeowner's or mobile home tenant's organizing, petitioning government for rent relief, or exercising any right granted under this chapter; or
2. Evasion of the purposes of this chapter.

B. It shall be unlawful for a landlord to retaliate against a tenant - homeowner or mobile home tenant for the owner's or tenant's assertion or exercise of rights under this chapter in any manner, including but not limited to:

1. Threatening to bring or bringing an action to recover possession of a rental unit.
2. Engaging in any form of harassment that causes the tenant - homeowner to quit the premises.
3. Decreasing housing services.
4. Increasing rent.
5. Imposing or increasing a security deposit or other charge payable by the owner or tenant.

9.80.170 Excessive Rents or Demands Therefor.

It shall be unlawful for a park owner to demand, accept, receive, or retain any rent in excess of the amounts authorized by this chapter.

9.80.180 Excessive rents - Refusal to Pay and Remedies

9.80.100 A. Refusal of ~~tenant~~ **tenant - homeowner** to pay illegal rent.

A ~~tenant~~ **tenant - homeowner** may refuse to pay any rent in excess of the maximum rent permitted by this chapter. The fact that such unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobilehome space for nonpayment of rent or to collect the illegal rent. (Ord. 98-6 § 1, 1998).

9.80.120 B. Remedies.

Any person who demands, accepts or retains any payment or rent in violation of the provisions of this chapter shall be liable in a civil action to the person from whom such payment is demanded, accepted or retained for damages in the sum of three times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum rent which could be lawfully demanded, accepted or retained together with reasonable attorney's fees and costs as determined by the court. (Ord. 98-6 § 1, 1998).

C. Remedies provided by this section are in addition to any other legal or equitable remedies and are not intended to be exclusive.

9.80.090 9.80.185 Permissible reasons for terminating or refusing to renew a tenancy.

A tenancy which is not subject to the provisions of the Mobilehome Residency Law shall not be terminated nor shall its renewal be refused, except for one or more of the following reasons:

A. Failure of the ~~tenant~~ **tenant - homeowner** to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the ~~tenant~~ **tenant - homeowner** receives a notice of noncompliance from the appropriate governmental agency;

B. Conduct by the ~~tenant~~ **tenant - homeowner**, upon the mobilehome park premises, which constitutes a substantial annoyance to other tenants;

C. Failure of the tenant to comply with a reasonable rule or regulation of the mobilehome park. No act or omission of the ~~tenant~~ **tenant - homeowner** shall constitute such failure to comply unless and until the owner has given the tenant written notice of the alleged rule or regulation violation and the tenant has failed to adhere to the rule or regulation within seven days;

D. Nonpayment of rent, utility charges, or reasonable incidental service charges;

E. Condemnation of the mobilehome park;

F. Change of use of the mobilehome park; provided, that the provisions of subsection (f) of Section 798.56 of the California Civil Code are followed:

1. The owner gives the ~~tenant~~ **tenant - homeowner** written notice of the proposed change 12 months or more before the date of the proposed change,

2. The owner gives each proposed ~~tenant~~ **tenant - homeowner** whose tenancy will commence within 12 months of the proposed change written notice thereof prior to the inception of that person's tenancy. Notice of termination or refusal to renew must be given in writing in the manner prescribed by Section 1162 of the Code of Civil Procedure or at least 60 days prior to the termination date of the tenancy. Said notice shall state the date

the tenancy terminates, the reason for the termination or refusal to renew, and the specific facts upon which the owner is relying. (Ord. 98-6 § 1, 1998).

9.80.190 Rules and guidelines.

The city manager may adopt rules and procedures to implement the applications, notices, registration, verification and certification required by this chapter, and for the review of rent increase applications and the conduct of hearings. Such rules and guidelines shall be submitted to the city council for review and approval.

9.80.200 Authority of city council to bring civil action to compel compliance.

The city council may institute a civil action to compel compliance with this chapter.

~~9.80.080~~ **9.80.210 Fees Administrative Service Fee.**

A. The costs of administration of this chapter shall be borne by the city, subject to reimbursement of the city's general fund by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the city. The park owner who pays these fees may not pass through any of the fees assessed against a mobilehome space to the tenants ~~tenant~~ - homeowner .

B. The fees imposed by this section shall be paid annually. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this section shall be as provided by separate ordinance of the city council. The ~~clerk~~ city manager shall recommend to the city from time to time the amount of such fee and the city council shall adopt such fee by resolution.

9.80.215 Supplemental Administrative Fee.

A. **Definition.** "Supplemental Administrative Fee" or "Supplemental Fee" means a charge upon tenant - homeowner occupying a space within a mobile home park for the privilege granted by this chapter of receiving the specific rent stabilization benefits conferred by this chapter.

B. **Collection.** The Supplemental Administrative Fee is to be paid to the city from every occupied mobile home space except exempt spaces which shall be excluded from paying the fee.

C. **Purpose and Limitation on Use.** The purpose of the fee is to reimburse, in whole or in part, the city for the reasonable costs of conferring the benefits and privileges provided by this chapter to the benefit of the mobile home owners who are collectively paying the fee.

These costs may include, but not be limited to, the costs of administering and enforcing the rent stabilization provisions of this chapter; defending those provisions and their administrative enforcement from litigation challenging them; defending the administrative decisions of the city that would result in the preservation of the mobile home spaces receiving the benefits of this chapter as rental spaces that are qualified, under state law, to continue to receive the benefits of this chapter from their conversion to subdivided lots or other uses that would result in their loss of the rent stabilization benefits and privileges conferred by this chapter from litigation challenging them and providing grants to mobile home park tenant - homeowners' associations, or legal service providers, to partly cover the costs of providing the legal services necessary for enforcing their rights in administrative proceedings under this chapter, including representing mobilehome owners in responding to Fair rate of return applications under this Chapter. All moneys collected by the city through this administrative fee shall be set aside and used by the city only for the purposes set forth in this subsection and shall not exceed the reasonable costs of conferring the benefits and privileges provided by this chapter to the persons collectively

paying the fee, including providing the city with a reserve for covering such future costs, compensating the city for the expenditure of such prior costs and covering the payment of any loans that the city has or may incur to help pay for the costs of providing the benefits and privileges of this chapter, including loans to help pay the city's costs of defending against litigation that is covered under this subsection.

9.80.220 Appeal of decisions pursuant to this chapter.

City determinations pursuant to this chapter, including but not limited to fair return determinations, shall be subject to review pursuant to California Code of Civil Procedure Section 1094.5 as a final administrative determination, within the time constraints established pursuant to Code of Civil Procedure Section 1094.6.

Article II. Collection and Payment of Administration Fees

~~9.80.130~~ **9.80.230 Definitions for Article II.**

A. As used in this article, "owner" and "owner of a mobilehome park" mean any owner, lessor or sublessor of a mobilehome park in the city who receives or is entitled to receive rents for the use or occupancy of any mobilehome space thereof, and the representative, agent or successor of such owner, lessor or sublessor, and who reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits or deductions because of such ownership.

B. As used in this article, "mobilehome park," "mobilehome," and "mobilehome space" shall have the same meanings as set forth in Section 9.80.020 of this Chapter

~~9.80.140~~ **9.80.240 Registration – Required.**

On or before May 31st of each year, each owner of a mobilehome park, as defined in Section 9.80.230, in the city, as long as the city council may so authorize and/or allow, shall register with the city clerk of the city by providing, in writing, the name and address of each such mobilehome park owner, and a statement of the number of mobilehome spaces including both occupied and unoccupied spaces and spaces subject to lease agreements, as described under Civil Code Section 798.17, contained in each such park, and a statement of the number of recreational vehicle spaces in the park. Reregistration and provision of this information must also be made upon change of ownership of the mobilehome park or an increase or a decrease in the number of spaces.

~~9.80.150~~ **9.80.250 Payment of Administration Service Fee.**

A. On or before June 30th of each year, each owner of a mobilehome park, as defined in Section 9.80.230, shall pay to the city clerk of the city a mobilehome park rent stabilization program administration fee in the sum of \$24.00 per year for each "mobilehome space" as defined in Section 9.80.020, including both occupied and unoccupied mobilehome spaces not subject to a rental agreement in full compliance with the requirements of Civil Code Section 798.17(a) and (b). **The City Council shall be authorized to increase the Administrative Service Fee each year thereafter by the amount of the increase of the Consumer Price Index. City staff shall determine the rise in the Consumer Price Index, as defined in Section 09.08.020(B) of this Chapter, from December to December, and round this percentage amount to the nearest Five Cents (\$.05).**

B. The city clerk of the city shall forward these funds to the city's community development department to administer the mobilehome park rent stabilization ordinance enacted in Article I of this chapter. Further, the city clerk of the city shall issue to each mobilehome park owner a receipt for payment of the fees required to be paid in this article.

C. Any person owing money to the city under the provisions of this article shall be liable to an action brought in

the name of the city for the recovery of such amount.

9.80.160 9.80.260 Late payment – Fee.

A service fee equal to one and one-half percent per month will be charged on all late payments of registration fees under this article.

9.80.270 Collection and Payment of Supplemental Administrative Fee.

The Supplemental Administrative Fee is to be paid to the City monthly, collected from the tenant - homeowners by the Park Owner with the monthly rent, prorated if necessary, from every occupied Mobile home space except those spaces that are excluded from paying the Fee under subsection 11-3.222. This Fee shall be deemed a debt owed by the tenant - homeowner to the City. Any such Fee that has been collected by a Park owner, which has not been paid over to the City, shall be deemed a debt owed to the City.

Park owners are not required to pay the Fee to the City for spaces occupied by tenant - homeowners who fail to pay the fee to the Park owner and failure to pay the Fee shall not be grounds for a Mobile home park rule violation or grounds for eviction under Civil Code Section 798.56 (a) or (e). Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Sonoma for the recovery of such amount.

9.80.280 Spaces Excluded from Paying Supplemental Administrative Fee.

Only tenant - homeowners occupying spaces that receive the specific rent stabilization privileges granted and benefits conferred by this Chapter shall be assessed this Rent Control Fee. Persons occupying spaces that are excluded from the rent stabilization privileges granted and benefits conferred by this Chapter, either through state law or otherwise, shall not be charged this Rent Control Fee.

9.80.290 Amount of the Supplemental Administrative Fee.

For the first year of implementation, the Fee shall be set in the amount of \$5.00 per month as soon after the effective date of the implementing ordinance as is practicable. The City Council shall be authorized to increase the Supplemental Administrative Service Fee each year thereafter by the amount of the increase of the Consumer Price Index; provided that the City Council shall waive, in whole or in part, the Fee or any increase for a particular year if the City Council determines that the Fee otherwise collected for that particular year together with the Fees collected from prior years would exceed the reasonable costs of conferring the benefits and privileges provided by this Chapter, including a reasonable reserve for covering future legal fees and costs. City staff shall determine the rise in the Consumer Price Index, as defined in Section 09.08.020(B) of this Chapter, from December to December, and round this percentage amount to the nearest Five Cents (\$.05).

9.80.300 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have passed the ordinance codified in this chapter and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

APPENDIX A

IMPORTANT NOTICE TO PROSPECTIVE HOMEOWNER REGARDING THE PROPOSED RENTAL AGREEMENT FOR THE _____ MOBILE HOME PARK.

PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM

IN EXCESS OF TWELVE MONTHS.

BY SIGNING THIS RENTAL AGREEMENT, YOU ARE EXEMPTING THIS MOBILE HOME SPACE FROM THE PROVISIONS OF THE CITY OF Sonoma MOBILE HOME RENT STABILIZATION ORDINANCE FOR THE TERM OF THIS RENTAL AGREEMENT.

THE CITY OF Sonoma MOBILE HOME RENT STABILIZATION ORDINANCE AND THE STATE MOBILE HOME RESIDENCY LAW (CALIFORNIA CIVIL CODE SEC. 798 et seq.) GIVE YOU CERTAIN RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT YOU MAY CHOOSE TO SEE A LAWYER.

UNDER THE PROVISIONS OF STATE LAW, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR:

- (1) A TERM OF TWELVE MONTHS, OR
- (2) A LESSER PERIOD AS YOU MAY REQUEST, OR
- (3) A LONGER PERIOD AS YOU AND THE MOBILE HOME PARK MANAGEMENT MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR 30 DAYS BEFORE ACCEPTING OR REJECTING IT.

IF YOU SIGN THE AGREEMENT YOU MAY CANCEL THE AGREEMENT BY NOTIFYING THE PARK MANAGEMENT IN WRITING OF THE CANCELLATION WITHIN 72 HOURS OF YOUR EXECUTION OF THE AGREEMENT.

IT IS UNLAWFUL FOR A MOBILE HOME PARK OWNER OR ANY AGENT OR REPRESENTATIVE OF THE OWNER TO DISCRIMINATE AGAINST YOU BECAUSE OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE CITY OF SONOMA MOBILE HOME RENT REVIEW LAW, OR BECAUSE OF YOUR CHOICE TO ENTER INTO A RENTAL AGREEMENT WHICH IS SUBJECT TO THE PROVISIONS OF THAT LAW.

CITY OF SONOMA

RESOLUTION 57-1998

ADOPTING ADMINISTRATIVE GUIDELINES FOR THE MOBILEHOME SPACE RENT PROTECTION ORDINANCE (CHAPTER 9.80 SMC)

WHEREAS, the City Council adopted revisions to the Mobilehome Space Rent Protection Ordinance on August 12, 1998; and

WHEREAS, administrative guidelines have been drafted in order to clearly establish the procedures for implementing certain provisions of said ordinance; and

WHEREAS, said guidelines have been reviewed by representatives of the owners and residents of affected mobilehome parks in the City of Sonoma; and

WHEREAS, the City Council considered the draft guidelines and related public testimony at its meeting of September 30, 1998.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Sonoma hereby adopts the following guidelines for the administration of Mobilehome Space Rent Protection Ordinance:

Automatic Annual Rent Increases

A. Automatic annual increases shall be permitted in May of each year.

B. The Clerk of the Mobilehome Park Rental Review Board (hereinafter "Clerk") shall announce the annualized percentage change in the Consumer Price Index (CPI) on or about January 15 of each year.

C. Park owners shall provide the Clerk with a list of all park spaces subject to the automatic annual increase, the current monthly rent and the amount of the rent increase for those spaces resulting from the automatic increase.

D. Upon receipt of the information provided to the Clerk pursuant to subsection C, the Clerk shall send a copy of the application materials to the Sonoma Tri-Park Committee and a copy shall be made available for public review at City Hall.

E. Within five working days of the receipt of information provided pursuant to subsection C for an automatic annual increase, the Clerk shall confirm

to the park owner in writing that said increase has been correctly calculated pursuant to 80% of the announced change in the CPI.

F. In recognition of the fact that there are varying time periods between the date of the last rent increase and the first automatic annual rental increase permitted pursuant to Section 9.80.045 as amended in 1998, the first year's increase shall be determined by the percentage change in the CPI in effect one month prior to the effective date of the notice of last rent increase and the CPI in effect in January 1999.

G. Starting in the year 2000, in order to calculate the allowable increase, the percentage change in the CPI shall be computed by calculating the percentage change between the CPI in effect in the preceding January and the CPI in effect in January of the prior year.

H. If a space was exempted from Chapter 9.80 in the prior calendar year pursuant to an exempt lease the allowable increase shall be calculated by calculating the percentage change between the CPI in effect on the date of the termination of the exempt lease and the CPI used to calculate the automatic annual increase.

I. The amount of any allowable increase shall be rounded to the nearest one-quarter of a percent.

Automatic Annual Increases after the Termination of a Lease Exempted by State Law

A. For the purposes of calculating automatic annual increases after the termination of a lease exempted from rent regulation by the Mobilehome Residency Law (California Civil Code Sec. 798.17) the rent in effect at that time the lease terminates shall be used for the purpose of determining the allowable increase and the calculation of the allowable CPI increase shall be equal to the percentage change between the CPI in effect on the date the lease terminates and the CPI used to determine the allowable annual automatic increase.

Determination of Income and Expenses

Calculation of Base Year Operating Costs Pursuant to Maintenance of Net Operating Income Formula when Applicant does not have Base Year Information and Presumptions about Increases in Management and Maintenance Expenses

A. In cases where an applicant cannot provide complete information on base year operating costs despite good faith efforts to obtain such information, said expenses shall be projected.

In order to project costs, if the costs are determined by public regulation or public charges or fees, changes in these charges between the base year and the current year shall be considered. (For example, if water rates have increased by 40% since the base year, it shall be presumed that water expenses have increased by 40% since the base year, unless there is evidence that consumption patterns have changed thereby affecting annual costs.)

B. There shall be a rebuttable presumption that maintenance expenses have increased by the percentage increase in the CPI, unless the level of maintenance has significantly increased or decreased since the base year.

C. There shall be a rebuttable presumption that management expenses have increased by the percentage increase in the CPI, unless the level of management services has significantly increased or decreased since the base year.

Capital Improvements - definition

A. Capital improvements are expenditures which materially add to the value of a property or appreciably prolong its life, which have a life of ten or more years, and are not treated as an expense for income tax purposes.

B. Expenses related to the provision of gas and electricity, facilities for which a fee is charged (such as coin operated washers and dryers), or for which reimbursement may be obtained shall not be considered.

Interest Rate for Capital Improvement Expenses

A. The interest rate for capital improvements shall be equal to the prime interest rate as reported by the *Wall Street Journal*, on the date the application is deemed complete.

Amortization Periods

A. Capital improvements shall be amortized according to the following schedule. If an improvement is not itemized in the schedule, it shall be amortized in accordance with the useful life tables of the Internal Revenue Service which are used to set depreciation schedules. If it shown by a preponderance of the evidence that the amortization schedule should be different than the schedule in this section or the IRS tables, than a schedule shall be set based on the evidence. Improvements that are made in conjunction with the construction of a building shall be amortized over the life of the building.

Improvement

Amortization Period
(Years)

Fencing	15
New building	27.5
"Petromat" paving	10
Reroofing	18
Sewer Systems	50
Water distribution systems	50

Notification of the Amount of Capital Improvement Increases and their Amortization Period

A. All notices to tenants of their rent levels, shall separately set forth amount of any capital improvement increases and the termination date(s) of those increases.

Definition "in-place" sale

A. For the purposes of determining if an in-place sale has occurred pursuant to Section 9.80.070.C. of the Sonoma Municipal Code the following types of transfers shall not be considered in-place sales: transfers to a spouse, former spouse, child, sibling, mother or father in-law, sister or brother in-law; transfers upon death to any of the foregoing relatives.

The foregoing Resolution was duly adopted this 30th day of September, 1998 by the following roll call vote:

AYES: (5) Clm. Barnett, Dorf, Mazza, Ramponi, Mayor Carter
 NOES: (0) None
 ABSENT: (0) None
 DISQUALIFIED: (0) None



[Signature]

 MAYOR

[Signature]

 CITY CLERK

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Sonoma at a regular adjourned meeting thereon held September 30, 1998.

[Signature]

 CITY CLERK

Northern California Mobile Home Park Space Rent Control Ordinances

Jurisdiction	# of Spaces	Annual Increases			Pass-Throughs	Increases on In-Place Mobilehome Sales
		Amount	Floor	Ceiling		
Alameda County Uninc.	6,315	5%				
American Canyon	843	90% CPI inc up to 3%				up to \$25 if below park median
Benecia	266	80% CPI inc 3 to 4%		6%		
Callstoga	585	70% CPI inc 4 to 6%				any rent increase may be challenged in a hearing
Cloverdale	175	100% of CPI		6%		None
		none				None
Clovis	860	80% of CPI up to 5%				
Concord	1,412	52% of CPI inc 5-10%				5%
Contra Costa Cty Uninc.	6,350	25% of CPI inc over 10%				None
Cotati	112	60% of CPI	2%	6%	new cap. imp.	None*
Fairfield	851	75% of CPI		6%		None
		100% of CPI		6%		4%**
Fremont	732	60% of CPI	3%	6%	cap. imp. up to 5% of rent	None
					utilities, prop. Taxes, gov. fees, assessments up to 5% of rent	
Fresno	3,247	75% of CPI				10%
Gilroy	349	80% of CPI		5%		Unlimited
Hayward	2,397	60% of CPI	3%	6%		None
Healdsburg	75	100% of CPI		6%		None
		100% of CPI inc up to 5%				
Jackson	278	75% of CPI increase > 5%				5%
Marina	339	100% of CPI				
Merced	624	any rent increase may be challenged in a hearing				
Millipitas	566	50% of CPI		5%		None
Modesto	1,443	100% of CPI		6%	prop tax inc. on sale	10% once/ 5 yrs
		agreement option				
Morgan Hill	816	75% of CPI				None
Novato	654	100% of CPI				None
Pacifica	93	75% of CPI				Unlimited
Petaluma	874	100% of CPI		6%		None
Pleasanton	494					
		100% of CPI < 5%, 75% of CPI inc 5 to 10%, 66% of CPI > 10%				no rent control after vacancy
Rocklin	443	100% of CPI - 1/2%				None
Robert Park	1,316	75% of CPI		8%		Unlimited
Salinas	1,467	75% of CPI		5%		None
San Mateo County Uninc.	2,684	75% of CPI		3%	prop tax inc. 1/2 cap. rep.	None
San Jose	10,756	75% of CPI		7%		8%
San Rafael	442	75% of CPI				
Santa Cruz County Uninc.	5,797	50% of CPI				None
Santa Rosa	3,754	100% of CPI		6%		None
Scotts Valley	529	100% of CPI	3.5%	7%	prop tax inc. 1/2 cap. rep.	10%/ 36 months
Sebastopol	285	100% of CPI		6%		None
	700	80% of CPI		5%		10% or up to minimum rent
Sonoma	2,637	100% of CPI		6%		None
Sonoma County Uninc.	2,637				gov't assess amortized cost fix code violations	10%
Tuolumne County	896	100% of CPI				None
Union City	1,085	90% of CPI		7%		None
Vacaville	1,244	100% of CPI			Capital Replacements	None
Vallejo	1,254	75% of CPI		5%	Capital Replacements	None
Watsonville	797	70% of CPI				None
Woodland	466	lesser of CPI or 3%			Gov't assessments	None

DECISION MATRIX

Issue **Yes** **No** **Yes with Modification**

HOMEOWNERS' PROPOSED AMENDMENTS			
<p>1. Disbanding the Rental Review Board as the decision maker on rent increase applications, and, instead, assigning that responsibility to the City Manager, whose decision is based solely on experts' evaluations without hearing, and is appealable to an independent hearing officer selected through the State's Office of Administrative Hearings.</p>			
<p>A. Applicable to fair return petition.</p>			
<p>B. Applicable to service reduction petition.</p>			
<p>C. Applicable to capital improvement pass-through petition.</p>			
<p>2. Authorizing the city manager to retain experts to assist the city manager in making decisions on individual rent increase applications and requiring the applicant to advance funds to pay for such experts. It appears that the proposed revisions allow the applicant to recoup those costs in the form of rent increases if the applicant is successful in achieving the results sought in its application.</p>			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
3. Setting up a process whereby the residents, in response to the filing of a rent increase application, can make a settlement offer to the applicant-park owner agreeing to accept a certain rent increase. If that offer is not accepted by the park owner and the application is prosecuted to a final decision that is less than the settlement amount, then the park owner is not entitled to recover its expenses incurred in prosecuting its rent increase application after the offer was made by the residents and the residents' costs in defending the application incurred after the offer was made are recoverable against the park owner.			
4. A corresponding right on the part of the park owners to offer a settlement proposal is established. Unclear as to recovery of park owners' legal and other expenses if park owner achieves award greater (but less than petitioned for award) or less than settlement offer.			
A. Applicable to fair return petition.			
B. Applicable to service reduction petition.			
C. Applicable to temporary capital improvement pass-through petition.			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
5. Requiring that each park's residents annually elect a resident as the residents' representative. This representative is vested with the authority to speak on behalf of and bind the residents to certain decisions made by the representative.			
A. What decisions should the representative be able to make on behalf of residents.			
6. Reduce vacancy control limitation of increasing rent to 10% above prior rents to no more than 5% of pre-existing rent.			
7. Expanding the definitions and provisions governing what constitutes income and expenses in the context of a petition seeking rental increases in order to MNOI.			
8. Requiring park owners to file "complete" applications for rent increases before time periods begin running and as a condition to the City's obligation to process the application.			
9. Except where settlement offers have been made by the homeowners or park owner, requiring that the legal and expert fees and other costs incurred by a park owner in processing a successful rent increase application be passed through to the residents, provided that they are amortized over 5 years, with interest.			
10. Amortizing park owners' legal costs and expert fees over 5 years, with interest.			

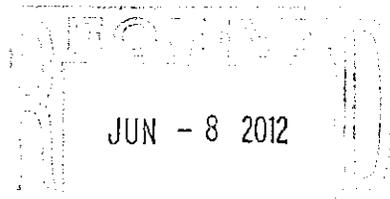
DECISION MATRIX

Issue	Yes	No	Yes with Modification
11. If a decision granting a rent increase petition is delayed beyond 120 days (180 days?), City required to grant retroactive rent increase covering the delay period. It is to be amortized over 5 years with interest.			
12. Adding a provision expressly authorizing residents to petition for rent reductions in those situations where the park has reduced services or amenities as defined in the proposed revisions.			
13. Imposition of a supplemental administrative fee, chargeable to residents, but to be collected by park owners. If residents do not pay supplemental administrative fee, it appears that the City must pursue collection against the non-paying resident, not the park owner.			
PARK OWNERS' PROPOSED AMENDMENTS			
1. Increase annual automatic rent increase from 80% to 100% of the CPI and eliminate the 5% cap.			
2. Eliminate vacancy control, thus permitting park owners to charge market rents to new owners of in-place mobile homes.			
3. Amend the MNOI formula to increase permitted rent increases in NOI from 80% of the CPI change to 100% in the change of the CPI. See, SMC Section 9.80.050(C). [Note: It appears that the ordinance proposed by the homeowners does not include the 80% limitation.]			

DECISION MATRIX

Issue	Yes	No	Yes with Modification
4. Amend Resolution No. 57-1998 to change the amortization period for sewer systems from 50 to 15 years and for water distribution systems from 50 to 25 years.			
5. Clarify the types of expenses that do not meet the definition of “Capital Improvements” set forth on page 2(B) of Resolution No. 57-1998.			
6. Amend SMC Section 9.80.065(C) to eliminate the homeowners’ right to protest a rent increase for necessary capital improvements (defined at SMC Section 9.80.020(B)(1)).			
7. Amend Resolution No. 57-1998 which excludes identified types of in-place sales of mobile homes from those types of in-place sales for which the landlord can increase the rent to the new owner by 10% such that the only exclusion from this limited form of vacancy control is a transfer to a spouse.			
8. Add a section that would allow park owners to pass through to homeowners any fees or charges that a majority of the homeowners’ request or agree should be passed through.			
9. If the City amends the ordinance to permit the City to charge a park owner for the services of an expert retained by the City to analyze a park owner’s rent increase application, the park owner’s attorney is recommending that a section be added that would allow the park owner to “immediately” pass through such cost to the homeowners on a pro rata basis.			

June 6, 2012



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Re: Proposed Amendments To The City's Mobilehome Rent Control Ordinance

Dear Mr. Walter and Mr. Stern:

You have asked that my clients, DMV, LLC and Pueblo Serena, propose language for the amendments that we requested on page 6 of my February 24, 2012 letter. Of course, as we have made clear (see my letters of February 24, March 29, and May 7, 2012), those are not the only amendments that my clients believe are appropriate or required; we contend that the Ordinance is unconstitutional and thus urge the City to cease enforcing the Ordinance in its entirety.

However, in response to Mr. Stern's request, below are the specific amendments that we requested on February 24, followed by language that we propose the City adopt. In no way should this submission be construed as an admission or acknowledgement that any provision of the Ordinance is appropriate or constitutional, or that the following is an exhaustive list of amendments that are appropriate and/or constitutionally required.

- **Among other things, we urge the City to amend the Ordinance to permit 100% CPI adjustments to base rents each year (and remove the 5% cap on annual increases), and allow park owners to increase rents to market upon any sale or transfer, space vacancy, or other change in tenancy.**

In Section 9.80.045 of the Ordinance, the City should replace "80 percent" with "100 percent", and delete the following language: "in no instance shall the rental increase permitted pursuant to this section result in a rental increase of greater than five percent per 12-month period over that in effect prior to the rental increase permitted pursuant to this section."

In addition, the City should replace Section 9.80.070 with the following provision:

Section 9.80.070. Full Vacancy Decontrol – Establishment of New Base Rent.

Jeffrey A. Walter, Esq.
Howard Stern, Esq.
June 6, 2012
Page 2

A mobilehome park owner shall be permitted to increase the base rent to the then current market rent, as determined in the mobilehome park owner's sole discretion, upon: (a) any change in tenancy at a mobilehome space, including, without limitation, any sublease of a mobilehome or the mobilehome space, any termination of tenancy, any assignment, or any transfer of the mobilehome or any interest therein into or out of trust, and (b) any sale of a mobilehome, exchange of a mobilehome, transfer of a mobilehome, conveyance of a mobilehome, other disposition of the mobilehome, or termination of tenancy where the mobilehome remains on the mobilehome space; provided, however, that a mobilehome park owner shall not be permitted to increase rent to the then current market rent: (i) upon a change in tenancy that results from the death of a spouse, divorce, marriage, or addition of a domestic partner, or the replacement of a mobilehome with another mobilehome on the same site without any change in the homeowner, or (ii) any assignment or transfer by the homeowner or the homeowner's agent of the homeowner's property interest in a mobilehome to a trust or other instrument of property ownership, where the homeowner is the settler of the trust, and/or the primary purpose of the transfer is for estate planning, tax planning, financial planning, or other asset management purpose, where the homeowner maintains an incidence of property ownership and continues to reside in the mobilehome as his or her principal residence.

- **Add to the Ordinance a provision that would allow park owners to pass through to homeowners any fees or charges that a majority of homeowners request or agree should be passed through.**

We request that the City add the following provision to the Ordinance: "A park owner shall be permitted to pass through to homeowners any fees or charges that are agreed upon by the park owner and a majority of homeowners in the park, in the manner agreed."

Furthermore, we believe that park owners should be allowed to pass through to homeowners any government mandated fees. We request that the City add the following provision to address that issue: "A park owner shall be permitted to pass through to homeowners any new or increased fees, charges, assessments, or taxes (other than the annual increase in real property taxes (of up to 2%) or state or federal tax on net income from the property) imposed by any local, state, or federal government or agency thereof, including but not limited to any increased taxes based on reassessment of property value based on a change in ownership or new construction, on a *pro rata* basis based on the number of occupied homesites in the park."

Jeffrey A. Walter, Esq.
Howard Stern, Esq.
June 6, 2012
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- **Amend the MNOI increase calculation to allow a park owner a rent increase sufficient to ensure its NOI increases by 100%, rather than 80%, of the CPI increase (see Section 9.80.050(C)).**

We request that the City replace “80 percent” with “100 percent” in Section 9.80.050(C) of the Ordinance.

- **Clarify the types of expenses that do not meet the definition of “Capital Improvements” as set forth on page 3, subparagraph B of Resolution 57-1998.**

We request that the City replace Paragraph B, under “Capital Improvements – definition” on page 3 of Resolution 57-1998, with the following language: “For any capital improvement that generates fees or reimbursements that a park owner receives from residents (such as fees received from coin operated washers and dryers), the fees received shall be deducted annually from the amounts that may be passed through to Homeowners in the form of a temporary rent increase pursuant to Section 9.80.065.”

- **Amend Section 9.80.065(C) of the Ordinance to eliminate homeowners’ right to protest a rent increase for capital improvements that is based on a “Necessary Capital Improvement,” as that term is defined in Section 9.80.020(B)(1), and thus ensure that park owners are able to pass-through to homeowners any capital improvement that is necessary to maintain the park (as is the owner’s obligation).**

We request that the City delete the following language from Section 9.80.065(C): “In the event that 50 percent plus one of the affected tenants receiving notice of the temporary rental increase protest the application in writing to the clerk within the 15-day notice period, the clerk shall schedule a public meeting of the board where all affected tenants may respond to the proposed capital improvement. At said meeting, it shall be the responsibility of the protestors to provide reasonable, quantifiable evidence as to why the temporary rental increase should not be approved or conditionally approved by the clerk pursuant to findings 1 through 4 of this subsection C.”

- **Amend the amortization periods for “Sewer Systems” and “Water distribution systems” from 50 years to a maximum of 30 years to reflect the useful lives of the components (see Resolution 57-1998 at 4).**

As you know, we supplemented our submission on this proposed amendment on March 29, 2012. We request that the City amend Resolution 57-1998 to change the amortization periods for “Sewer Systems” and “Water Distribution” systems from 50 years to 15 years and 25 years, respectively. That can be accomplished by simply replacing “50” with “15” and “25,” respectively, in the chart on page 4 of the Resolution.

Jeffrey A. Walter, Esq.
Howard Stern, Esq.
June 6, 2012
Page 4

- **Amend the definition of “in-place” sale to limit the exclusion only to a transfer to a spouse, and otherwise including in the definition any other transfer of a mobilehome, upon death or otherwise (see Resolution 57-1998 at 4).**

If the City adopts our full vacancy decontrol amendment, as set forth above, it should delete the definition of “in-place sale” in Resolution 57-1998. Absent such an amendment, the City should replace the definition of “in-place sale” on page 4 of Resolution 57-1998, with the following language:

For the purposes of determining if an in-place sale has occurred pursuant to Section 9.80.070.C. of the Sonoma Municipal Code, the following types of transfers shall not be considered in-place sales: any transfer to a spouse, whether upon death or otherwise.

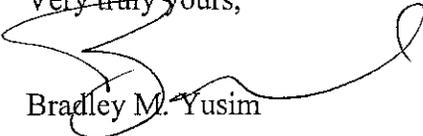
Finally, when I spoke to Mr. Stern on May 15, he informed me that Mr. Constantine intends to propose an amendment that would allow park owners to pass through to tenants any costs that a park owner incurs to retain an expert for the City in any MNOI increase proceeding, as he has proposed. We vigorously oppose any amendment that would require a park owner to pay the City’s cost to retain an expert, on the basis that it would unconstitutionally chill my clients’ right to petition (see my previous letters). Although any such amendment would be unconstitutional, if the City adopts such an amendment—which it should not—a park owner should be permitted to immediately and directly pass through the entire cost of the City’s expert to homeowners, as Mr. Constantine apparently concedes. The following language would so permit:

A park owner that is required to pay the cost to retain an expert for the City in connection with any rent increase proceeding shall be permitted to immediately pass through all such costs to the homeowners at the park on a *pro rata* basis based on the number of occupied homesites in the park.

Thank you for your consideration.

Jeffrey A. Walter, Esq.
Howard Stern, Esq.
June 6, 2012
Page 5

Very truly yours,



Bradley M. Yusim

cc: Michael Gelfand, DMV-Moon Valley Mobilehome Park
Wendy G. Glenn, Esq., DMV, LLC
Dean Moser, Pueblo Serena
Philip Taylor, Pueblo Serena