



City of San Leandro

Meeting Date: June 3, 2019

Staff Report

File Number: 19-310

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for the Second Reading of the City of San Leandro City Council Ordinance to Add Mobilehome Space Rent Stabilization to the City of San Leandro Municipal Code (An Ordinance that Would Regulate Space Rents in San Leandro Mobilehome Parks)

SUMMARY AND RECOMMENDATIONS

On May 20, 2019, the City Council reviewed and accepted public comments on the first reading of the City of San Leandro City Council Ordinance to Add Mobilehome Space Rent Stabilization to the City of San Leandro Municipal Code. Councilmember Aguilar motioned, seconded by Vice Mayor Lopez, for a minor modification to the ordinance by revising the “special circumstance” household definition to more clearly show that elderly and/or persons with disabilities must be income eligible (i.e., very low income). The motion passed: 4 ayes, 1 no, and 1 abstain.

Staff recommends that the City Council approve the second reading of the City of San Leandro City Council Ordinance to Add Mobilehome Space Rent Stabilization to the City of San Leandro Municipal Code.

BACKGROUND & ANALYSIS

The proposed Ordinance will establish a method to review mobilehome park space rent increases, protect Mobilehome Owners from arbitrary, capricious, or unreasonable rent increases, and ensure that mobilehome park owners, operators and/or investors receive a fair and reasonable return on their investment. In response to the March 4, 2019 City Council Meeting, staff held two meetings--one with Mobilehome Owners on April 17 and one with Mobilehome Park Owners and industry representatives on April 25. See “Summary of Public Outreach” section below for more information regarding both meetings.

Given the feedback received from both of those meetings and public comments received to the first version of the Ordinance that was presented for first reading (see Attachment B), there were

two significant changes to the Ordinance since the March 4 first reading.

The first change adds a section for “Just Cause” mobilehome space tenant evictions to the Ordinance using the State of California Mobilehome Residency Law (MRL) section 798.56 “Seven Authorized Reasons for Termination of Tenancy” as a basis. The MRL “just cause” eviction protections prohibit the owner of a mobilehome park from terminating or refusing to renew the tenancy of an individual who rents a mobilehome space except for specific reasons. Examples of such reasons include the nonpayment of rent, failure of a resident to comply with a rule in a rental agreement, and conduct by the resident that constitutes a substantial annoyance to other residents. The MRL also includes specific requirements regarding the opportunity to correct a violation that must be provided to the resident before an eviction can occur. The protections of the MRL apply throughout California.

The proposed ordinance will apply the just-cause eviction provisions of the MRL to all individuals renting a mobilehome space, regardless of the structure located thereon. For example, the provision will apply to individuals who locate certain types of recreational vehicles, defined by the Ordinance, on mobilehome spaces. The proposed Ordinance’s just cause eviction provisions apply to the rental of mobilehome spaces, but not the mobilehomes themselves. The rental of mobilehomes is governed by the City’s Rent Review Ordinance (SLMC Chapter 4-32) and the Tenant Relocation Ordinance (SLMC Chapter 4-37) in addition to specific existing California laws regulating landlord-tenant relations.

The second change replaces the Consumer Price Index (CPI), All Urban Consumers, West Region from the March 4th Ordinance with the CPI, All Urban Consumers, San Francisco-Oakland-Hayward as an annual rent increase threshold. Staff evaluated all suggested versions of the Consumer Price Index (CPI), accounting for public comments. Consequently, staff recommends that the CPI (SF-Oakland-Hayward) be used in the Ordinance because it is geographically specific. Attachment C provides a table and line graph that shows a comparison over time of the West Region vs. the San Francisco-Oakland-Hayward CPI Tables. Both CPI indices have changed annually at a similar average rate over the last 8 years, although the CPI (SF-Oakland-Hayward) rate is slightly higher (2.9% vs 2.2%) over this period.

Definitions

Base Rent - rent in effect for a Mobilehome Space on July 1, 2018.

Base Year - the 2018 calendar year or, if a Fair Return Application subsequently establishes a new Base Rent, the calendar year preceding the year the application is made.

Fair Return Application - an application to the City seeking to increase space rents above one hundred percent of the Consumer Price Index (CPI) to provide a fair return to the Mobilehome Park Owner.

Mobilehome - a structure designed for human habitation and for being moved on a street or highway including manufactured homes and trailers and all other recreational vehicles of all types defined in section 18010 of the California Health and Safety Code. Recreational vehicles defined

in section 799.29 of the Civil Code and section 18010 of the Health and Safety Code and certain motor homes, truck campers, and camping trailers covered under California Civil Code Section 798.3(b) (the Mobilehome Residency Law or MRL) are not included in the Ordinance's definition of Mobilehome. The MRL is the State law regulating Mobilehome Parks.

Mobilehome Owner - a person who owns a Mobilehome and legally occupies the Mobilehome within a Mobilehome Park.

Mobilehome Park - an area of land within the City of San Leandro where two or more Mobilehome Spaces are rented, or held out for rent, to accommodate Mobilehomes.

Mobilehome Space - the spaces 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.

Mobilehome Park Owner - the owner or operator of a Mobilehome Park or an agent or representative authorized to act on said owner's or operator's behalf in connection with the maintenance or operation of the Mobilehome Park.

Eligibility

The following are eligible for Mobilehome Space rent stabilization under the proposed Ordinance:

Mobilehome Owners whose space is not covered by a valid lease meeting the requirements of section 798.17(b) of the MRL, or otherwise legally exempt from local rent stabilization regulations.

Under MRL, Mobilehomes which include trailers or other recreational vehicles that have occupied a Mobilehome Space on November 15, 1992 under a rental agreement with a term of one month or longer and Mobilehomes that have occupied a Mobilehome Space in a Mobilehome Park prior to January 1, 1991.

Under MRL, trailers or other recreational vehicles that occupy a Mobilehome Space in a Mobilehome Park for nine or more continuous months on or after November 15, 1992.

Base Rent

In general, the Ordinance establishes a base rent in an amount not exceeding the 90th percentile of all rents in effect in the Mobilehome Park at the time the Mobilehome Space is rented.

Base rents under the Ordinance may change under other circumstances such as expiration of an exempt lease.

Space Rent Increase Cap

Establishes an annual rent increase, which is the lesser of the increase to the applicable Consumer Price Index (CPI) defined in the Ordinance or four percent (4%) once in a twelve (12) month period.

Requires that Mobilehome Park Owners provide written notice of rent increase or capital improvement/replacement pass-through charges to the City's Rent Review Officer and each affected Mobilehome Owner at least 90 days before the rent increase goes into effect or as required by the MRL.

Special Circumstances Households

The proposed Ordinance addresses Mobilehome Owners whose incomes and capacity to pay rent are limited based on objective factors. The Ordinance provides protections from capital improvement pass-throughs to "Special Circumstances Households" based on the following objective factors:

- One (1) resident that is sixty-two years of age or older; or
- One (1) resident qualified as disabled as defined by Title 42, United States Code section 423 or handicapped as defined by California Health and Safety Code Section 50072; and
- A total household income that is below fifty percent (50%) of the Alameda County area median household income as established annually by the U.S. Department of Housing and Urban Development, or closest equivalent if the HUD income limits no longer exist.

Exemptions

The proposed ordinance recognizes that California state law provides for certain exemptions that preempt local law including the following:

- Newly constructed Mobilehome Spaces initially held out for rent after January 1, 1990.
- A Mobilehome Space upon which there is a Mobilehome that is not the principal or primary residence of the Mobilehome Owner.
- Civil Code Section 798.17(b) allows an exemption from any city ordinance that establishes a maximum amount that a landlord may charge a tenant if there is a different rent amount allowed in a signed rental agreement. This is allowed only while the rental agreement is active and has not lapsed.
- Mobilehomes or Mobilehome Parks owned or operated by any governmental agency.
- Any Mobilehome that is also a rental unit where the rent is subsidized pursuant to a public program that limits the rent that can be charged for the Mobilehome.
- Mobilehome Parks with fewer than 10 spaces.

Vacancy Decontrol

Under the Ordinance, it would be lawful for a Mobilehome Park Owner or operator to charge a new Mobilehome Space rent beyond the space rent thresholds established under the Ordinance pursuant to the following:

- Voluntary in place sale or transfer of a Mobilehome which remains in place on the space or pad.
- Voluntary removal of a Mobilehome by the Mobilehome Owner who will no longer reside in the park.
- Vacancy occurring after the park owner obtains a judgement of unlawful detainer or other legal termination of tenancy.
- Abandonment of the Mobilehome.

The Ordinance establishes the following circumstances where it would be unlawful for a Mobilehome Park Owner or operator to charge Mobilehome Space rent beyond the space rent thresholds under the Ordinance:

- Mobilehome Owner replaces his/her mobilehome unit on the existing space.
- Mobilehome owner legally transfers title to existing lawful residents of the Mobilehome, or the Mobilehome Owner legally transfers title to a parent or parents, siblings, children, grandchildren, nieces or nephews.

Fair Return Rent Increase

The Ordinance establishes a method to ensure a fair rate of return to park owners based on the concept of Maintenance of Net Operating Income (MNOI).

The Ordinance provides a method to calculate Net Operating Income (NOI) based on Gross Rental Income and Operating Expenses (as both are defined in the Ordinance). NOI would be calculated by subtracting operating expenses from gross rental income.

Gross rental income would not include: utility charges for submetered gas and electricity; charges for water, refuse disposal, sewer service and/or other services provided by or charged to the Mobilehome Owner solely on a pass-through basis and/or are regulated by state or local law, laundry service charges, storage charges, and rental income spaces exempted from rent limits by state law or the Ordinance.

Operating expense exclusions would include: mortgage principal or interest payments or other debt service costs; penalties, fees or interest assessed or awarded for violations of the Ordinance or other laws; depreciation; political contributions; and master-metered gas and electricity services.

Process to Consider Alternate or Settlement Proposals

The Ordinance allows an opportunity for - and a period where - either the Mobilehome Owner(s) or Mobilehome Park landowner may propose an alternative and mutually agreeable rent change.

If an offer for settlement is rejected and the rejecting party fails to obtain a more favorable decision or award, the rejecting party cannot recover his or her post-offer legal expenses and must pay for the offering party's legal costs from the time of the offer. When settlement offers have been submitted in a timely manner, but neither were accepted, the Rent Review or Hearing Officer may assign responsibility for legal costs based on which party failed to obtain a more favorable decision.

Procedures for Rent Review

The Ordinance allows Mobilehome Park Owners and affected Mobilehome Owners a request for review by the Rent Review Officer once within any 12-month period year for applications seeking:

- Rent increase based on a Fair Rate of Return;
- Temporary increase in rent based on a Capital Improvement Cost pass-through;
- Temporary increase in rent based on a Capital Replacement Cost pass-through;
- Rent reduction based on a reduction of services by the Mobilehome Park Owner.

Notification of the rent review application must be sent to the Mobilehome Owner, or the owner's representative. A copy of the rent review application must also be available for public review and copying in City Hall during normal business hours. The Rent Review Officer may determine the need for financial expertise (a certified public accountant, for example) to verify the accuracy of application-related financial documentation.

Applications for rent review will be decided by the Rent Review Officer, which will be the Community Development Director or his or her designee, based on substantial evidence and without a hearing or personal appearances by any of the involved parties or their representatives. The Rent Review Officer's determination will be mailed and emailed to the park owner and the Mobilehome Owners, and if applicable, to their representatives.

Appeal of the Rent Review Officer's Decision

The proposed ordinance provides procedures for appealing the Rent Review Officer's decision. There is a 30 day deadline from the date the Rent Review Officer mails the decision. For Mobilehome Owners to appeal a rent increase or pass-through, at least 25% of the affected Mobilehome Owners within the park must sign the appeal application.

A Hearing Officer would review and make a decision regarding the appeal. The Hearing Officer will be a licensed attorney and member of the California Bar. The Hearing Officer will be selected through the California Office of Administrative Hearings (OAH), or through the City Manager if the OAH is unable to provide hearing officers. The Hearing Officer must conduct a public hearing where both the park owner and Mobilehome Owners can attend and present their justifications.

Rights of Prospective Mobilehome Owners

The proposed ordinance requires that Mobilehome Park Owners offer to prospective Mobilehome Owners information regarding the Ordinance, that they are offered an initial lease agreement of at least 12 months, and that they provide a copy of the Ordinance for the prospective Mobilehome Owner's information.

Annual Registration/Noticing

The proposed Ordinance requires that Mobilehome Park Owners register with the City annually. The City will track contact information and the name of the legal entity, if any, that has an ownership interest in the Mobilehome Park. Additionally, the annual registration will require information on the rents as well as any other charges by the Mobilehome Park Owner for a Mobilehome Owner's occupancy of a Mobilehome Space. In recent years, when Mobilehome Parks have changed ownership, the City has invested significant staff time to address problems and conflicts with these changes in ownership. The Ordinance proposes that the City and all Mobilehome Owners in a Mobilehome Park must be notified of any change in ownership, and that the prospective park owners will be informed of the Ordinance.

Prohibition of Retaliation

The following conduct by a Mobilehome Park Owner will be considered unlawful under the Ordinance:

- Eviction of a tenant as retaliation for organizing, petitioning, or exercising rights under the Ordinance.
- Any retaliatory conduct, including threats to bring an action to recover possession of a mobilehome park space, harassment, unlawful mobilehome park space rent increases, or unlawfully imposing requirements.

Miscellaneous

An affected Mobilehome Owner may refuse to pay any illegal rent in excess of the maximum rent increase amount authorized under the proposed Ordinance. Such unpaid rent in excess of the maximum rent increase permitted will be a defense in any action brought to recover possession of a Mobilehome Space for nonpayment of rent or to collect the illegal rent.

The following rent increases may be implemented anytime during the year: 1) government mandated expense pass-throughs, 2) utility pass-throughs, 3) capital improvement pass-throughs, and 4) in-place transfer rent increases (e.g., eligible change of ownership of the Mobilehome unit, which remains in its space).

All prospective tenants must be offered the option of a tenancy of 12 months or less upon terms consistent with the proposed Ordinance unless the Mobilehome Park Owner and the Mobilehome

Owners mutually agree upon their own lease terms.

Previous Actions

On July 16, 2018, staff provided the City Council general information on the status of San Leandro Mobilehome Parks. City Council members requested that staff return to the City Council Rules Committee for further discussion and public input regarding mobilehome park space rent.

On January 14, 2019, the City Council held a work session regarding the elements of a proposed Ordinance. Staff summarized key components of an ordinance and presented comparable local ordinances. The City Council provided comments and direction to staff to prepare the Ordinance before the City Council.

On March 4, 2019, the City Council conducted a first reading of a proposed Mobilehome Space Rent Stabilization Ordinance. After receiving public comments and asking questions, staff was instructed to do further outreach and collect comments from both Mobilehome owners and Mobilehome park owners.

On May 20, 2019, the City Council conducted a first reading of a proposed Mobilehome Space Rent Stabilization Ordinance that staff modified from the March 4 version. City Council approved (motion by Councilmember Aguilar and second by Vice Mayor Lopez) the ordinance, with a minor amendment to clarify the “special circumstance” household definition, by a vote of 4 ayes, 1 no, and 1 abstention.

Committee Review and Actions

On October 22, 2018, the City Council Rules Committee held a meeting to receive public input regarding 1) mobilehome park space rents. The City Council Rules Committee directed staff bring the matter to a January 2019 City Council Work Session.

Applicable General Plan Policies

Housing Element Goal 56 Affordable Housing Conservation; Policy 56.08, Conservation of Mobile Home Parks - promote the conservation and rehabilitation of mobile home parks without displacing tenants or reducing the number of affordable units. Mobile home parks should be recognized as an important affordable housing resource for San Leandro’s seniors and low-income households.

Housing Element Policy Action 56.08-A: Mobile Home Rent Stabilization - Consider adopting a mobile home rent stabilization ordinance similar to the agreement currently in effect for Mission Bay. (The agreement would apply more broadly to residents of all mobile home parks in the city and help protect the city’s supply of mobile homes.)

Environmental Review

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only

applies to projects that have the potential for causing a significant effect on the environment.

Summary of Public Outreach Efforts

A community meeting with Mobilehome owners was held on April 17, 2019 at the San Leandro Senior Center. There were 52 people in attendance. Of those attendees there were 42 tenants (or 80% of all meeting attendees) representing all nine San Leandro Mobilehome Parks, 2 former residents of Bayshore Commons who currently self-identify as homeless, 7 tenant advocates, an attendee identifying themselves as a "SL Tenant," and a representative from Assembly Member Rob Bonta's office. Public comments highlighted concerns with the instability of future rent increases, evictions due to infeasible rent increases, and inadequate park conditions.

The meeting with Mobilehome Park Owners had in attendance owners from five of the nine San Leandro Mobilehome Parks in addition to representatives from two industry groups: staff from Western Manufactured Housing Communities Association and a board member from the Rental Housing Association of Southern Alameda County. The public comments from park owners and the industry representatives included opposition to a permanent space rent stabilization ordinance for a variety of reasons (e.g., cumbersome regulations, inadequate fair return) and support for a direct agreement between the City and park owners for space rent stabilization limits over a shorter term period with higher and wider floor/ceiling space rent thresholds.

For tonight's meeting and prior City Council public meetings regarding mobilehome park space rent stabilization, staff contacted the owners and/or owners' representatives of all nine Mobilehome Parks. The City also sent notices to all park residents. Staff emailed copies of the notice to an ongoing interested parties email list. A notice for tonight's meeting was also posted online on Nextdoor.

All public comments received in writing as of the finalization of the agenda materials are included with the agenda (see Attachment B).

Legal Analysis

The proposed Ordinance was prepared by the City Attorney's Office and staff.

Fiscal Impacts

The projected annual cost to administer the Ordinance could range from approximately \$30,000 to \$75,000 depending on the volume of applications for review and appeals. Thus, Ordinance administration could impact the General Fund should fee revenue to offset the costs not be approved. The Ordinance, as proposed, does establish an administrative fee based on a dollar amount per each Mobilehome Space in the City pending future approval by the City Council. The annual fee would cover the costs to administer the Ordinance, including city staff (e.g. a Senior Housing Specialist, Project Specialist, or City Attorney time), a Rent Review Officer, a Hearing Officer, and professional financial services (such as a certified public accountant). Mobilehome Park Owners may pass through up to 50% of any fee approved by the City to Mobilehome Owners in their parks.

Attachment to Staff Report

None

Attachment to Ordinance

Exhibit A: Proposed Mobilehome Rent Stabilization Ordinance

PREPARED BY: Maryann Sargent, Senior Housing Specialist, Community Development Department



City of San Leandro

Meeting Date: June 3, 2019

Ordinance

File Number: 19-272

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE of the City of San Leandro City Council to Add Mobilehome Space Rent Stabilization to the City of San Leandro Municipal Code (An Ordinance that Regulates Space Rents in San Leandro Mobilehome Parks)

The City Council of the City of San Leandro recites the following:

WHEREAS, the State of California recognizes, by the adoption of special legislation regulating tenancies of mobilehome owners in mobilehome parks, that there is a significant difference between homeowners in mobilehome parks and other dwelling units; and

WHEREAS, the State likewise recognizes that homeowners in mobilehome parks, unlike apartment tenants or residents of other rental housing stock, are in the unique position of having made a substantial investment in a residence, the space for which is rented or leased and not owned (*Galland v. County of Clovis* (2001) 24 Cal.4th 1003, 1009); and

WHEREAS, state law defines mobilehomes as a residential structure if they have been in place for nine months or greater (State Law, Chapter 2.5, Cal. Civil Code, Article 1, section 798.3(b)(2) ("The trailer or other recreational vehicle occupies a mobilehome site in the park for nine or more continuous months commencing on or after November 15, 1992").); and

WHEREAS, the City of San Leandro has nine (9) mobile home parks with a total of approximately eight hundred fifty-five (855) spaces located within the City limits. These spaces represent a significant portion of the affordable housing supply within the City; and

WHEREAS, the City of San Leandro General Plan, Chapter 6, Housing Element provides for the following goals and actions:

1. Conservation of Mobile Home Parks. Promote the conservation and rehabilitation of mobile home parks without displacing tenants or reducing the number of

affordable units. Mobile home parks should be recognized as an important affordable housing resource for San Leandro's seniors and low-income households (Policy 56.08).

2. Mobile Home Rent Stabilization. Consider adopting a mobile home rent stabilization ordinance similar to the agreement currently in effect for Mission Bay (Action 56.08-B) (The agreement would apply more broadly to residents of all mobile home parks in the city and help protect the city's existing supply of mobile homes.); and

WHEREAS, it is often difficult to move mobilehomes from one park to another due to the age and condition of some mobilehomes and the limited availability of vacant spaces in mobilehome parks; and

WHEREAS, it is often costly to move a mobilehome and, in many instances, moving a mobilehome requires separation of the mobilehome from its appurtenances, which may create severe damage and depreciation in value to the mobilehome; and

WHEREAS, the U.S. District Court of the Central District of California observed that "the park owners are business people who understand that the operation of a mobilehome park involves an economic relationship in which both park owner and the home owner must make a substantial investment. Indeed, they have encouraged the tenants to make the investment and to expect a return on it." (*Adamson Companies v. County of Malibu*, 854 F.Supp. 1476, 1489 (1994, U.S. Dist. Ct., Central Dist. California).)

NOW THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. AMENDMENT OF CODE. Title 4 (Public Welfare), Chapter 4-39 of the San Leandro Municipal Code, entitled "Mobilehome Park Space Rent Stabilization" and consisting of Article 1, Definitions, and Article 2, General Provisions is hereby created as provided in Exhibit A, which is incorporated herein and made a part hereof.

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 3. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to

adoption.

SECTION 1. Article 1, **Mobilehome Park Rent Stabilization**, is hereby created in [Chapter 4-39, Mobilehome Park Regulations, of Title 4 Public Welfare] of the San Leandro Municipal Code as follows:

TITLE [4] – [PUBLIC WELFARE]
CHAPTER [4-39] – MOBILEHOME SPACE RENT STABILIZATION
ARTICLE [1] – DEFINITIONS

[4-39-100] Short Title.

This Chapter shall be known as the “Mobilehome Space Rent Stabilization Ordinance.”

[4-39-105] Definitions.

For purposes of this Chapter, the following words, terms and phrases shall be defined as follows:

- A. “Affected Mobilehome Owners” means those Mobilehome Owners whose Space Rent is affected by a Rent adjustment made pursuant to this Chapter that is not covered by a valid lease meeting the requirements of California Civil Code section 798.17(b) of the Mobilehome Residency Law, or otherwise legally exempt from local rent stabilization regulation.
- B. “Base Rent” means the Rent in effect for that Space on July 1, 2018, as adjusted in accordance with this Chapter.
- C. “Base Year” means the 2018 calendar year or, if a Fair Return Application subsequently establishes a new Base Rent pursuant to this Chapter, the calendar year preceding the year the application is made for the new Base Rent that is established.
- D. “Capital Improvement” means the installation of new improvements and facilities not including ordinary maintenance or repairs or Capital Replacement Costs. Capital Improvements are required to be amortized over the useful life of the improvements pursuant to the provisions of this Chapter and the United States Internal Revenue Code.
- E. “Capital Improvement Costs” means all costs reasonably and necessarily related to the planning, engineering and construction of Capital Improvements and shall include debt service costs, if any, incurred as a direct result of Capital Improvements. Capital Improvement Costs does not include ordinary maintenance or repairs or Capital Replacement Costs.
- F. “Capital Replacement” means an improvement required to maintain the common facilities and areas of the park in a decent, safe and sanitary condition or to maintain the existing level of park amenities and services. A Capital Replacement is an expenditure as defined by the United States Internal Revenue Code that replaces, upgrades or repairs an existing improvement, such as, but not limited to, an onsite water or electrical distribution or sewage collection system, a street, a parking area, or common facility, such as a laundry, community kitchen or meeting room. If the expenditure qualifies for treatment as a capital expenditure which must be depreciated under the Internal Revenue Code, it is a Capital Replacement. If it can be fully deducted in one year as a business expense, it does not qualify as a Capital Replacement.
- G. “Capital Replacement Costs” means all costs reasonably and necessarily related to the planning, engineering and construction of Capital Replacement and shall include debt service costs, if any, incurred as a direct result of the Capital Replacement. Capital

Replacement does not include Capital Improvement Costs.

- H. “Consumer Price Index or CPI” means the annual percentage change in the prices paid by urban consumers for a representative basket of goods and services. For purposes of this Ordinance, the consumer price index is defined follows: All Urban Consumers, San Francisco-Oakland-Hayward, CA Area All Items, 1982-1984=100, as published by the United States Bureau of Labor Statistics of the United States Department of Labor.
- I. “Fair Return Application” means an application made to the City that seeks to increase Space Rents beyond the lesser of the CPI or four (4) percent during the most recent twelve-month period ending December of the prior year in order to provide a fair return to the Park Owner.
- J. “Hearing Officer” The City Manager or their designee who conducts a hearing or hearings pursuant to this Ordinance. The minimum qualifications of the Hearing Officer shall be as established by the rent review procedures. A person shall not be appointed as a Hearing Officer if the City Manager or designee determines that the person has an actual or potential conflict of interest in the matter or if such appointment would have the appearance of a conflict of interest in the matter. For example, a person who is a mobilehome owner, a park owner or an immediate family member of a mobilehome owner or park owner shall be ineligible to serve as a Hearing Officer.
- K. “Interest Allowance on Amortized Expenses” means the interest rate on the cost of the amortized expense equal to the “average rate” for 30-year fixed rate 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 application. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.
- L. “Legal Expenses” means reasonable attorney’s fees, expert witness’ fees, and legal costs.
- M. “Mobilehome Residency Law” means the California Mobilehome Residency Law codified in California Civil Code Section 798 *et seq.* as now enacted and hereafter amended.
- N. “Mobilehome” has the meaning set forth in Section 798.3 of the Mobilehome Residency Law\ as of the date of enactment of this Chapter as follows:
 - 1. A structure designed for human habitation and for being moved on a street or highway under permit pursuant to section 35790 of the Vehicle Code, including a manufactured home, as defined in section 18007 of the Health And Safety Code, and a mobilehome, as defined in section 18008 of the Health And Safety Code, but, except as provided in subsection 2 of this definition, does not include a recreational vehicle, as defined in section 799.29 of the Civil Code and section 18010 of the Health and Safety Code or a commercial coach as defined in section 18001.8 of the Health and Safety Code.
 - 2. "Mobilehome" for purposes of this Chapter and pursuant to California Civil Code section 798.3(b) “includes trailers and other recreational vehicles of all types defined in section 18010 of the Health and Safety Code, other than motor homes, truck campers, and camping trailers, which are used for human habitation, if the occupancy criteria of either subsection [2a] or [2b] of this definition, as follows, are met:”
 - a. “The trailer or other recreation vehicle occupies a mobilehome site in the park,

on November 15, 1992, under a rental agreement with a term of one month or longer, and the trailer or other recreational vehicle occupied a mobilehome site in the park prior to January 1, 1991.” (Civil Code section 798.3(b)(1))

- b. “The trailer or other recreational vehicle occupies a mobilehome site in the park for nine (9) or more continuous months commencing on or after November 15, 1992.” (Civil Code section 798.3(b)(2))
- O. “Mobilehome Owner” means a person who is the owner of a Mobilehome and legally occupies the Mobilehome within a Mobilehome Park.
- P. “Mobilehome Park” or “Park” has the meaning set forth in Section 798.6 of the Mobilehome Residency Law, which is defined as of the date of enactment of this Chapter as any area of land within the City of San Leandro where two (2) or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.
- Q. “Mobilehome Space” or “Space” is 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.
- R. “Mobilehome Park Owner” or “Park Owner” means the owner or operator of a mobilehome park or an agent or representative authorized to act on said owner’s or operator’s behalf in connection with the maintenance or operation of such park.
- S. “Party” means any Affected Mobilehome Owner and/or Park Owner involved in proceedings under this Chapter.
- T. “Prospective Mobilehome Owner” means a person who is in the process of negotiating a Space tenancy in a Mobilehome Park.
- U. “Rent” means any consideration, including any bonus, benefit or gratuity demanded or received by a Park Owner for, or in connection with, the use or occupancy of a Mobilehome Space, or in connection with the assignment of a lease, or in connection with subleasing of a Space. Rent shall not include:
 - 1. Utility 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 Mobilehome Owners 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 Mobilehome unit (as opposed to amounts paid for the use and occupancy of a Mobilehome Space).
 - 4. Charges for laundry services.
 - 5. Storage charges.
- V. “Rent Increase” means any increase in Base Rent charged by a Mobilehome Park Owner to a Mobilehome Owner or offered to a Prospective Mobilehome Owner.
- W. “Rent Review Officer” means the Community Development Director or designee who shall serve as the Rent Review Officer to administer and enforce the provisions of this

Ordinance. The Rent Review Officer shall have the power and duty to receive, investigate, and make findings and decisions regarding petitions for rent adjustment.

- X. “Rent Stabilization Administration Fee” means the fee established by this Ordinance and amended from time to time by resolution of the City Council in accordance with the provisions of this Chapter.
- Y. “Service Reduction” means a decrease or diminution in the basic service level provided by the Park Owner occurring at any time since January 1, 2019, 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 Mobilehome Residency Law, California Civil Code Section 798 *et seq.*
 - 3. The Mobilehome Parks Act, California Health and Safety Code Section 18200 *et seq.*, or
 - 4. An express or implied agreement between the Park Owner and the Space tenant.
- Z. “Special Circumstances Household” means a Mobilehome Owner or anyone else leasing a Space who has the following characteristics at the time of notice or implementation of a Mobilehome Park Owner action prescribed by this Ordinance:
 - 1. Has total household income at or below fifty percent (50%) of the Alameda County area median household income as established annually by the U.S. Department of Housing and Urban Development, or closest equivalent if the HUD income limits no longer exist; and;
 - 2. Is sixty-two (62) years of age or older; or
 - 3. Has total household income at or below fifty percent (50%) of the Alameda County area median household income as established annually by the U.S. Department of Housing and Urban Development, or closest equivalent if the HUD income limits no longer exist; and; Qualifies as disabled as defined by Title 42, United States Code section 423; or
 - 4. handicapped as defined by California Health and Safety Code Section 50072.

SECTION 2. Article 2, **Mobilehome Park Rent Stabilization**, is hereby created in [Chapter 4-39, Mobilehome Park Regulations, of Title 4 Public Welfare] of the San Leandro Municipal Code as follows:

TITLE [4] – [PUBLIC WELFARE]
CHAPTER [4-39] – [MOBILEHOME PARK RENT STABILIZATION PROGRAM]
ARTICLE [2] – [GENERAL PROVISIONS]

[4-39-200] Purpose.

The purpose of this Article is to establish an efficient method for reviewing certain requested Mobilehome Space Rent Increases in Mobilehome Parks to protect Mobilehome Owners from arbitrary, capricious or unreasonable Rent adjustments while enabling Park Owners and/or operators and investors to earn a fair and reasonable return on their investment in their Mobilehome Parks.

[4-39-202] Definitions.

Unless specifically defined in this Article or the context specifically requires otherwise, the terms used herein are defined in Article 1, Definitions, of this Chapter.

[4-39-205] Applicability.

This Article shall be applicable to all Mobilehome Spaces within the City of San Leandro except those specifically exempted by this Chapter or state law.

[4-39-207] Exemptions.

- A. The following exemptions from local Rent regulations are provided by state law:
1. Spaces that are subject to a lease that exempts that Space from Rent regulation pursuant to the Mobilehome Residency Law.¹
 2. New Mobilehome Spaces exempted pursuant to Civil Code section 798.45 of the Mobilehome Residency law.²
 3. Spaces that are not the principal residence of the Mobilehome Owner, and that are exempt pursuant to California Civil Code Section 798.21 of the Mobilehome Residency Law.
- B. This Article shall not apply to Mobilehomes or Mobilehome Parks owned or operated by any governmental agency or any rental unit where Rent is subsidized pursuant to a public program that limits the Rent that can be charged for the Mobilehome.
- C. This Article shall not apply to Mobilehome Parks with fewer than ten (10) Spaces.

[4-39-210] Base Rent.

- A. Base Rent in 2018 for Non-exempt Spaces. Base Rent in 2018 for non-exempt Spaces means the Rent in effect for that Space on July 1, 2018. Except as provided in this Article, a Mobilehome Park Owner shall not demand, accept or retain Rent for a Mobilehome Space exceeding the Base Rent.
1. If a previously rented Mobilehome Space was not rented in the 2018 calendar year, the Park Owner shall not demand, accept, or retain Rent for said Space in an amount

¹ Civil Code section 798.17(a)(1) (“Rental agreements satisfying the criteria for exemption under Civil Code Section 798.17(b) shall be exempt from any city ordinance, rule, regulation, or initiative measure that establishes a maximum amount that a landlord may charge a tenant for rent. The terms of a rental agreement meeting the criteria of subdivision 798.17(b) shall prevail over conflicting provisions of an ordinance, rule, regulation, or initiative measure limiting or restricting rents in mobilehome parks, only during the term of the rental agreement or one or more uninterrupted, continuous extensions thereof. If the rental agreement is not extended and no new rental agreement in excess of 12 months’ duration is entered into, then the last rental rate charged for the space under the previous rental agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulation, if any.”)

² Civil Code sections 798.45 and 798.7 (Newly constructed Mobilehome Spaces initially held out for rent after January 1, 1990 “shall be exempt from any city ordinance, rule, regulation, or initiative measure adopted by any city, county, or city and county, which establishes a maximum amount that a landlord may charge a tenant for rent.”)

exceeding the 90th percentile of all subject Rents in effect at the time the Space is rented. The Park Owner shall provide evidence verifying compliance with the terms of this provision to the Rent Review Officer upon request.

2. If an existing Mobilehome Space is rented for the first time after the 2018 calendar year, the rent charged by the Park Owner in that year shall be the Base Rent for the Space.

B. Base Rent Following Expiration of an Exempt Lease. Base Rent for a Mobilehome Space that becomes subject to this Chapter upon the expiration of an exempt lease shall be the Rent in effect under the exempt lease as of the date of its expiration. Mobilehome Space Rents shall be verified by information required on the annual registration application or any other documentation required by the City.

C. Base Rent Following Termination or Permanent Removal. Under either of the following circumstances listed below, a Park Owner shall be permitted to charge a new Base Rent for the Mobilehome Space not to exceed the 90th percentile of all subject rents in effect at the time the Space is rented:

1. The termination of the tenancy of the Affected Mobilehome Owner in accordance with the Mobilehome Residency Law; or
2. The voluntary permanent removal of a Mobilehome by a Mobilehome Owner. 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.

The Park Owner shall provide evidence verifying compliance with the terms of this provision to the Rent Review Officer upon request.

D. Base Rent Following a Fair Return Application. Base Rent shall be the allowable Rent determined as a result of a Fair Return Application.

[4-39-212] Annual Rent Increases.

A. Annual Rent Increase:

1. Starting in 2019, on or after January 1 of each year, a Mobilehome Park Owner may impose a Rent Increase for a Mobilehome Space that shall be equal to the lesser of CPI or four (4) percent of the Rent charged for the Space in the preceding year, except as permitted by this Article in accordance with a CPI Decrease, an In-place Mobilehome transfer, or extraordinary circumstances. Such Rent Increase may be imposed once in any twelve (12) month period.
2. CPI Decrease: In the event that the CPI decreases, no Rent decrease shall be required pursuant to this Section.

B. Notice of Allowable Annual Rent Increase.

1. Calculation of Annual Increase. The allowable annual Rent Increase shall be equal to the lesser of CPI or four (4) percent annually unless the Rent Review Officer or designee elects to set an alternate cap on the annual increase due to a CPI Decrease or extraordinary circumstances.

2. Notice of Annual Increase. If the Rent Review Officer elects to change the amount of the Annual Increase due to a CPI Decrease or extraordinary circumstances, notice shall be: (a) posted by February 15 of each year in City Hall and on the City's website, (b) mailed and/or emailed by the City to each Park Owner and Affected Mobilehome Owner in each Park, and (c) posted by the Park Owner on a notice board in each Mobilehome Park within three business days after it is received by the Park Owner.
- C. 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 Park Owner has given the notice required by state law.
- D. Notice: A written notice of the amount and duration of each Rent Increase or new or increased Capital Improvement Cost or Capital Replacement Cost pass-through charge made under the provisions of this Section shall be filed by the Park Owner with the Rent Review Officer or designee, and provided to each Affected Mobilehome Owner, at least ninety (90) days before the Rent Increase goes into effect or as required by the Mobilehome Residency Law. The notice shall identify the Park and shall specify the dollar amount of the increase, the percentage of the increase, the duration of the increase, an itemization of all new or increased pass-throughs and additional Rent charges, the specific Space affected, the date the increase will go into effect, how each increase was calculated, and the date the Rent on each affected Space was last increased. The notice shall also advise each Affected Mobilehome Owner of any right to petition for review of a proposed Rent Increase and that a petition form may be requested from the Rent Review Officer or Designee.

[4-39-215] Vacancy Decontrol, Rent Increases and Establishment of New Base Rent.

- A. A Park Owner shall be permitted to charge a new Space Rent for a Mobilehome Space subject to the terms of this chapter whenever a lawful Space vacancy occurs. The new Space Rent shall become the Base Rent upon which future rent increases pursuant to this chapter will be calculated. For the purposes of this chapter, a lawful Space vacancy is defined as any of the following:
1. Voluntary in place transfer, which is a sale, transfer or other conveyance of a mobilehome with the mobilehome remaining on the mobilehome space following the sale, transfer or conveyance. A transfer of title whereby the Mobilehome Owner adds or removes one or more co-owners and continues to reside in the mobilehome as their primary residence shall not constitute an in-place transfer. No increase may be imposed pursuant to this Section when an existing Mobilehome Owner replaces an existing Mobilehome with another Mobilehome, occupying the same Mobilehome Space. No increase may be imposed pursuant to this Section where title to the Mobilehome passes to one or more person(s) who, at the time of the title transfer, (1) was/were also lawful, authorized resident(s) of the mobilehome, or (2) were/are parents, siblings, children, grandchildren, nieces, or nephews of the Mobilehome Owner and the Mobilehome remains in the same Space. A Park Owner may not condition an in-place transfer of a Mobilehome, or condition the assignment of an existing lease to a prospective Mobilehome Owner that is subject to this Ordinance, upon agreement to an increased Rent.
 2. Voluntary removal of a mobilehome by the mobilehome owner who will no longer be a resident of the Park. 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 with a newer mobilehome shall not

constitute a voluntary removal of the mobilehome under this section.

3. A vacancy occurring after the Park Owner obtains a judgment of unlawful detainer (an eviction), a judgment of abandonment for an “abandoned mobilehome” as defined by and pursuant to the Mobilehome Residency Law, or other termination of the tenancy of the Affected Mobilehome Owner in accordance with the Mobilehome Residency Law, California Civil Code Sections 798.55 through 798.60, as amended.
 4. Abandonment of the mobilehome as determined by a judgment of abandonment pursuant to section 798.61 of the Mobilehome Residency Law.
- B. Rent Increases authorized by this Section shall be in addition to any other Rent Increases authorized by this Chapter.

[4-39-217] Fair Return Rent Increases.

- A. Fair Return. A Park Owner has the right to obtain a Rent Increase to maintain net operating income (“MNOI”) equal to the Base Year net operating income adjusted by the percentage increase in the CPI since the Base Year. It shall be presumed this standard provides a fair return. Nothing in this Article shall preclude the Rent Review Officer, or Hearing Officer if on appeal, from granting a Rent Increase that is necessary in order to meet constitutional fair return requirements.
- B. If a Park Owner presents evidence to the Rent Review Officer, or Hearing Officer if on appeal, including any financial records requested by the Rent Review Officer, which proves that the Park Owner is denied a fair return by the provisions of this Article, the Rent Review Officer, or Hearing Officer if on appeal, may authorize an increase in Rent as deemed appropriate by the Rent Review Officer, or Hearing Officer if on appeal, to provide a fair return to the Park Owner. The Rent Review Officer, or Hearing Officer if on appeal, shall use the method set forth in this Article to determine the fair return.

[4-39-220] Method to Determine a Fair Return.

- A. Maintenance of Net Operating Income: It shall be presumed that the net operating income produced by the property during the Base Year provided a fair return. A Park Owner shall be entitled to Rents sufficient to earn a fair and reasonable return and to maintain and increase the Base Year net operating income in accordance with this Section. This method shall be called maintenance of net operating income (“MNOI”) and shall be included in all Fair Return Applications.
- B. Adjustment of Base Year Net Operating Income: The Park Owner or the Affected Mobilehome Owners may apply to the Rent Review Officer to rebut the presumption of fair and reasonable return based upon the Base Year net operating income. To make such a determination and in order to adjust to the Base Year net operating income, the Rent Review Officer, or Hearing Officer on appeal, must make 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 park 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 repairs were 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. 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 Mobilehome Owners were charged reduced rent.
 - b. If the gross income during the Base Year was significantly lower than normal because of the destruction of the Park 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 Year Rents were disproportionately low in comparison to the Base Year Rents of other comparable parks in the City.
 - e. Other exceptional circumstances, excluding any comparisons of Base Year Rents to Rents of other comparable parks located outside of the City or to market rents determined from comparable Parks located outside of the City.

C. 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 the following:
 - i. Gross Rents calculated as gross rental income at 100 percent occupancy, adjusted for uncollected Rents due to vacancy and bad debts to the extent such vacancies or bad debts are beyond the control of the Park Owner. Uncollected Space Rents in excess of three percent of gross Space Rent shall be presumed to be uncollectable unless established otherwise and shall not be included in computing gross rental income.
 - ii. All other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit, except as excluded below.
 - b. Gross rental income shall not include the following:
 - i. Utility charges for submetered gas and electricity.

- ii. Charges for water, refuse disposal, sewer service, and/or other services which are either provided and charged to Mobilehome Owners 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 Mobilehome unit (as opposed to amounts paid for the use and occupancy of a Mobilehome Space).
- iv. Charges for laundry services.
- v. Storage charges.
- vi. Rental Income from Spaces exempted from Rent limitation by state law or this Chapter.

3. Operating Expenses.

- a. Operating expenses shall include the following:
 - i. Reasonable costs of operation and maintenance.
 - ii. Management expenses. It shall be presumed that management expenses increase by the percentage increase in Rents or the CPI, whichever is greater, between the Base Year and the prior year unless the level of management services has either increased or decreased significantly between the Base Year and the prior year.
 - iii. Utility costs, except 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 attributable to the Base Year or prior year regardless of when actually paid.
 - v. License and registration fees required by law to the extent these expenses are not otherwise paid or reimbursed by Mobilehome Owners.
 - vi. Park Owner-performed labor compensated at reasonable hourly rates. No Park Owner-performed labor shall be included as an operating expense unless the Park Owner submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this subsection of five percent of gross income unless the Park Owner shows greater services were performed for the benefit of the Mobilehome Owners.
 - vii. Legal Expenses incurred (1) in connection with successful good faith attempts to recover Rents owed, (2) pursuit of rights under or in relationship to this Article, including Legal Expenses incurred in the course of pursuing successful Fair Return Applications, (3) under unlawful detainer actions not in derogation of applicable law and, when incurred in the normal operation of the Park, to the extent such expenses are not recovered from adverse or other parties.

- viii. Interest Allowance on Amortized Expenses.
- b. Exclusions from Operating Expenses. Operating expenses shall not include the following:
 - i. Mortgage principal or interest payments or other debt service costs.
 - ii. Penalties, fees or interest assessed or awarded for violation of any provision of this Chapter or other provisions of law.
 - iii. Land lease expenses.
 - iv. Political contributions and payments to organizations which are substantially devoted to legislative lobbying purposes.
 - v. Depreciation.
 - vi. Expenses for which the Park Owner 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 that deviate substantially from the historical average increase in expenses since the base year.
 - viii. Expenses associated with the provision of master-metered gas and electricity services.
 - ix. Expenses attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements.
 - x. Expenses attributable to a Park-owned Mobilehome, including but not limited to any Mobilehomes rented out by the Park Owner except when provided to a Park manager as a component of employment compensation.
 - xi. Expenses attributable to Spaces exempt from Rent limitations by state law or this Chapter shall be excluded, for the purpose of determining applicable rents for non-exempt spaces, by reducing the total allowed operating expenses by the amount attributable to exempt spaces. This may be done by reducing the total allowed operating expenses by the percentage of operating expenses attributable to the total number of exempt Spaces in the Park, or by another method approved by the Rent Review Officer.
- c. Adjustments of Operating Expenses. Base Year and/or current operating expense items shall be averaged with other expense levels for the same types of items for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for the item(s) that most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and prior year expenses. Grounds for such adjustments include, but are not limited to:
 - i. Either the amount or nature of 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 prior year expense is not a reasonable projection of expenditures for that item in recent years or of future expenditures for that item.
 - iv. If a particular item of 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 the prior year expense although the level or type of service for which the expense is incurred 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.
- D. Constitutionally Required Fair Return: Notwithstanding any other provisions of this Chapter, the Rent Review Officer or Hearing Officer, if on appeal, is authorized to approve any Rent Increase that is constitutionally required by law to yield a fair return.³
- E. Rent Increase Effective Date: Rent Increases approved by the Rent Review Officer shall be effective on the date given by the applicant in the notice to the Affected Mobilehome Owners required in section 798.30 of the California Civil Code. In the event that the period for determining the allowable Rent Increase exceeds 120 days, the Park Owner may recover a Rent charge retroactive to 120 days after the Fair Return Application is deemed complete. Delays or continuances that are mutually agreed to in writing by all parties concerned, extensions authorized in this Article, and the number of days that lapse between applicant receiving notice of the necessity of replenishing their cost account with the City and paying the required amount pursuant to the fee payment procedure for review of Fair Return Applications, including any costs of expert analysis ordered pursuant to this Article, shall not be counted in determining whether said 120-day period has expired. In order to avoid undue hardship on the Mobilehome Owners affected by the decision, the retroactive Rent charge shall be amortized and paid over a period of five years, unless the Rent Review Officer, or Hearing Officer if on appeal, determines that a different amortization period is more reasonable. Interest may be charged on this amortized Rent.
- F. Per Space Rent Adjustment Pursuant to Fair Return Standard: The allowable Rent Increase per Mobilehome Space pursuant to this Section may not be increased as a result of exempt Spaces in the Park.

[4-39-222] Settlement Proposals.

³ *Fisher v. Berkeley*, " 37 Cal. 3d 644, 693 P.2d 261, 209 (The court held that a standard allowing the landlord to recover a reasonable return on investment was sufficient to withstand a facial challenge. The court suggested a Net Operating Income Method would be acceptable, provided landlords' income was not indefinitely frozen at the nominal amount earned in the base year.)

- A. At least 10 days prior to the date specified when the Rent Review Officer will take under submission a Fair Return, Capital Replacement, or Rent Reduction application filed pursuant to this Article, or 10 days prior to any appeal hearing, the Mobilehome Owner Representative or the Park Owner may submit a written settlement offer to the other party to settle the claims or requests made in the application and to allow a decision or award to be made in accordance with the terms and conditions stated in the offer.
- B. The offer shall include a statement of the terms and conditions that the offering party is willing to accept, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. At the same time that the offering party submits its offer to the other party, the offering party shall also file a copy of the written settlement offer with the Rent Review Officer, or Hearing Officer if on appeal, in a separately sealed envelope, with a statement on the outside of the envelope identifying the offeror and stating that it is a written settlement offer submitted pursuant to this section. The sealed copy of the written settlement offer that is filed with the Rent Review Officer or Hearing Officer if on appeal shall not be opened until it is either timely accepted by the opposing party or, if it is not timely accepted by the opposing party, after the Rent Review Officer or Hearing Officer, as appropriate, has rendered a final decision on the application or appeal.
- C. Acceptance of the offer must be in writing and shall be signed by the counsel for the accepting party or, if unrepresented by counsel, by the accepting party.
- D. If the offer is accepted, the parties shall notify the Rent Review Officer, and the Hearing Officer if the application is on appeal, and the Rent Review Officer or Hearing Officer, as appropriate, shall enter the accepted offer as the final decision respecting the application or appeal.
- E. If the offer is not accepted within seven calendar days of the offer's receipt by the opposing party, the offer shall be deemed withdrawn and cannot be given in or considered as evidence as part of the Rent Review Officer's or Hearing Officer's decision.
- F. Legal Expenses. If an offer made pursuant to this Section is not accepted and the rejecting party fails to obtain a more favorable award or decision, the rejecting party shall not recover their post-offer Legal Expenses and shall pay the Legal Expenses incurred by the offering party from the time of the offer. If competing offers to settle are timely submitted but have not been timely accepted, the Rent Review Officer or Hearing Officer, as may be appropriate, shall determine which party has failed to obtain a more favorable decision or award and assign responsibility for the payment of legal expenses accordingly.
 - 1. The Rent Review Officer or Hearing Officer shall mail and email to the parties a notice of assignment of Legal Expense liability ("Legal Expense Notice") within seven days after issuance of a final decision on the application or appeal. Within seven days of receipt of the Legal Expense Notice, each party shall simultaneously serve a written request for the awarding of and an accounting of Legal Expenses on the Rent Review Officer or Hearing Officer and all parties by regular mail and electronic mail. Said requests shall include detailed records of fee billings, time records and supporting declarations executed under penalty of perjury. Within seven days of receiving the requests, opposing parties may file and serve objections in the same manner as service of the original requests. Within seven days after service of the oppositions or within seven days of the deadline for the filing of oppositions, if none is submitted, the Rent Review Officer or Hearing Officer may submit a proposed supplemental decision stating the amount of legal expenses each party is required to pay and the reasons therefor.

- a. When issued by the Rent Review Officer, said supplemental decision shall become final when issued and shall be appealable separately from the Rent Review Officer's decision pertaining to the merits of the application. The appellate procedures set forth in this Article shall govern an appeal of a Rent Review Officer's decision pertaining to the awarding of Legal Expenses, but an appeal of a Legal Expenses award shall be consolidated with any appeal taken of the Rent Review Officer's final decision pertaining to the merits of the application.
 - b. When issued by the Hearing Officer, said supplemental decision shall become final seven days after the proposed decision, unless either party requests an evidentiary hearing within said seven days in which case a final decision shall be made within seven days after the evidentiary hearing is concluded. The Hearing Officer's decision shall become final upon mailing, with proofs of service, to all parties of the (i) final decision on the merits of the application, or (ii) final decision on the Legal Expenses award, whichever occurs last.
 - c. In their discretion, the Rent Review Officer or the Hearing Officer, as appropriate, may reduce or offset from any Legal Expense award made in favor of the applicant by the amount of legal expenses the applicant may be required to pay.
2. Any award of Legal Expenses shall be itemized by the Park Owner separately from any Rent Increase or Services Reduction award. Legal Expenses awarded to Park Owners shall be shown as a limited time pass-through charged to the Affected Mobilehome Owners. A Legal Expense award to a Park Owner plus Allowable Interest on Amortized Expenses shall be recovered in equal monthly payments over a five-year period, unless the Rent Review Officer or Hearing Officer determines that a different period is more appropriate, and shall be eliminated after payment is completed at the end of the amortization period. Legal Expenses awarded to Mobilehome Owners shall be made as either a Rent credit or direct payment to the Mobilehome Owners.
 3. In determining whether a party has obtained a more favorable award or decision than that proffered in a written settlement offer not accepted by that party, the Rent Review Officer or Hearing Officer shall rely upon and be guided by legal precedent and authorities construing the same term as it is used in California Code of Civil Procedure Section 998.
- G. The time limits prescribed in this Section may be extended by the Rent Review Officer or the Hearing Officer, as appropriate, upon a showing of good cause.

[4-39-225] Procedures for Review of Rent.

- A. The following matters are subject to review by the Rent Review Officer upon application:
 1. Fair Return Rent Increase.
 2. Preapproval of a temporary Rent Increase for specified Capital Improvements and Capital Replacements.
 3. Rent reduction for Service Reduction.
- B. Limit on Frequency of Applications. Only one application pursuant to this Article may be

filed for a Mobilehome Park within any 12-month period, except in the event of extraordinary circumstances that could not reasonably have been foreseen at the time the prior application was filed.

C. Filing of Application.

1. Applications for Rent adjustments for fair return Rent Increases, temporary Capital Improvements and Capital Replacements Rent Increases, or Rent reductions for Service Reductions shall be on forms prescribed by the Rent Review Officer.
2. The Rent Review Officer may require an application to contain any information as he or she deems relevant, including, but not limited to:
 - a. A list of the names and addresses of all Mobilehome Owners subject to the proposed Rent adjustment.
 - b. A statement of the date the Rent adjustment is proposed to be effective.
 - c. The Rent for each Space in the park in the Base Year, and the three (3) prior years.
 - d. An income and expense statement for the Base Year, and the four (4) prior years.
 - 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 upon to justify the Rent Increase, or upon which the Mobilehome Owner is relying upon to justify a Rent reduction.
 - g. A statement of the applicant's theories in support of the Rent Increase or Rent reduction.

D. Notice of Application. The applicant and the City shall provide notice of an application as follows:

1. The applicant and City: by sending a hard copy and electronic copy of the application to either (a) each Affected Mobilehome Owner, or (b) the Park Owner, as appropriate;
2. The applicant: by providing the City with hard and electronic copies of the application.

E. Determination that Application is Complete. Within sixty [60] days after filing an application, the Rent Review Officer will determine if it is complete. An application will be considered complete only if and when the required fees have been paid. If the application is incomplete, the Rent Review Officer will inform the applicant in writing as to what additional information is required. Within 45 days of the applicant's submittal of requested additional information or fees, the Rent Review Officer shall determine whether the application is complete and notify the applicant of the Rent Review Officer's determination. This process shall continue until the Rent Review Officer issues a written notice advising the applicant that the application is complete. The time period for Rent Increase effective date shall begin running on the date the Rent Review Officer delivers said completeness notice to the applicant.

- F. Access to Application. Applications shall be available upon request for inspection and copying by the public during the City's normal business hours.
- G. Expert Analysis. Upon the receipt of an application authorized by this Article, the Rent Review Officer shall determine if the employment of experts will be necessary for a thorough analysis of the application. The Rent Review Officer may retain a certified public accountant to, among other things, 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 Article; and/or, a licensed appraiser.
- H. Response by other party. The party not filing the application may submit a written response to the application within 30 days after the application is determined complete, unless the Rent Review Officer determines that there is good cause to extend that deadline. The party filing a written response shall deliver it to the applicant and to the Rent Review Officer.
- I. Decision by Rent Review Officer. Applications filed pursuant to this Article shall be decided by the Rent Review Officer based on substantial evidence and without a hearing or personal appearances by any of the involved parties or their representatives. The decision will be made within 60 days of the date that the application is deemed complete, unless the Rent Review Officer determines that there is good cause to extend that deadline. The Rent Review Officer shall email all involved parties or their representatives the date on which the Rent Review Officer will consider the matter under submission and beyond which the Rent Review Officer will not accept additional information, briefs, evidence or arguments (the "Submission Date"). The Rent Review Officer shall email notice of the Submission Date to all parties or their representatives at least 21 days prior to the Submission Date. The Rent Review Officer's decision on the merits of the application shall be emailed and sent by mail, with proof of mailing, to the Mobilehome Owner, the Park Owner, the Park Owner's and Mobilehome Owners' representatives, and the Mobilehome Owners' Association Representative, if any.
- J. Required Findings in Fair Return Decision: Any Rent adjustment decision pursuant to this Article that approves a fair return rent increase shall include a determination that the Park Owner would be denied a fair return according to the method in this chapter and shall include findings made of the following:
1. Base Year and prior year rental income;
 2. Base Year and prior year operating expenses by category;
 3. Base Year and prior year overall operating expenses;
 4. Base Year and prior year net operating income;
 5. The percentage change in net operating income between the Base Year and the prior year;
 6. The percentage change in the CPI between the Base Year and prior year;
 7. The ratio of the percentage change in net operating income to the percentage change in the CPI between the Base Year and prior year;
 8. The rent adjustment required under the MNOI standard, if applicable to the

application.

- K. Conditions for Allowance or Disallowance of Rent Increase: The allowance or disallowance of any proposed Rent Increase (or decrease) or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this Article.

- L. Representation of Parties:
 - 1. Each party may be represented by any person of its choosing. The representative need not be an attorney.
 - 2. Written designation of representatives shall be filed with the Rent Review Officer or Hearing Officer.
 - 3. 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 by the Rent Review Officer or Hearing Officer.

- M. Overall Period for Review of Application. Except as otherwise provided in this Article, a decision on an application for Rent adjustment made pursuant to this Article shall be made within 120 days after the application is deemed complete, unless extended by the Rent Review Officer or Hearing Officer for good cause.

- N. Standard of Review. The applicant shall bear the burden of proof, by a preponderance of the evidence, on all issues necessary to the granting of the petitioner's petition, both at the Rent Review Officer and Hearing Officer levels of review.

[4-39-227] Appeal of the Rent Review Officer's Decision.

- A. The decision of the Rent Review Officer on an application for Rent Increase for fair return, Capital Improvements, or Capital Replacements, or Rent reduction for Service Reduction may be appealed within 30 days after the date of its mailing. An appeal by the Park Owner shall be signed by the Park Owner or its lawfully authorized agent. An appeal by the Mobilehome Owners must be signed by the Mobilehome Owners residing on twenty-five (25) percent of the Mobilehome Spaces that are subject to the Rent Review Officer's decision. An appeal must be in writing and must be delivered to the opposing parties and the City within the 30-day appeal period. If the Rent Review Officer's decision is not timely appealed, the Rent Review Officer's decision shall become final on the thirty-first day after the decision is mailed. The appealing party shall be required to pay for the costs of the appeal, including those imposed by the Hearing Officer and those established by resolution of the City Council. The appeal shall be conducted through a de novo evidentiary hearing, which shall consider at least the following: the application, all information, expert opinions and arguments submitted by the parties to the Hearing Officer; the opinions of the City's experts; additional arguments or facts upon which the Hearing Officer's decision is based; and the briefs, evidence and testimony accepted or rejected by the Hearing Officer in support of or in opposition to the application by any of the parties to the proceedings.

- B. Procedure for Selection of a Hearing Officer.
 - 1. Hearing Officers shall be licensed attorneys of the State Bar of California in good standing, and shall have no financial interest in Mobilehomes, Mobilehome Spaces or Mobilehome Parks and shall not have represented Mobilehome Park Owners or

Mobilehome Park Mobilehome Owners in Rent setting cases or Park closings, Park conversions or any disputes between Park Owners and Park residents.

2. A hearing officer shall be selected through the California Office of Administrative Hearings (OAH). In the event OAH is unavailable or unable to provide a hearing officer, the City Manager or designee may elect to contract with another agency, lawyer, or law firm that provides arbitration or hearing officer services or may establish a panel from which the hearing officer is selected in accordance with this Section.
3. In the event a list of hearing officers is established, the City Manager or designee shall make all reasonable efforts to ensure that the list is comprised of at least five qualified candidates. 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 City shall make the initial selection of the Hearing Officer from the panel. The parties to the appeal shall be advised in writing of the selected Hearing Officer, and advised of their right to disqualify the selected Hearing Officer within five days of receipt of the notice of selection. In the event of a disqualification, another Hearing Officer shall be randomly selected from the panel by the City, and a new notice of hearing sent to the parties. Each party shall have the right to disqualify one Hearing Officer for a particular appeal 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.

C. Time of and Scheduling of Hearing.

1. A hearing on the appeal shall commence within 30 days of the selection of the Hearing Officer unless both parties agree to a different schedule. The hearing shall be completed within 15 days after it is commenced. These time deadlines may be extended by the Hearing Officer for good cause.
 2. The hearing may be scheduled during normal business hours of the City unless a majority of the residents that are subject to the appeal requests that the hearing be scheduled outside of normal City business hours. The hearing shall be scheduled at a time that is convenient for the residents' and Park Owner's representatives.
- D. Presentations by each party at the hearing and of the City staff and experts shall be limited to 30 minutes each unless the Hearing Officer determines good cause exists to extend those time periods. Each party and the City shall be permitted a cumulative total of one hour of cross-examination of the opposing party's expert witnesses, unless the Hearing Officer determines good cause exists to extend those time periods. The City may provide legal counsel to help prepare the City's experts for their presentation at the appeal hearing, to defend the City's expert witness and to cross examine the expert witnesses of the parties.
- E. Notwithstanding anything to the contrary stated herein, whether or not the City decides to appear, submit documents and/or briefs, retain counsel to represent the City, or otherwise participate in the administrative appellate proceedings shall be left to the discretion of the City.
- F. Written notice of the time, date and place of the hearing shall be given at least 21 days prior to the hearing.

G. Requests for Additional Information Not Previously Provided to the Rent Review Officer by Opposing Party:

1. Either party or the City may request that additional, supporting documentation that was not previously provided to the Rent Review Officer as part of its initial examination and decision be provided to substantiate the claims made by a party. The request shall be presented in writing to the Hearing Officer.
2. The Hearing Officer may order production of such requested documentation if the Hearing Officer determines the information is relevant to the proceedings.

H. Responses:

1. Mobilehome Owners or the Park Owner may submit responses to the decision of the Rent Review Officer or to reports by the City's experts. Responses shall be submitted to the other parties and the Hearing Officer at least 10 days prior to the hearing. Responses shall be in printed and electronic form.
2. Rebuttal reports may be submitted by the Park Owner, Mobilehome Owners, and/or City or its expert(s). Such reports shall be submitted to the parties and Hearing Officer at least five days prior to a hearing. Rebuttals shall be in printed and electronic form.
3. The parties' responses and rebuttal reports shall be considered the prehearing briefs of the parties and the City and no other prehearing briefs shall be allowed unless requested by the Hearing Officer for good cause.

I. Conduct of Hearing:

1. 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.
2. 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.
3. 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 may be admitted and considered.
4. 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.
5. The Hearing Officer may grant or order not more than two continuances of the hearing for not more than 10 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.

6. A recording of the proceedings shall be made or arranged by the Hearing Officer in a format that is made easily available, upon request, within thirty days of the conclusion of the hearing.
7. The hearing shall be conducted in a manner that ensures the 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 their respective cases.
8. **Deadline for Decision:** Appeals shall be decided by the Hearing Officer within 90 days of the date of the filing of the appeal and payment of all appellate fees, unless extended by the Hearing Officer for good cause or by the Rent Review Officer to accommodate scheduling availability of a Hearing Officer.
9. **Notice of Decision:** The Rent Review Officer shall mail hardcopies of the hearing officer's decision to the Park Owner and all Affected Mobilehome Owners within 15 calendar days of the City's receipt of the Hearing Officer's written decision. The decision shall be emailed to the Park Owner's and Mobilehome Owners' representatives as soon as possible after the decision is received by the City.
- J. **Modification of Decision in the Event of Mathematical or Clerical Inaccuracies:** Any party alleging that the Hearing Officer's statement of decision contains mathematical or clerical inaccuracies may so notify the Hearing Officer and the other party within 15 calendar days of the date of mailing of the decision. The Hearing Officer may make corrections and shall file a corrected statement of decision within 10 working days after receiving the request to correct. Alternatively, the Hearing Officer may decline to correct the decision and shall so notify the parties of his/her determination. Upon filing a corrected statement of decision or a determination not to correct the decision, the Hearing Officer's decision shall be final.
- K. **Preservation of Record:** Written findings made by the final decision maker pursuant to this Section shall be permanently preserved in the City records.

[4-39-230] Temporary Rent Increases for Specified Capital Improvements and Capital Replacements.

- A. A Park Owner shall be permitted to obtain a temporary Rent increase to reimburse specified Capital Improvements and Capital Replacements pursuant to this Section.
- B. The City Council shall from time to time adopt an amortization schedule for typical Capital Improvements and Capital Replacements subject to the provisions of this Section.
- C. Prior to making a Capital Replacement or Capital Improvement, the Park Owner may file an application with the Rent Review Officer for approval of a temporary Rent Increase to reimburse Capital Improvement Costs or Capital Replacement Costs. Except as provided in Subsection H., a Park Owner who commences and completes a Capital Improvement project prior to obtaining a temporary Rent Increase approval under this Section, shall be deemed to have conclusively waived its right to seek a Rent Increase for that Cost.
- D. Applications for a temporary Rent Increase shall contain at a minimum the following information:
 1. A description and cost of the proposed project. The estimated cost of the proposed project shall be reflected in at least two bids or proposals from qualified and

licensed (if required by law) contractors, installers and/or builders;

2. Evidence establishing that the project is necessary at the time the Park Owner seeks to implement it;
 3. The date(s) upon which the Park Owner proposes to commence and complete the project;
 4. The manner by which the Park Owner will notify the City of the commencement of the work to allow the City to monitor construction and ensure, as practicable, that the work is completed consistent with the temporary Rent Increase approval;
 5. The period of time during which the Park Owner proposes to amortize the Rent Increase and the rationale therefor;
 6. Evidence that the project will be made at a direct cost of not less than \$100.00 per affected Mobilehome Space or at a total direct cost of not less than \$5,000, whichever is lower, or such other amounts as adjusted by resolution of the City Council;
 7. Calculation of costs amortized over a period of not less than 36 months, or a different time period if the monthly payment amount will not impose an unreasonable financial burden on the Mobilehome Owners;
 8. Evidence that the costs do not include any additional costs incurred for property damage or deterioration that result or have resulted from any unreasonable delay in undertaking or completing any repair or improvement;
 9. Evidence that the costs do not include costs incurred to bring the Park, improvement or other property into compliance with a provision of the San Leandro Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements;
 10. A representation by the Park Owner stating that at the end of the amortization period, the allowable monthly Rent will be decreased by any amount it was increased because of a Rent Increase approval granted under this Section; and
 11. Evidence that the amortization period is in conformance with any schedule adopted by the City Council, unless it is determined that an alternate period is justified based on the evidence presented during the consideration of the Park Owner's application.
- E. Capital Replacement. Upon receipt of a Capital Replacement application, the Rent Review Officer shall provide notice ("Capital Replacement Notice") of the application to all Affected Mobilehome Owners. The Capital Replacement Notice shall state the proposed Capital Replacement, the amortization schedule including interest for the project, and the resulting temporary Rent Increase proposed. The Rent Review Officer shall email the application and all of its attachments to the Affected Mobilehome Owners. The Park Owner shall post a complete, physical copy of the application and its attachments at a location that is obvious and accessible to all Mobilehome Owners.
1. A temporary Rent Increase for Capital Replacement shall be approved and the

protest provisions under subsections 2 and 3 shall not apply if the Park Owner submits evidence with its application that the Park Owner has:

- a. Consulted with the Affected Mobilehome Owners prior to initiating construction of the Capital Replacement project regarding the nature and purpose of the project and estimated cost; and
 - b. Obtained the prior written consent of an adult household member from at least 50 percent plus one of the Spaces whose Rent would be affected by the requested Capital Replacement temporary Rent Increase. Evidence of such consent must be presented at the time of filing the application with the City.
 - c. Provided that the two criteria listed in (a) and (b) have been satisfied, the Rent Review Officer or their designee shall approve the application as submitted, and shall send notice to the Park Owner and Affected Mobilehome Owners stating that the application is granted and identifying the amount of the approved temporary Rent Increase. Said decision by the Rent Review Officer or their designee shall be final and shall not be appealable.
2. In the event that one adult household member from at least 50 percent plus one of the affected Mobilehome Spaces protest the application in writing to the Rent Review Officer within 45 days after the date the Rent Review Officer mails or emails the Capital Replacement Notice to the Affected Mobilehome Owners, the Rent Review Officer shall determine whether the application is complete, including determining whether all applicable fees have been paid. The Rent Review Officer may require additional information if the application is deemed incomplete. Upon determining that the application is complete, the Rent Review Officer may retain expert assistance as necessary to review the application, and may require the Park Owner to pay the cost of expert assistance. The complete application shall be reviewed by the Rent Review Officer, and approved, rejected or modified, pursuant to this Chapter.
 3. In the event that one adult household member from at least 50 percent plus one of the affected Mobilehome Spaces whose Rent would be increased if the application were approved do not protest the application in writing to the Rent Review Officer within 45 days after the date the Rent Review Officer mails or emails the Capital Replacement Notice to the Affected Mobilehome Owners, the Rent Review Officer shall approve the application as submitted, and send a notice to the applicant and the Affected Mobilehome Owners stating that the application has been granted and identifying the amount of the temporary Rent Increase allowed to be charged the Affected Mobilehome Owners. Said decision by the Rent Review Officer shall be final and shall not be appealable.
- F. Capital Improvements. A Park Owner shall be entitled to seek a temporary Rent Increase to make a Capital Improvement only if the Park Owner submits evidence with its application that the Park Owner has:
1. Consulted with the Affected Mobilehome Owners prior to initiating construction of the project regarding the nature and purpose of the project and estimated cost;
 2. Limited the annual increase in Rent solely attributable to Capital Improvements to less than or equal to four (4) percent of the Rent for Spaces being rented by Special Circumstances Households, such that the total increase in Rent inclusive of

approved Capital Improvements is limited to eight (8) percent per year for Special Circumstances Households; and

3. Obtained the prior written consent of an adult household member from at least 50 percent plus one of the Spaces whose Rent would be affected by the requested Capital Improvement temporary Rent Increase. Evidence of such consent must be presented at the time of filing the application with the City.

Provided that the above three criteria have been satisfied, the Rent Review Officer shall approve the application as submitted, and shall send notice to the applicant Park Owner and Affected Mobilehome Owners stating that the application is granted and identifying the amount of the approved temporary Rent Increase.

- G. No temporary Rent Increase granted pursuant to this Section shall become effective until the first full calendar month following the filing by the Park Owner of a notice of completion of the Capital Improvement or Capital Replacement project with the Rent Review Officer, and determination by the City that the work was completed in accordance with the Rent Increase approval. A Rent Increase approved pursuant to this Section shall be itemized separately on the rental billing provided to the Affected Mobilehome Owners and shall terminate upon the conclusion of the approved amortization period.
- H. Nothing in this Section shall prevent the Park Owner from making emergency Capital Replacements required as a result of a disaster or other emergency event to preserve or secure the health, safety, or welfare of persons or property. In such event, the Park Owner may make limited and reasonable Capital Replacements required to protect the public health and safety and to limit further damage to the Park, and to thereafter or simultaneously seek a Rent adjustment for such Capital Replacement pursuant to this section.

[4-39-232] Rent Reduction for Service Reduction.

Rent may be reduced and/or refunded if a Service Reduction results in the reduction in the Mobilehome Owners' enjoyment of their Mobilehomes.

- A. Filing and Processing a Service Reduction Application. A Service Reduction application must be signed by at least one adult Mobilehome Owner from each of twenty-five percent (25%) plus one of the Spaces subject to this Chapter.
- B. If the Rent Review Officer, or Hearing Officer on appeal, finds that a material Service Reduction has occurred, the Rent Review Officer, or Hearing Officer on appeal, shall determine the resultant percentage reduction in the Mobilehome Owners' enjoyment due to the Service Reduction. Rent shall be reduced by that percentage or amount. In addition, the Mobilehome Owners shall be entitled to, and the Rent Review Officer, or Hearing Officer on appeal, shall award a rebate in the amount of the monthly Rent reduction multiplied by the number of months between the date the Mobilehome Owners notified the Park Owner of the reduction in service and the date the Rent Review Officer, or Hearing Officer on appeal, determined the Rent reduction. Any rebate authorized pursuant to this section may be amortized over a maximum five year period, and bear the Interest Allowance for Amortized Expenses. In the event the Park Owner was not notified of the Service Reduction by the Mobilehome Owners or applicant and the Park Owner did not know nor should have known that the Service Reduction occurred prior to the filing of the application, no rebate shall be awarded. If a preponderance of the evidence proves that the Park Owner knew or should have known of the Service Reduction, a rebate shall be awarded and calculated from the date that the Park Owner knew or should have known of the start of the reduction.

- C. No rebate shall be allowed or authorized if a Service Reduction of a recreational facility or service, and resulting Rent decrease, has the prior written approval signed by at least one adult Mobilehome Owner from each of fifty percent (50%) plus one of the Spaces subject to this Article.
- D. No Service Reduction may include a condition created by the Park management's failure to maintain the physical improvements in the common facilities in good working order, or condition for which the provisions of Civil Code section 798.84 provides a remedy.
- E. No recreational service or facility that has been reduced or eliminated shall be reinstated at any cost to the Mobilehome Owners without prior written approval signed by at least one adult Mobilehome Owner from each of fifty percent (50%) plus one of the Spaces subject to this Article.
- F. In the event that a Service Reduction application is filed while a Fair Return Application is pending, the Rent Review Officer, may require consolidation of applications. The Park Owner, or the Affected Mobilehome Owners may request consolidation of the applications.

[4-39-234] Cause for Termination.

- A. A Mobilehome Park Owner may not terminate or refuse to renew a Tenancy except in the same manner as provided for in Chapter 2.5 of the Mobilehome Residency Law, Civil Code sections 798.55 *et seq.*, as may be amended from time to time.
- B. For the purposes of this section, a "Tenancy" means the right of a person or persons to use a Mobilehome Space on which to locate, maintain, and occupy a Mobilehome or any other vehicle or structure for the purpose of human habitation.
- C. In adopting this Section, the City Council finds and declares that structures and vehicles that do not meet the technical definition of a Mobilehome, but are nevertheless located on a Mobilehome Space, often share many of the same characteristics as a Mobilehome. These structures or vehicles are not generally intended to be moved frequently, if at all, and often have site improvements and accessory structures constructed onto or adjacent to the structure or vehicle. The City Council finds and declares that there is a high cost of moving these vehicles and structures and a potential for damage resulting from a move, such that the owners of these structures or vehicles used for human habitation and located in a Mobilehome Space need the special protections provided for in this section.

[4-39-235] Waivers.

- A. Any waiver or purported waiver by a Mobilehome Owner of rights granted under this Article shall be void as contrary to public policy.
- B. It shall be unlawful for a Park Owner to require or attempt to require as a condition of tenancy in a Mobilehome Park a Mobilehome Owner or a prospective Mobilehome Owner to waive in a lease or rental agreement or in any other agreement the rights granted to a Mobilehome Owner by this Article.
- C. It shall be unlawful for a Park Owner to deny or threaten to deny tenancy in a Mobilehome 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 Mobilehome Owner by this Article.

[4-39-237] Rights of Prospective Mobilehome Owners.

- A. Prospective Mobilehome Owners shall be offered the option of renting a Space in a manner that will permit the “Mobilehome-to-be” to receive the benefits of the Mobilehome Park Rent Stabilization Program codified herein, which includes, but is not limited to, rental of a Mobilehome Space on a month-to-month basis. A prospective Mobilehome Owner cannot be denied the option of a tenancy of 12 months or less in duration.
- B. The Park Owner shall provide each prospective Mobilehome Owner with a copy of this Chapter.
- C. Any effort to circumvent the requirements of this Article shall be unlawful.

[4-39-240] Annual registration and other notices required from Park Owner.

- A. Due Date. No later than May 31st of each year, each Park Owner shall file with the City an annual registration statement, on a form prescribed by the Rent Review Officer.
- B. Contents of Registration Form. The registration form shall include, but not be limited to, 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 Mobilehome 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 Mobilehome 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; the name and address of each Mobilehome Owner; the name and address of each person renting a Mobilehome; an identification of those Spaces or Mobilehomes which the Park Owner considers exempt from this Article and a statement of the reasons therefor; a statement of the number of recreational vehicle Spaces in the Park, the names of the RV owners and renters, and the current rent and utilities charged for each space; and other information required by the Rent Review Officer.
- C. Certification of Registration Forms. All registration forms, and any documentation accompanying 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 the Mobilehome Park, the seller or transferor shall notify the Rent Review Officer and all Mobilehome Owners within the Mobilehome Park of the sale or transfer and of the name and address of the buyer or transferee. Within 10 days of the sale or transfer of a Mobilehome Park, the buyer or transferee shall provide a new registration form meeting the requirements of this section and a copy of the statement of the Base Year income, expenses, and net operating income of the Park and supporting documents that the previous Park Owner had provided to them pursuant to subsection E. of this section.
- E. Notice to Prospective Park Purchasers. The Park Owner shall provide prospective Park purchasers with a copy of this Chapter.

[4-39-242] Retaliation Prohibited.

- A. It shall be unlawful for a Park Owner to evict a Mobilehome tenant where the Park Owner’s motive in seeking to recover possession of the space is:

1. Retaliation for the Mobilehome Owner's organizing, petitioning for Rent relief, or exercising any right granted under this Article; or
 2. Evading or circumventing the purposes of this Article.
- B. It shall be unlawful for a Park Owner to retaliate against a Mobilehome Owner because of the Mobilehome Owner's assertion or exercise of rights under this Article in any manner, including but not limited to:
1. Threatening to bring or bringing an action to recover possession of a space.
 2. Engaging in any form of harassment that causes the Mobilehome Owner to quit the premises.
 3. Decreasing housing services.
 4. Unlawfully increasing Rent.
 5. Imposing or increasing a security deposit or other charge payable by the Mobilehome Owner.

[4-39-245] Time of Allowed Rent Increase/Adjustment.

- A. Once within a twelve (12) month period, the Park Owner may implement a CPI Rent adjustment or a Fair return increase, as authorized in this Article, but not both.
- B. A Capital Replacement Cost pass-through authorized by this Article may only be implemented on the effective date of the CPI or Fair return rent adjustment.
- C. The following Rent Increases or adjustments, as authorized by this Article, may be implemented at any time during the year:
 1. Government mandated expense pass-throughs;
 2. Utility pass-throughs;
 3. Capital Improvement Cost pass-throughs;
 4. In-place transfer Rent Increases.
- D. Rent Increases subject to approval by the Rent Review Officer shall be implemented after final determination.
- E. Rent reductions for Service Reductions shall be implemented at the time Service Reductions are ordered.

[4-39-247] Refusal of Mobilehome Owner to Pay Illegal Rent.

It shall be unlawful for a Park Owner to demand, accept, receive, or retain Rent in excess of the amounts authorized by this Article. An Affected Mobilehome Owner 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.

[4-39-250] Disclosures.

A Park Owner shall disclose to each prospective Mobilehome Owner the current and proposed Base Rent for the Mobilehome Space, any rental agreement options, provide each prospective Mobilehome Owner a copy of this Chapter, and that if the prospective Mobilehome Owner signs a lease with a term of more than one year, that lease will be exempt from rent stabilization in addition to notice required pursuant to Civil Code section 798.74.5 of the Mobilehome Residency Law. The Park Owner shall give the required disclosure and provide a copy of this Chapter to the prospective Mobilehome Owner at the time that the Park Owner, or Owner's representative, receives the prospective Mobilehome Owner's application for tenancy. The Park Owner shall obtain a signature of the prospective Mobilehome Owner on the disclosure form acknowledging receipt of the disclosures. The Park Owner shall retain the signed disclosure form throughout the entire tenancy of the Mobilehome Owner. This signed form shall be made available to the Rent Review Officer upon reasonable written notice.

[4-39-252] Prospective Mobilehome Owner; Tenancy Twelve Months or Less.

All prospective Mobilehome Owners shall be offered the option of a tenancy of twelve (12) months or less upon terms consistent with the provisions of this Article. This section shall not apply to prevent a mutually agreed upon assignment between a Park Owner and an existing Mobilehome Owner of an existing lease, provided any such assignment does not violate the provisions in this Article applicable to in-place transfer Rent Increases.

[4-39-255] Rent Stabilization Administration, Fees.

- A. Administrative Regulations: The Rent Review Officer may administratively adopt implementing regulations that are consistent with the provisions and intent of this Article.
- B. Rent Stabilization Administration Fee: All or any portion of the costs to administer this Chapter may be collected by the imposition of an annual rent stabilization administration fee, which shall be established by the City Council. The fee, if any, shall be chargeable against every Mobilehome Space in the City subject to rent stabilization. The Park Owner shall remit payment to the City within 30 days after the end of each calendar quarter, and may pass-through up to one-half of the fee to those Mobilehome Owners subject to the fee as a government mandated expense pass-through. The fee is intended to cover the full cost of administration and the fee assessment amount may be amended from time to time by resolution of the City Council.
- C. Other Fees: The City Council may adopt by resolution additional fees as necessary to reimburse the City for its costs to implement this Chapter, and may allocate specified charges to the respective Parties.

[4-39-257] Amendment.

Any amendment to this Article shall require a prior public hearing before the City Council with notice thereof mailed to all Affected Mobilehome Owners in the City at least ten (10) days prior to the hearing.

SECTION 3. This Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines based on the finding that the provisions of the Ordinance constitute additional regulation for a process already existing under State law and thus does not have the potential for causing a significant impact to the environment.

3227251.1