

Mobilehome Rent Review Commission Agenda

October 19, 2017 – 10:00 AM

City Council Chambers - Yucaipa City Hall
34272 Yucaipa Blvd., Yucaipa, California

THE CITY OF YUCAIPA COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT OF 1990. IF YOU REQUIRE SPECIAL ASSISTANCE TO ATTEND OR PARTICIPATE IN THIS MEETING, PLEASE CALL THE CITY CLERK'S DEPARTMENT AT (909) 797-2489, AT LEAST 48 HOURS PRIOR TO THE MEETING.

ANY PUBLIC WRITINGS DISTRIBUTED BY THE CITY TO AT LEAST A MAJORITY OF THE COMMISSION REGARDING ANY ITEM ON THIS REGULAR MEETING AGENDA WILL BE MADE AVAILABLE AT THE PUBLIC RECEPTION COUNTER AT CITY HALL, LOCATED AT 34272 YUCAIPA BOULEVARD, DURING NORMAL BUSINESS HOURS.

IF YOU WISH TO ADDRESS THE COMMISSION DURING THE MEETING, PLEASE COMPLETE A SPEAKERS FORM AND RETURN IT TO THE CITY CLERK PRIOR TO THE BEGINNING OF THE MEETING. THERE IS A THREE-MINUTE TIME LIMIT FOR SPEAKING.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CONSENT AGENDA

The following Consent Agenda items are expected to be routine and non-controversial. The Commission will act upon them, at one time, without discussion. Any Commission Member or staff member may request removal of an item from the Consent Agenda for discussion.

- P. 2 1. **SUBJECT:** APPROVE COMMISSION MINUTES OF AUGUST 22, 2017.

RECOMMENDATION: That the Commission approve the Mobilehome Rent Review Commission Minutes of August 22, 2017.

PUBLIC COMMENT

DISCUSSION AND ACTION

- P. 4 2. **SUBJECT:** BIENNIAL REVIEW OF MOBILEHOME RENT STABILIZATION ORDINANCE AND RESOLUTION

RECOMMENDATION: That the City of Yucaipa Mobilehome Rent Review Commission conduct a review of the Mobilehome Rent Stabilization Ordinance (Yucaipa Municipal Code Chapter 15.20) and the Administrative Rules last amended by Resolution No. 2011-52, and direct staff as appropriate.

ADJOURNMENT

City of Yucaipa
Mobilehome Rent Review Commission Minutes
Regular Meeting of August 22, 2017

A Regular meeting of the Mobilehome Rent Review Commission of the City of Yucaipa, California was called to order in the Council Chambers, 34272 Yucaipa Boulevard, Yucaipa, California, on August 22, 2017 at 10:00 AM.

PRESENT: Caecilia Johns, Chairperson
Jordan Mack, Vice-Chairperson
William Mecham, Commissioner
Tom Powell, Commissioner
Jennifer Shankland, Deputy City Manager/Rent Administrator
Amy Greyson, Commission Attorney

ABSENT: None

CONVENE MOBILEHOME RENT REVIEW COMMISSION

The meeting was opened with the Pledge of Allegiance led by Vice-Chairperson Mack.

PUBLIC COMMENT

Dale Ramsdell, Hidden Valley Mobilehome Park resident, requested that the language of the Ordinance be strengthened to reduce the financial impacts to seniors and low-income residents.

Jo Sutt, Wildwood Canyon Mobilehome Park resident, suggested that the City offer informal training or educational workshops to the general population.

CONSENT AGENDA

Chairperson Johns asked if there were any Consent Agenda items to be removed for discussion. No items were removed for discussion.

1. **SUBJECT:** APPROVE COMMISSION MINUTES OF AUGUST 1, 2017.

RECOMMENDATION: That the Mobilehome Rent Review Commission approve Mobilehome Rent Review Commission Minutes of August 1, 2017.

ACTION: MOTION BY COMMISSIONER MECHAM, SECOND BY VICE-CHAIRPERSON MACK, CARRIED 4-0 TO APPROVE MOBILEHOME RENT REVIEW COMMISSION MINUTES OF AUGUST 1, 2017.

STUDY SESSION

2. **SUBJECT:** THE COMMISSION WILL HOLD A TRAINING SESSION REGARDING RENT ADJUSTMENTS TO PROVIDE A REASONABLE RETURN PURSUANT TO YUCAIPA MUNICIPAL CODE § 15.20.100 OF THE YUCAIPA MOBILEHOME RENT STABILIZATION ORDINANCE, ADMINISTRATIVE RULES, AND RULES AND PROCEDURES FOR THE CONDUCT OF HEARINGS.

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DISCUSSION: Deputy City Manager/Rent Administrator Shankland provided an overview of the training session.

Commission Attorney Greyson presented the training session. Commission Attorney Greyson and Deputy City Manager/Rent Administrator Shankland addressed questions raised by the Mobilehome Rent Review Commissioners.

PUBLIC COMMENT

Tony Slaick, YMRA Chairperson, stated that the Ordinance has a loophole in the general term “fair return on investment” and stated that new park owners should be required to wait three to five years prior to filing a Fair Return Application.

Barbara Delahoyde, Carriage Trade resident, expressed her concerns pertaining to the expenses listed in the Carriage Trade Manor MNOI Application.

Dale Ramsdell, Hidden Valley Mobilehome Park resident, stated that Carriage Trade Manor Mobilehome Park was profitable and expressed his concerns pertaining to the financial impacts to seniors and low-income residents

Carolyn Cape, Yucaipa, questioned how many other cities have a Fair Return Standard and questioned when the Biennial Review would take place.

Jo Sutt, Wildwood Canyon Mobilehome Park resident, commented on AB1269, Mobilehome Residents and Senior Protection Act, and requested additional information pertaining to the Galland vs City of Clovis case.

Commission Attorney Greyson addressed questions raised during the Public Comment.

ADJOURNMENT

The meeting adjourned.

ATTEST:

Caecilia Johns
Chairperson

Jennifer Shankland
Deputy City Manager/Rent Administrator

APPROVED AT THE MEETING OF:

October 19, 2017

**CITY OF YUCAIPA
MOBILEHOME RENT REVIEW COMMISSION
AGENDA REPORT**

TO: Mobilehome Rent Review Commission

FROM: Jennifer Shankland, Deputy City Manager/Rent Administrator 
Amy Greyson, Assistant City Attorney/Mobilehome Rent Review Commission Attorney

FOR: Mobilehome Rent Review Commission of October 19, 2017

SUBJECT: Biennial Review of Mobilehome Rent Stabilization Ordinance and Resolution

RECOMMENDATION

That the City of Yucaipa Mobilehome Rent Review Commission conduct a review of the Mobilehome Rent Stabilization Ordinance (Yucaipa Municipal Code Chapter 15.20) and the Administrative Rules last amended by Resolution No. 2011-52, and direct staff as appropriate.

BACKGROUND

The Mobilehome Rent Stabilization Ordinance (“Ordinance”) requires that the City carry out a review of the Ordinance during odd-numbered years (YMC §15.20.140.) The last review was completed in 2016. That review resulted in extensive modifications to both the Ordinance and Administrative Rules.

On August 17, 2017, staff notified Park Owners, Park Owner Organizations, and the Park Resident Organization of the upcoming Biennial Review and requested that they submit comments regarding the Ordinance and/or Administrative Rules, by September 11, 2017. Staff received comments from the Yucaipa Mobilehome Residents Association (“YMRA”), Manufactured Housing Educational Trust (“MHET”), Western Manufactured Housing Communities Association (“WMA”), Andrew Rottenbacher (Calanda Real LP), Golden State Manufactured-home Owners League, Inc. (GSMOL), Ian Dyer (mobilehome park owner) Elizabeth Sonderman/Barbara Kutra & Dale Ramsdell (Yucaipa mobilehome residents), and Robin Minnear (Beaumont mobilehome resident).

On October 13, 2017, the City Council introduced Ordinance No. 364 for first reading which, upon adoption, will impose a ninety (90) day moratorium on consideration of or action on applications for Special Rent Adjustments under YMC §15.20.100(A), (B) or (C). Ordinance No. 364 will be effective thirty days after second reading. The City Council also directed the Commission to conduct its review of the Ordinance and Administrative Rules at the Commission’s October 19, 2017 meeting and provide any recommendations to the City Council at that meeting, in order to enable the City Council to complete the Biennial Review before expiration of the moratorium.

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Since completion of the 2016 Biennial Review, the following rent adjustment applications were submitted to the City that were in addition to Annual Adjustments:

8/2016 – Current	Final Decision	Type	Increase	Term	<i>Kavanau</i> *	<i>Galland</i> **
Carriage Trade Manor	Apvd – RA Administrative	Cap. Imp	\$15.16	15 Yr.	n/a	n/a
Carriage Trade Manor	Apvd. – MRRC Reso. 2017-35	MNOI	\$95.94	Base Rent Adj.	n/a	\$10.45

Footnotes:

*A *Kavanau* adjustment is a temporary future rent increase required to compensate the park owner for lost rent while a confiscatory rent ceiling was in effect when a court has determined that a city unlawfully denied a rent increase. (*Kavanau v. Santa Monica Rent Control Board* (1998) 16 Cal.4th 761.) The *Kavanau* adjustment is the amount of lost profit caused by delay between the city’s original denial of the rent increase and the final decision after remand by a court.

**A *Galland* adjustment is a temporary rent increase that allows a park owner to recover the reasonable costs of the application and hearing process in order to prevent the park owner from being deprived of a fair return due to an unduly burdensome rent control process. (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003.)

Since the 2016 Biennial Review, parks have implemented the Annual Adjustments each year, based on the lesser of 80% of the increase in CPI since the prior year or five percent (5%) of current space rent. (YMC § 15.20.080) A chart showing average rents in each park at this time is attached to this Staff Report as Attachment A.

The intent of the Biennial Review is to address issues that have arisen since the last Biennial Review that are based on legal considerations, clarification to provisions and procedures, political and policy issues, and other issues raised by staff and various stakeholders, and to identify potential amendments to the Ordinance or Administrative Rules based on those issues. This Biennial Review will provide the Commission with an opportunity to discuss these issues and potential amendments, to seek further information if necessary, to receive input from various stakeholders, and ultimately provide general direction to staff and recommendations for consideration by the City Council. Staff will then prepare a report for the City Council conveying the recommendations of the Commission and staff recommendations, if they differ from the Commission recommendations, on possible amendments to YMC Chapter 15.20 or the Administrative Rules.

The following issues that have been raised by staff, staff counsel, and stakeholders, have been broken down into categories to assist in this process. If the City Council adopts any amendments made to the Ordinance or Administrative Rules, which relate to public hearings on rent adjustment applications to the Commission or appeals, those amendments will also be reflected in the Rules and Procedures for Conduct of Mobilehome Rent Public Hearings document and application forms. To assist the Commission’s review and consideration of the issues, this Staff Report includes additional back-up materials and all of the written comments submitted by the stakeholders, and additional supporting materials, which are enclosed as Attachments A through M. Staff previously provided the Commission with copies of the current Ordinance,

Administrative Rules, and Rules and Procedures for Conduct of Mobilehome Rent Public Hearings.

RECOMMENDATIONS FOR POLICY CHANGES AND IMPROVEMENTS IN THE ADMINISTRATION OF THE ORDINANCE.

1. SUBJECT: TEMPORARY RENT ADJUSTMENT FOR APPLICATION AND HEARING COSTS

In *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, the California Supreme Court ruled that park owners should be allowed to include the costs of the administrative hearing process in a rent adjustment in order to prevent a confiscatory result. Based on the *Galland* decision, the Ordinance and Administrative Rules were amended to allow consideration of a temporary rent adjustment (sometimes referred to as a “*Galland* adjustment”) in conjunction with a Special Rent Adjustment application for a Maintenance of Net Operating Income (“MNOI”) rent adjustment, MNOI Rent Adjustment based on a Re-adjusted Base Year NOI or Fair Return Rent Adjustment. YMC §15.20.116 provides that if a park owner obtains approval of a Special Rent Adjustment, the park owner may also request that the City approve a temporary rent adjustment to reimburse the park owner for reasonable professional costs incurred by the park owner in preparing and presenting the application to the Commission. The Ordinance also provides that a *Galland* adjustment is only temporary, must be amortized over a five-year period with interest at 7%, cannot be part of the space rent and itemized as a separate charge on the residents’ monthly rent statement; and must cease at the end of the amortization period. Residents also have the option of paying the *Galland* adjustment in one lump sum. Additional provisions implementing the temporary rent adjustment process are set out in Chapter 6 of the Administrative Rules.

Staff Comments: The City's Administrative Rules §6.0002(B) requires the Applicant to show "the amount of the costs incurred in the Commission Proceedings, that he or she actually incurred such costs, the reasonableness of such costs, and the amount of the proposed temporary rent adjustment." In addition, Administrative Rules §6.0004(B) provides a list of factors to consider in determining the reasonableness of such costs. However, none of the factors address the relationship of the temporary rent adjustment awarded to the rationale presented in the Applicant's claim(s) in support of their application for a Special Rent Adjustment. Park owners often include several types of methodologies to justify their request for a Special Rent Adjustment. If the Commission grants approval of a Special Rent Adjustment, the Commission's decision will be based on a specific methodology, which will be set out in its decision. In reviewing prior applications, the Commission has rejected methodologies for reasons including the park owner's failure to present evidence to support the methodology, or because the methodology is prohibited by the Ordinance. For example, since 2005, the City has received four Special Rent Adjustment applications for MNOI rent adjustments that used several different methodologies (with differing results), one of which has always included a rent increase determined using 100% of the increase in CPI since the base year to adjust the park's net operating income (or “100% CPI NOI indexing”). Under the Ordinance, 100% NOI CPI indexing is not authorized to determine an MNOI adjustment. The base year NOI is indexed by a two-tiered percentage of inflation – using 66-2/3% of the increase in CPI from the base year (1987) to October 1996, and by 80% of the increase in CPI from October 1996 to the date of

application. As a result, in each of these past cases, the City rejected use of 100% CPI NOI indexing. However, under the present temporary rent adjustment process of the Ordinance, the professional costs incurred by the park owner in preparing all of his/her methodologies, including methodologies rejected in the City’s decision, have been incorporated into the temporary rent adjustment.

Staff believes that it would be appropriate to amend the Ordinance and Administrative Rules to include a factor that evaluates the relationship of the temporary rent adjustment awarded to the Applicant’s claim, and allows the Commission to reduce claimed professional costs by an amount representing a disallowed methodology.

For example: Park owner submits an application requesting an MNOI Rent Adjustment with two alternative proposed rent increases, one for \$150, using 100% CPI NOI indexing, and an alternative of \$125 using the Ordinance's two-tiered CPI NOI indexing factor. The Commission rejects use of 100% CPI indexing, and approves an MNOI Rent Adjustment of \$80, using the two-tiered CPI indexing factor of the Ordinance (66-2/3% of the increase in CPI from the base year to October 1996 and 80% of the increase in CPI since October 1996). The Commission also adjusts some of the applicant’s claimed expenses based on the Ordinance, Rules and evidence. Since the applicant received only 64% (\$80/\$125) of the applicant’s lowest claim, the costs awarded as a temporary rent adjustment could likewise be limited to 64% of the professional costs incurred, as reported by the applicant. Such a provision might encourage applicants to be more realistic in making their rent increase claims and reduce professional expenses incurred by applicants.

STAKEHOLDER	STAKEHOLDER COMMENTS
Minnear (Att. J)	Park Owner legal expenses should be reviewed by a third party or eliminated.
YMRA (Att. B)	Requests that the Ordinance be amended to include language to express that the recovery of application costs in connection with the successful approval of rent adjustment application, directly relate to the outcome and the success of the applicant’s original request be proportionate to the award granted.

Staff Recommendation to the Commission:

Amend YMC §15.20.116(A) as follows (the additions are marked by italic/bold text):

“A. A park owner may seek a temporary rent adjustment to reimburse the park owner for the reasonable cost of professional services actually incurred by the park owner in preparing and presenting an application under §15.20.100 to the commission. The park owner shall bear the burden of proof and shall provide the evidence to justify a temporary rent adjustment submitted under this section, and approval of the application will be conditioned upon the park owner’s successfully obtaining approval of a rent adjustment

pursuant to Section 15.20.100 of this chapter. *Any such temporary rent adjustment shall not exceed the ratio between the rent adjustment granted under Section 15.20.100 and the lowest claimed rent adjustment sought by the applicant in their application under Section 15.20.100.* Any temporary rent adjustment shall be amortized over a five-year period with interest at the rate of seven percent per year, compounded monthly, and any increase granted shall remain in effect only during the five-year period. Any such increase shall not be included as part of the monthly space rent but shall be itemized as a separate charge on the residents' monthly rent statement. Nothing in this provision shall preclude a park resident from paying the full amount of the temporary rent adjustment as one lump sum without any payment of interest, following issuance of the city's final decision. Any such lump sum payment shall be made in accordance with the administrative rules adopted by resolution of the city council."

Add new Administrative Rule §6.0004(B)(11) as follows:

§6.0004(B)(11) Reasonable professional costs incurred by the park owner in preparing and presenting the special rent adjustment application will be limited to the amount determined by the percentage difference between the Commission-approved special rent adjustment and the Applicant's lowest claim under YMC 15.20.100.

2. SUBJECT: ANNUAL ADJUSTMENTS

The Ordinance authorizes park owners to raise their rents each year without Commission approval, pursuant to the Annual Adjustment process set forth in YMC §15.20.080 and Administrative Rules, Chapter 3. The Annual Adjustment is calculated based on 80% of the CPI or 5% of current space rent, **whichever is less** (YMC §15.20.080; Administrative Rules, §§3.0001 and 3.0001(B)). Although the Ordinance caps the amount of the Annual Adjustment, the Ordinance does not establish a minimum rent increase under the Annual Adjustment formula, such as when there has been no increase or only a minimal increase in inflation, or where there is an actual decrease in the cost of living, over the prior 12 months. The Commission may wish to consider recommending that the City amend the Annual Adjustment formula to establish a minimum percentage increase on base rent across-the board, or to set a minimum percentage increase or dollar increase in those situations where the CPI has not increased, increased by only a minimal amount, or has decreased over the prior 12 months, while retaining the 5% cap.

Staff Comments: The Annual Adjustment process allows park owners to obtain a rent increase once each year based on 80% of the increase in the CPI published by the Bureau of Labor Statistics over the prior twelve months, capped at 5% of current base space rent, so that park owners are guaranteed an annual increase based on inflation to cover increased costs and provide a profit. The purpose of the Annual Adjustment process is to provide a relatively simple, expedited process that enables park owners to obtain rent increases without having to go through a formal noticed-hearing process through the Special Rent Adjustment process.

Under the Ordinance and Administrative Rules, park owners may apply for an Annual Adjustment each year. The Rent Administrator provides the park owners with the

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applicable CPI indexing factor by February 1st of each year. Because the Bureau of Labor Statistics runs about two months behind in publishing the monthly CPI, the CPI most recently available to the City is the CPI reported in December of each year. (See YMC §15.20.080; Administrative Rules, §3.0001.)

The following chart shows the CPI increases between 2009 and 2016:

	2009	2010	2011	2012	2013	2014	2015	2016
Prior Year*	219.37	219.62	223.64	226.64	231.57	236.04	238.74	240.48
Current Year*	219.62	223.64	226.64	231.57	236.04	238.74	240.48	245.36
CPI (100%)	0.11%	1.83%	1.34%	2.17%	1.93%	1.14%	0.73%	2.03%
CPI Factor (80%)**	0.09%	1.47%	1.07%	1.74%	1.55%	0.92%	0.58%	1.62%

*The reported CPI figure most recently available from the Bureau of Labor Statistics of the U.S. Department of Labor as of February 1st, generally is the CPI for December of the prior year.

**Used in determining each park's Annual Adjustment to be imposed on or after February 1st of each year.

The following chart shows the difference on Annual Adjustments between using 80% CPI and 100% CPI, using a hypothetical monthly space rent of \$300 beginning in 2009.

Hypothetical Rent Control Monthly Space Rent \$300.00								
	2009	2010	2011	2012	2013	2014	2015	2016
Rent	\$ 300.00	\$ 300.27	\$ 304.68	\$ 307.94	\$ 313.30	\$ 318.16	\$ 321.09	\$ 322.95
80% CPI	0.09%	1.47%	1.07%	1.74%	1.55%	0.92%	0.58%	1.62%
Increase	\$ 0.27	\$ 4.41	\$ 3.26	\$ 5.36	\$ 4.86	\$ 2.93	\$ 1.86	\$ 5.23
	<u>\$ 300.27</u>	<u>\$ 304.68</u>	<u>\$ 307.94</u>	<u>\$ 313.30</u>	<u>\$ 318.16</u>	<u>\$ 321.09</u>	<u>\$ 322.95</u>	<u>\$ 328.18</u>
Rent	\$ 300.00	\$ 300.33	\$ 305.83	\$ 309.92	\$ 316.65	\$ 322.76	\$ 326.44	\$ 328.82
100% CPI	0.11%	1.83%	1.34%	2.17%	1.93%	1.14%	0.73%	2.03%
Increase	\$ 0.33	\$ 5.50	\$ 4.10	\$ 6.73	\$ 6.11	\$ 3.68	\$ 2.38	\$ 6.68
	<u>\$ 300.33</u>	<u>\$ 305.83</u>	<u>\$ 309.92</u>	<u>\$ 316.65</u>	<u>\$ 322.76</u>	<u>\$ 326.44</u>	<u>\$ 328.82</u>	<u>\$ 335.50</u>
Difference	\$ 0.06	\$ 1.14	\$ 1.98	\$ 3.35	\$ 4.60	\$ 5.35	\$ 5.88	\$ 7.32

There are several options that may be considered by the Commission:

- Option #1:** Amend YMC §15.20.080(A) and Administrative Rules, §3.0001(B)(3) to provide that if the increase in CPI over the prior the prior 12 months is less than one percent (1%), the Annual Adjustment will be an amount equal to one-and-one-half percent (1.5%) of the current rent, or 5% percent of current space rent, whichever is less. Under this option, the Annual Adjustment process will continue to provide park residents with some certainty in being able to anticipate the amount of their next rent adjustment based on the Annual

Adjustment while providing park owners with a simplified procedure to raise rents each year even in those situations in which there is no increase or only a minimal increase in inflation.

- **Option #2:** Amend YMC §15.20.080(A) and Administrative Rules §3.0001(B)(3), to provide that the park owner may increase the rent in each regulated space once annually, by 100% of the increase in CPI, or by 5% percent of the current space rent, whichever is less. This revision would allow park owners to increase rent by the full cost of inflation.
- **Option #3:** Amend Administrative Rules, §3.0001(B)(3) to: (1) removing the 5% maximum or (2) implement a minimum 2.5% annual increase.
- **Option #4:** Retain the existing language of the Ordinance and Rules – maintain 80% CPI.

<u>STAKEHOLDER</u>	<u>STAKEHOLDER COMMENTS</u>
Dyer (Att. F)	Requests that the annual rent increase be amended to 100% CPI, on the basis that the use of 80% CPI does not allow the park owner to keep up with minimum wage and expenses related to compliance with the Rent Stabilization Ordinance.
MHET (Att. C)	Requests that the Ordinance and rules be amended to allow for automatic annual rent increases of 100% CPI, and support a 2.5% floor to create an equitable annual monthly rent adjustment.
Rottenbacher (Att. E)	Requests that the City allow for an administrative annual increase of 100% of the change in CPI, and supports removing the maximum annual increase provision and/or implement a minimum administrative 2.5% annual increase.
WMA (Att. D)	Requests that the annual rent adjustments increase from 80% to 100% CPI, on the basis that the park owner’s purchase power diminishes with a sub-inflationary increase.
YMRA (Att. B)	Requests maintaining the 80% indexing for the automatic annual rent increases. Also requests that if the indexing number were to rise by any amount, then they propose the following: <ul style="list-style-type: none"> ● No longer allow an automatic Annual increase; instead, require the park owners to apply and report expenses to justify that they are maintaining their parks at reasonable industry levels. ● Lower the current cap of 5% to 4%. ● Require the park owners to pay 50% of the costs for an approved Capital Improvement.
GSMOL (Att. K)	Maintain the annual rent increase of 80% CPI

Staff Recommendation to the Commission:

That the Commission consider the above options pertaining to the Annual Adjustment formula.

3. SUBJECT: SPECIAL RENT ADJUSTMENTS BASED ON VOLUNTARY MEET AND CONFER

(Issue raised by City Attorney's Office) Pursuant to YMC §15.20.100 (E) and Administrative Rules §4.0006, a park owner and residents may mutually agree to a special rent adjustment by a voluntary meet and confer process. The special rent adjustment must be based on the MNOI methodology contained in YMC §15.20.100(A) or (B), and must exclude any capital improvements.

Staff Comments: In reviewing these provisions recently, it was determined that there are some inadvertent errors in the Administrative Rules §4.0006 which should be corrected during the Biennial Review. The Rules require, in Section 4.0006(G)(1), that the Park Resident Representative serve the notification of the results of the meet and confer on the residents, and suggests the Park Resident Representative serves the ballots as well (to be filled out and submitted by the residents directly to the Rent Administrator). However, in Section 4.0006(G)(3), the Rules state the Park Owner must serve all the required notices on the residents. There is also an incorrect reference to Subsection (E)(1), rather than Subsection (G)(1).

STAKEHOLDER	STAKEHOLDER COMMENTS
None	No comments received for Subject No. 3

Staff Recommendation to the Commission:

Amend Administrative Rules §4.0006 as follows (the additions are marked by italic/bold text):

“G. Confidential Resident Vote. If no agreement is reached at the meet and confer between the park owner representatives and park resident representatives regarding a proposed special rent adjustment, then all further proceedings under this Section shall cease. If agreement is reached at the meet and confer between the park owner representatives and the park resident representatives regarding a proposed special rent adjustment, then a resident vote by confidential ballot shall take place in accordance with the following provisions:

1. Notice to Residents of Results of Meet and Confer. Not later than five (5) days following the conclusion of the meet and confer, the park resident representatives shall serve written notice and a proof of service on all residents of the regulated spaces on

City-approved forms. The notice shall be served on each resident by personal delivery or by First Class mail, postage prepaid, and shall contain all of the following information and documentation:

a. The date(s) and time(s) when the meet and confer was conducted, and the names, addresses and telephone numbers of the representatives of the park owner and park residents at the meet and confer; and

b. The results of the meet and confer, including whether the park owner representative(s) and the park resident representative(s) reached agreement on the proposed special rent adjustment; the method by which the proposed special rent adjustment ~~was~~ *would be* determined; and that all documentation upon which the proposed special rent adjustment may be inspected by the residents at the park clubhouse, park office and a third location as determined by the park resident representatives and specified in the notice; and

c. The right of the residents from each regulated space to vote by confidential ballot on whether or not to consent to the proposed special rent adjustment (based on a vote by one adult resident per space), by submittal of a confidential ballot to the Rent Administrator not later than fifteen (15) days following service of the notice upon the resident by the park resident representative, and insertion of the specific deadline date by which the confidential ballot must be filed with the Rent Administrator;

d. *The proposed confidential ballot, in the form approved by the City; and*

~~d.e.~~ That the residents must return the confidential ballot to the Rent Administrator by personal delivery or by mail; along with a stamped envelope pre-addressed to the Rent Administrator; and

~~e.f.~~ That the proposed special rent adjustment shall not be effective unless consented to by at least fifty-one percent (51%) of the residents of the regulated spaces based on the results of the confidential ballot election; and

~~f.g.~~ A proof of service, on the City-approved form.

2. Effective Date of Service on Park Residents. For purposes of determining the 15-day deadline for residents to file their confidential ballots with the Rent Administrator, service of the notice *and confidential ballot form* under Section 4.0006~~(E)~~*(G)*(1) shall be deemed effective on the date of personal delivery to a resident or, if mailed, upon deposit in the U.S. Mail, postage pre-paid, to a resident. The park ~~owner~~ *resident representative* shall serve all notices, *confidential ballot forms* and supporting documentation on all residents of regulated spaces at the same time.

3. *Park Resident Representative* Service on City. Prior to or concurrently with serving the notice and all required documentation on the residents under Section

4.0006~~(E)~~(G)(1), the park ~~owner~~ *resident representative* shall serve the following documents on the Rent Administrator:

a. A complete copy of the notice, *confidential ballot form* and all required documentation set forth in Subdivision (G); and

b. A list of the full names, addresses and telephone numbers of the current occupants of each regulated space in the park.

4. *Park Owner Service on City and Park Resident Representative Following Meet and Confer. Not later than five (5) days following the conclusion of the meet and confer the park owner or his/her representative shall comply with all of the following requirements:*

a. The park owner shall file with the City the following documents:

(1) One set of address labels addressed to the current occupants of each regulated space in the park;

(2) A proof of service on the resident representative confirming the park owner's compliance with this Subsection 4, in the City-approved form, served by personal delivery or by First Class mail, postage prepaid.

b. The park owner shall serve a copy of the proof of service on the resident representative confirming the park owner's compliance with this Subsection 4, served on the park resident representative by personal delivery or by First Class mail, postage prepaid.

4. SUBJECT: RENT ADJUSTMENTS UPON VACANCY

The City's Ordinance defines a vacancy to mean any of the following: (i) the existence of any space on which no mobilehome is located; (ii) any transfer of ownership of a mobilehome which remains in a park; or (iii) any change in occupancy of any mobilehome space. (YMC §15.20.020) The Ordinance regulates rents upon vacancies as follows:

- The Ordinance prohibits any increase in space rent upon a vacancy resulting in the transfer of ownership of a mobilehome that remains in the park (an "in-place transfer" of ownership), or any change in occupancy of a mobilehome space (YMC §15.20.050 (A)).
- If a space is vacant because a mobilehome was removed or never had a mobilehome on it, the Ordinance also limits the rent that may be charged after a home is moved onto the space (YMC §15.20.050 (B)).
- If a homeowner buys a park-owned mobilehome, the base rent is the last regulated rent charged under the Ordinance, including any Annual Adjustments and any other Commission-approved adjustments, or, if the space was never subject to the

Ordinance, the rent is the average of the rents charged for comparable spaces in the park (YMC §15.20.050(B)(3)).

The purpose of the City's vacancy control provision is to protect the investment by mobilehome owners in their homes, given the unequal bargaining position of residents, imposition of exorbitant rents, and the immobility of mobilehomes.

In prior biennial reviews and in this current review, Park Owners and Park Owner Organizations have/are proposing amending the Ordinance to allow rents to increase to market rent level upon an in-place transfer of a mobilehome. YMRA and the park residents have consistently been opposed to any rent increases upon such vacancies, and the City Council in the past has declined to enact any rent increases upon vacancy.

GSMOL periodically surveys the cities and counties in California with some form of mobilehome park rent control. Their most recent survey, updated as of March 2015, indicates that out of 97 jurisdictions surveyed, 54 of those cities and counties have some type of limits on increases upon vacancy, such as a prohibition on any rent increase at the time of an in-place transfer of ownership of a mobilehome, exclusions for transfers to relatives, dollar caps, or caps based on a percentage of rent as of date of transfer. A copy of the GSMOL survey is enclosed with this staff report as (Attachment L).

Options presented below for Commission consideration would apply to vacancies resulting from in-place transfers where a mobilehome remains in the park, but these options would exclude vacancies that result: (i) when the home is replaced by the same tenant or resident for any reason (including age, fire, substantial destruction, or replacement with a new mobile home); or (ii) from transfers of ownership of the mobile home by inheritance or other transfers to relatives, heirs, personal representatives, and successors in interest.

Option #1: Upon a vacancy resulting from an in-place transfer (as defined), allow a park owner to impose a one-time space rent increase of \$25. If a space becomes vacant more than once during a calendar year, the park owner may increase the rent once more by an additional \$25 rent increase, but no further vacancy increases would be allowed regardless of the number of additional vacancies during that calendar year.

Option #2: Upon a vacancy resulting from an in-place transfer (as defined), allow the park owner to increase the space rent by eighty percent (80%) of the annual increase in CPI (the same amount as the Permitted Annual Rent Adjustment). Also limit this type of increase on vacancy to more than twice in the same calendar year, regardless of the number of vacancies during that calendar year.

Option #3: Same as Option #2, but cap the vacancy increase at five percent (5%) of the last rent in effect prior to the vacancy (as defined).

Option #4: Allow the park owner to increase rents to market upon a vacancy resulting from an in-place transfer (as defined).

Option #5: Require the park owner to post notice of the dollar amount or percentage of the increase upon vacancy (as defined) in that calendar year and limit increases to the posted amount; and require prior notification to the City of the proposed vacancy increase and past 6 months' increases, before the vacancy increases are posted.

Option #6: Upon a vacancy resulting in a vacant pad (defined as space was never occupied or mobilehome is completely removed), the park owner may increase the last rent based on the combined average of rent controlled spaces in the park plus 5% or \$50, whichever is less and limit the increase to once every three years per space. (Option presented in YMRA submittal)

Option #7: Retain the existing language of the Ordinance and Rules.

<u>STAKEHOLDER</u>	<u>STAKEHOLDER COMMENTS</u>
MHET (Att. C)	Requests that the Ordinance and rules be amended to allow for vacancy decontrol, which would allow NEW residents to agree upon the base rent before moving into the park. The adjustments would increase the parks revenue thus taking away the need to pursue a MNOI increase.
YMRA (Att. B)	Requests that if serious consideration to grant vacancy decontrol in any form, it be limited with a reasonable formula that would not give rise to any possible abuse for unethical or exploitative practices. Option #6 above was submitted by YMRA.
WMA (Att. D)	Requests some form of vacancy decontrol to reduce or eliminate MNOI applications.
Rottenbacher (Att. E)	Requests that the City implement vacancy decontrol on vacant spaces.
Minnear (Att. J)	Requests that the City retain the existing language of the Ordinance and Rules – not allowing any form of vacancy decontrol. Any form of vacancy decontrol will hinder the existing resident owner’s ability to sell their home at a fair price.
GSMOL (Att. K)	Requests that the City retain the existing language of the Ordinance and Rules – not allowing any form of vacancy decontrol. Vacancy decontrol would be another detriment to the homeowners who find it necessary to sell their homes.
Dyer (Att. F)	Supports vacancy decontrol because it provides the park owner the ability to raise the space rent to market, which offsets rapidly rising expenses.

Staff Recommendation to the Commission:

That the Commission consider the above options pertaining to limited increases on vacancy.

5. SUBJECT: DEFINITION OF FAIR RETURN ON INVESTMENT

The Ordinance allows a park owner to seek a rent increase that exceeds the Annual Adjustment if the park owner can establish that the Annual Adjustment does not provide the park owner with a fair return. YMC §15.20.100 provides for three types of increases, including an MNOI Rent Adjustment, an MNOI Rent Adjustment based on a Re-adjusted Base Year NOI, and a Fair Return Rent Adjustment, which require a formal application and Commission approval. The park owner bears the burden of proof and must provide the evidence to justify a Special Rent Adjustment under any of these methodologies based on the factors contained in the Ordinance and the Administrative Rules, §§4.0003, 4.0004 and 4.0005.

A “fair return” is the legal concept developed and used by the courts to evaluate the constitutionality of a rent control ordinance. There is no precise definition of what is a fair return.¹ Instead, courts have ruled that rent control regulations are permissible if they are “reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property.”² In defining and analyzing fair return, the courts borrow from the terminology of economics and finance, but the California Supreme Court has emphasized that a “fair return” is a legal constitutional term:

“It refers to a *constitutional minimum within a broad zone of reasonableness*... [W]ithin this broad zone, the rate regulator is balancing the interests of investors, i.e., landlords, with the interests of consumers, i.e., mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully.”³

Other courts have described a fair return in the following manner: “A fair return is a return which is high enough to encourage good management, reward efficiency and discourage the flight of capital and is commensurate with returns on comparable

¹ *Donohue v. Santa Paula West Mobile Home Park* (1996) 47 Cal.App.4th 1168, 1177; *City of Berkeley v. City of Berkeley Rent Stabilization Board* (1994) 27 Cal.App.4th 951, 984.

² *Colony Cove Properties v. City of Carson* (2013) 220 Cal.App.4th 840, 865 (quoting *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165).

³ *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1026 (emphasis added); *accord, Carson Harbor Village v. City of Carson Mobilehome Park Rental Review Board* (1990) 70 Cal.App.4th 281, 288-289.

investments, but not so high as to defeat the purpose of preventing excessive rents.”⁴ The decisions emphasize that a court must determine whether the regulations may be reasonably expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection for the heart of relevant public interest, both existing and foreseeable.⁵ The courts emphasize that “[i]t is the result reached which is important – the regulated prices must fall within a “broad zone of reasonableness” to be constitutional.⁶ This determination of whether a return is fair must be made based on expert evidence.⁷

The Special Rent Adjustment provisions have been carefully crafted to reflect court decisions analyzing fair return. For example, the MNOI methodology contained in YMC §15.20.100(A) has been upheld as a method that provides park owners with a fair return.⁸ The provisions of YMC §15.20.10(B) (MNOI Rent Adjustment based on Re-Adjusted Base Year NOI) and YMC §15.20.100(C) (Fair Return Rent Adjustment) also implement the requirements of other court decisions. The MNOI Adjustment based on a Re-adjusted Base Year NOI, contained in YMC §15.20.10(B), implements the requirements of *Vega v. City of West Hollywood*, which established that a park owner must be allowed an opportunity to show that base year rents do not reflect general market conditions, and if so, must be permitted an adjustment in base year rents (known as the *Vega* adjustment).⁹

STAKEHOLDER

STAKEHOLDER COMMENTS

YMRA
(Att. B)

Requests that YMC §15.20.20 be amended to include the exact and intended meaning of the “fair and reasonable return on investment” as well as describing in what cases the provision will not be applicable.

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules regarding the definition of fair return.

6. SUBJECT: SPECIAL RENT ADJUSTMENT TIMING

⁴ *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 771-772; *San Marcos Mobilehome Park Owners Ass’n. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1502; *Oceanside Mobilehome Park Owners’ Ass’n. v. City of Oceanside* (1984) 157 Cal.App.3d 887, 907.

⁵ *Stardust Mobile Estates v. City of San Buenaventura* (2007) 147 Cal.App.4th 1170, 1188; *Galland, supra*, 24 Cal.4th at 1021-1022; *Kavanau*; 16 Cal.4th at 771-772.

⁶ *Kavanau*, 16 Cal.4th 761, 779; *Carson Harbor Village, supra*, 70 Cal.App.4th 281, 290.

⁷ *Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1416; *Whispering Pines Mobile Home Park, Ltd. v. City of Scotts Valley* (1986) 180 Cal.App.3d 152, 160.

⁸ *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 221; *Donohue, supra*, 47 Cal.App.4th 1168, 1178; *Cotati Alliance for Better Housing v. City of Cotati* (1983) 148 Cal.App.3d 280, 288, 293..

⁹ *Vega v. City of West Hollywood* (1990) 223 Cal.App.3d 1342.

The Ordinance does not limit the timing of when a park owner may apply for a Special Rent Adjustment under YMC §§15.20.100(A), (B) and/or (C), and there is no distinction made based on whether an applicant is long-term park owner or a new park owner.

Staff Comments: As outlined above, a constitutional fair return is to a return “high enough to encourage good management, reward efficiency and discourage the flight of capital and is commensurate with returns on comparable investments, but not so high as to defeat the purpose of preventing excessive rents.”¹⁰ As noted, rent regulations should be reasonably expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection for the heart of relevant public interest, both existing and foreseeable.¹¹ Under the MNOI concept, a park owner may recover reasonable increases in operating expenses, so as to maintain net operating income.¹² Although courts have ruled that no specific dollar amount of profit or rate of growth is required in order to provide a fair return, court decisions have ruled that a rent control ordinance cannot indefinitely freeze the net operating income earned by a park and have invalidated rent control ordinances for that reason.¹³

Kenneth Baar, J.D., Ph.D., the consultant retained by the City to assist in evaluating applications submitted for special rent adjustments, has also reported that he has not encountered any rent control ordinances that how often a park owner may submit a fair return rent adjustment. (See Attachment M)

The MNOI methodology contained in YMC §§15.20.100(A) and (B) requires a determination of the base year and current year NOI, which is calculated by subtracting the park’s operating expenses from the park’s gross income for each year. When seeking a Special Rent Adjustment, the applicant must demonstrate that all operating expenses are reasonable. In determining a park’s base year or current year operating expenses, the Commission has authority to adjust operating expenses. For example, Administrative Rules, §4.0003(E) provides:

“Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of establishing the reasonableness of the expense. To the extent that the Commission finds any such expense to be unreasonable, the Commission shall adjust the expense to reflect the normal industry or other comparable standard.”

The Commission has authority to reduce operating expenses to the extent that the Commission finds that they resulted due to the park owner's failure to undertake prudent and ongoing maintenance activities or costs, which were caused by unnecessarily and

¹⁰ *Kavanau, supra*, 16 Cal.4th 761, 771-772; *San Marcos, supra*, 192 Cal.App.3d 1492, 1502; *Oceanside Mobilehome Park Owners’ Ass’n., supra*, 157 Cal.App.3d 887, 907.

¹¹ *Stardust, supra*, 147 Cal.App.4th 1170, 1188; *Galland, supra*, 24 Cal.4th at 1021-1022; *Kavanau, supra*, 16 Cal.4th at 771-772.

¹² *Oceanside, supra*, 157 Cal.App.3d 887, 903; *Colony Cove MHP, supra*, 220 Cal.App.4th 840;

¹³ See e.g., *Birkenfeld, supra*, 17 Cal.3d 129; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644.

unreasonably deferred negligent, or otherwise improper repair and/or maintenance or other acts or omissions of the park owner. (Administrative Rules, §4.0003(D)(4)(h).)

Adjustments to operating expenses may also be made under Administrative Rules, §4.0003(D)(5), which provides in part:

“In calculating operating expenses for any year, an expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses, under any of the following circumstances:

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

...

c. In the case of current year expenses, when the expense is not a reasonable projection of future expenditures of that item.”

All of these provisions provide the Commission with authority to evaluate the reasonableness of operating expenses when determining whether an applicant has met its burden of establishing the reasonableness of operating expenses and whether the applicant has met its burden of establishing a Special Rent Adjustment is warranted.

<u>STAKEHOLDER</u>	<u>STAKEHOLDER COMMENTS</u>
YMRA (Att. B)	Requests that the Ordinance and Rules be amended to forbid an investor from seeking a “fair and reasonable return on investment” for five years from the date the mobile home park is purchased. Requests that the applicant be required to submit 5 years of documentation and if request is granted the park owner shall report expenses for the three years following the rent adjustment. If park owner does not maintain expenditures within a 10% range from the reports expenses that justified the rent increase, a rent decrease should be reported to the park residents.
Sonderman (Att. G)	Requests a six to eight month hold for a new park owner to apply for a special rent adjustment.
Minnear (Att. J)	A new park owner that applies for a special rent adjustment following the first year of ownership violates the spirit of Fair Return and defeats the rent stabilization ordinance as a whole.
Minnear (Att. J)	Requests that the Ordinance’s time components between petitions are increased from one year to five years. Park owners would be forced to

be more precise and reasonable when requesting increases in rent or compensation for improvements.

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules regarding placing any limitations on when a park owner may submit an application for a Special Rent Adjustment under YMC §15.20.100(A), (B) or (C).

7. SUBJECT: SIMPLIFY MNOI AND CPI BASELINE YEAR CALCULATIONS

The City's Ordinance is designed to provide park owners with a fair return while protecting park residents against excessive rent increases. The Ordinance contains a presumption that in 1987, prior to the enactment of rent control, the parks were earning a fair return. Therefore, 1987 is the initial base year to be used in establishing a park's initial maintenance of net operating income (MNOI) rent adjustment upon application to the Rent Review Commission. The Ordinance further defines a fair return as the amount of income needed to maintain the park's base year net operating income (NOI), as adjusted for inflation. As established by case law, under the MNOI formula the starting point from which future space rent increases are determined must be based upon a time when the park owner earned a fair return – general market conditions prior to the imposition of rent control.

If a park owner obtains approval of an MNOI/Fair Return rent adjustment, the “base year” is no longer 1987. Instead, YMC §15.20.100(A)(2) provides that in the event a park has received a special adjustment since the base year, the income and expense year on which the special adjustment was based shall be deemed the base year for the purposes of evaluating a rent adjustment application, and the CPI used as the “current CPI” in determining the prior special rent adjustment shall be deemed the “base year CPI” for the purpose of evaluating the special rent adjustment application. (See also Administrative Rules, §4.0003(A)(2).)

As outlined above, the Ordinance and Administrative Rules have been drafted in light of judicial rulings establishing the principles of a fair return. This includes prior court decisions that the MNOI methodology for determining a fair return has been found to be a fairly constructed formula for determining space rent increases under city ordinances, which regulate mobilehome park space rents, and which provides the park owner with a fair return.¹⁴

During the 2007 Biennial Review process, the City modified the definition of base year to provide that once a park owner receives an MNOI rent adjustment after the base year, “the income and expense year on which the special adjustment was based shall be

¹⁴ See *Kavanau*, *supra*, 16 Cal.4th 761, 768-769; *MHC Operating Limited Partnership*, *supra*, 106 Cal.App.4th 204, 221).

deemed the base year for the purposes of evaluating a rent adjustment application.” (YMC §15.20.100(A)(2).) This change was premised on the concept that newly increased rents which incorporate an MNOI rent adjustment are now receiving a fair return. Since that time, under the Ordinance, for those parks that have already received an MNOI rent adjustment, a future MNOI rent adjustment will not use 1987 as the base year, but will use the later year upon which the most recent MNOI rent adjustment was based. In contrast, for those parks that have never received an MNOI rent adjustment, the year 1987 will be the base year should they apply for an MNOI rent adjustment.

The Ordinance complies with the constitutional requirement that park owners be entitled to show that the basic rent increase provisions (the Annual Adjustment process) are insufficient to provide a fair return and that an MNOI rent adjustment is needed so that they may earn a fair return.

STAKEHOLDER

STAKEHOLDER COMMENTS

Minnear
(Att. J)

Requests that the baseline year be amended to five years prior to the petition and then adjusts every five years. The result is a baseline year that is always between five and ten years prior to petition. This addresses imaginary or made up numbers when base year documents are not available.

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules pertaining to 1987 as the base year for the purposes of determining the initial MNOI adjustment or fair return adjustment for those parks that have not yet received an MNOI rent adjustment.

8. SUBJECT: SPECIAL RENT ADJUSTMENT APPLICATION REQUIREMENTS

The City’s Ordinance authorizes a park owner to seek a rent increase that exceeds the Annual Adjustment on the grounds that the Annual Adjustment does not provide the park owner with a fair return, pursuant to YMC §15.20.100. All of these Special Rent Adjustments require a formal application and Commission approval. The park owner bears the burden of proof and must provide the evidence to justify a Special Rent Adjustment under YMC §§15.20.100(A), (B), and/or (C).

The Ordinance’s application procedures are set out in YMC §§15.20.100 and 15.20.105, and Administrative Rules, §§4.0003, 4.0004 and 4.0005. In order to have a Special Rent Adjustment application submitted for hearing to the Commission, the park owner must pay a filing fee and submit a complete application, including complete financial records that support the requested rent adjustment. The applicant must submit documentation of its income and expenses in the base year and of its income and expenses in each of the last five years or since its last Special Rent Adjustment and such other information and documentation as is necessary to properly determine an MNOI calculation under YMC

§§15.20.100(A), (B) and/or (C). Required financial records include profit and loss statements, balance sheets, bank statements, invoices, cancelled checks, and similar financial records. The City cannot require that a park owner submit personal or business tax returns as those returns are confidential under federal and state law.

Staff Comments: In order to submit a complete application, an applicant must include all information and documentation to establish each element required by the Ordinance and Rules to meet his/her burden of proof demonstrating the basis for the requested MNOI Rent Adjustment, MNOI Rent Adjustment based on Re-adjusted Base Year NOI, and/or Fair Return Rent Adjustment. (See Administrative Rules, §§4.0002(B)(1)(a), (b) and (c); and §§4.0003, 4.0004 and 4.0005.) The City cannot require that a park owner submit personal or business tax returns as those returns are confidential under federal and state law. In addition, the City has not required submittal of audited financial records, because the cost of any such audit would probably become an element of the application and hearing costs that a park owner would seek to include in a temporary rent adjustment under YMC §15.20.140 and the Administrative Rules, Chapter 6.

<u>STAKEHOLDER</u>	<u>STAKEHOLDER COMMENTS</u>
YMRA (Att. B)	Requests that the applicant be required to submit 5 years of documentation.

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules regarding the number of prior years' income and expenses that must be submitted as part of an MNOI/Fair Return Rent Adjustment application, since the Ordinance and Rules already require that the park owner submit documentation for expenses for the current year and the preceding four years.

9. SUBJECT: COSTS OF CAPITAL IMPROVEMENTS

The Ordinance contains contain comprehensive provisions addressing when park owners may obtain approval of a rent adjustment based on a capital improvement. Pursuant to YMC §15.20.085 and the Administrative Rules, Chapter 5, a park owner may apply for a Capital Improvement Rent Adjustment consented to by at least 51% of the regulated spaces pursuant to a confidential ballot after holding a resident meeting. The park owner must then submit an application to the Rent Administrator for approval based on demonstrating that the work qualifies as a capital improvement and that the necessary 51% resident consent was obtained. The Rent Administrator's decision may be appealed to the Commission.

Under YMC §15.20.085, a park owner may also apply for approval of a Capital Improvement Rent Adjustment without conducting the resident meeting or obtaining 51%

consent of the residents, in two situations -- if the capital improvement is necessary to protect the health and safety of the park, its residents and/or its neighbors; or if the improvements qualify as emergency capital improvements.

Any Capital Improvement Rent Adjustment granted by the City cannot be included as part of the monthly space rent but must be itemized as a separate charge on the residents' monthly rent statement, and may only be charged for the useful life of the capital improvement, as determined by the City.

Staff Comments: The City has carried out significant revisions to the Capital Improvement Rent Adjustment procedures during the last two biennial reviews. During the 2011 biennial review, the City Council amended YMC §15.20.085 and the Administrative Rules, Chapter 5, to create the emergency capital improvement procedure, in order to allow a park owner to immediately correct health and safety capital improvements when a park is damaged due to events such as storms and fires, without having to go through the resident meeting/ballot election process, so long as the emergency improvements are carried out in a specific time frame following the emergency. At that time, the City Council also added provisions to the Ordinance and Administrative Rules requiring a separate rent adjustment application for capital improvements and excluding them from the Special Rent Adjustment process (Ordinance Nos. 311 and 315, Resolution Nos. 2011-52 and 2012-02).

During the 2016 biennial review, the City Council again amended YMC §15.20.085 and the Administrative Rules, Chapter 5, to provide more specific documentation requirements that must be provided to the residents at the resident meeting, including the bids or proposals obtained, and also to establish a certification requirement by a qualified expert for flatwork improvements made within a mobilehome park (Ordinance No. 351 and Resolution No. 2016-44).

STAKEHOLDER	STAKEHOLDER COMMENTS
YMRA (Att. B)	Requests that the Ordinance and Rules be amended to require approved capital improvement costs to be split evenly between the park residents and park owner.
YMRA (Att. B)	Emergency Health & Safety Capital Improvement – Clarify that emergency application cannot be submitted if a standard Capital Improvement was already submitted.
Minnear (Att. J)	Requests that the Ordinance be made fair and require the park owner and residents to share the costs for maintenance or improvements that result in equity building.

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules relating to capital improvement rent adjustments.

10. **SUBJECT: DEFERMENT OF APPLICATION FEES**

Over the years, the City Council has established the policy that the Ordinance must pay for itself, and that the benefited parties – the park residents and park owners – must bear the cost of administering and implementing the Ordinance. Costs for administering the Ordinance are substantial, due to the involvement of staff, experts and attorneys and are captured in the annual rent control fee.

The \$1,750 application/appeal fee only covers the costs associated with office supplies, copying costs, postage and a percentage of the costs associated with the court reporter for the application/appeal. The costs for City staff experts and the Commission attorney are not covered by the \$1,750 fee. If the \$1,750 fee is deferred and applied to the annual rent control fee it may:

- Increase the number of appeals before City Council; and
- Increase the *Galland* fees passed on to the residents if the Council upholds the decision of the Commission; and
- Full reimbursement to the City is not guaranteed since rent control fees are implemented January 1st of each year and collected January 1st of the following year, residents that were involved in the case may no longer own the coach when the rent control fees are collected; and
- Increase staff time to implement and track reimbursement.

STAKEHOLDER	STAKEHOLDER COMMENTS
YMRA (Att. B)	Requests that the Ordinance and Rules be amended to allow the deferment of the \$1,750 application/appeal fee. If the residents in the particular park prevail the application/appeal fee would be paid by the park owner and if the residents do not prevail, those residents would pay \$1,750 along with the rent control fee over a period of twelve months

Staff Recommendation to the Commission:

Staff does not recommend any changes to the Ordinance or Rules pertaining to the deferment of the \$1,750 application/appeal fee for residents.

11. **SUBJECT: DISCLOSE THE DIFFERENCE BETWEEN MONTH TO MONTH RENTALS AND LONG TERM LEASING**

The Ordinance and Administrative Rules originally required that park owners provide a copy of the Ordinance to all prospective residents and existing residents before they sign long-term leases and written verification of the park owner's compliance also had to be provided to the City. In 1995, a court decision was issued in *Escondido Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 33, which held

that a city could not add anything to the notice requirements contained in Civil Code §798.17 as to existing residents because the statute preempted local ordinances. Based on the *Escondido Mobilepark West* ruling, the City Attorney's office advised that the Ordinance provision could not be applied to existing residents, but could be applied to prospective homeowners. However, in 2004, a new statute became effective as part of the MRL, Civil Code §798.74.5, which governs the disclosures that must be made to prospective residents.¹⁵ Based on the *Escondido Mobilepark West* decision holding that when the Legislature has established notice requirements under the MRL, a city cannot enact additional notice requirements., during the 2006 biennial review staff advised the Commission and Council at that time that it is likely that a court would conclude new Civil Code §798.74.5 also precludes the City from requiring that prospective residents be given notice and a copy of the Ordinance before signing a long-term lease exempt from rent control.

During the 2006 biennial review, based on Civil Code §798.74.5 and the *Escondido Mobilepark West* decision, the City Council eliminated the requirements that the park owner provide its prospective residents with a copy of the Ordinance or a notice of the current space rent.

The following amendments were made to the Ordinance and Rules in 2006:

Eliminate the Rent Stabilization Certification Form and Amend YMC §15.20.050(D), §15.20.110(H) and Resolution §2.0010(B) and 2.0006(C) to read as follows:

~~YMC §15.20.050(D). At the time a prospective resident is provided with a proposed lease or rental agreement, the park owner shall also provide the prospective resident with a notice setting out the current space rent for the subject space, based upon the most recent rent adjustment approved by the city. No park owner shall require that a prospective resident sign a lease exempt from the Ordinance as a condition of tenancy. any rental agreement or lease, unless such notice of current rent has been provided to the prospective resident and the prospective resident has been given an opportunity to review the notice, and has signed a declaration so stating.~~

~~YMC 15.20.110(H). A copy of the Ordinance (YMC 15.20) codified in this chapter shall be posted in the office of every mobilehome park and in the recreation building or clubhouse of every mobile home park. A copy of said ordinance shall be shown to every resident and prospective resident of a mobilehome park before the resident or prospective resident agrees to any rental agreement or lease. Verification that each resident or prospective resident has reviewed said ordinance prior to agreeing to any rental agreement or lease shall be provided to the rent administrator by filing with the rent administrator a certification form provided by the rent administrator and signed by the resident or~~

¹⁵ Civil Code § 798.74.5 was also slightly modified in 2012, pursuant to AB 1287, effective in 2013.

~~prospective resident. (Ord. 231 §1, 2004; Ord. 214 §4-6, 2002; Ord. 193 §10, 1999; Ord. No. 161 §10, 1996; Ord. 126 §10, 1994)~~

~~Resolution §2.0010(B). The park owner shall show a copy of the Ordinance to every resident and prospective resident of the park before the resident or prospective resident agrees to any rental agreement or lease, and shall submit a verification signed by the park owner and such resident certifying under penalty of perjury that such resident has reviewed the Ordinance prior to agreeing to any rental agreement or lease. The Owner shall submit the executed verification form to the City with the annual registration form, or in accordance with the provisions of Section 2.0006(C) concerning new lease information. No park owner shall require that a prospective resident sign a lease exempt from the Ordinance as a condition of tenancy.~~

~~Resolution §2.0006(C). New Lease/Renew Lease Registration. A park owner is required to file a Rent Stabilization Certification form when there is a change in terms, and/or rental rate for a rent controlled or space exempt from the Ordinance pursuant to California Civil Code Section 798.17. The statement shall be filed with the RA within ten (10) working days of the change. Every park owner shall file a New Lease/Renew Lease Registration Statement, provided by the rent administrator, whenever the lease terms, resident name or rental rate for a space changes pursuant to a new or renewed lease which is exempted from this chapter pursuant to Civil Code Section 798.17.~~

STAKEHOLDER	STAKEHOLDER COMMENTS
YMRA (Att. B)	Requests that the Ordinance be amended to require a mobile home park owner to inform prospective tenants in writing the differences between month to month tenancies and leases that are for the duration of more than one year and how these differences pertain to the protection vs. forfeit of the Ordinance.

Staff Recommendation to the Commission:

The Mobilehome Residency Law already governs what information or documentation must be provided to existing residents and prospective residents. Staff recommends that the Commission make no change to the Ordinance and Rules with respect to this issue.

CONCLUSIONS:

In accordance with the City Council’s recent action, at this meeting following public comment, the Commission should discuss the issues and provide any recommendations for staff to present to the City Council in November. Following the Commission’s review and discussion of this

Mobilehome Rent Review Commission
Meeting of October 19, 2017

Report, the Report and any Ordinance and Resolution changes recommended by the Commission, will be presented to City Council for review and action.

Attachments:

- A 2017 Chart of Average Rents – City of Yucaipa
- B YMRA
- C MHET
- D WMA
- E Rottenbacher
- F Dyer
- G Elizabeth Sonderman
- H Barbara Kutra
- I Dale Ramsdell
- J Robin Minnear
- K GSMOL
- L GSMOL Survey of CA Jurisdictions with Mobilehome Park Rent Stabilization Ordinances (updated March 2015)
- M Memorandum from Kenneth Baar, Ph.D., J.D. dated October 16, 2017, “Comment on Proposal by Yucaipa Mobilehome Residents Association (YMRA) (Sept. 8, 2017) Regarding Fair Return Standards”

2017 CITY OF YUCAIPA
General Services/City Clerk Dept.

PARK SPACES Source: 2017 Annual Registration									BASE RENTS LONG-TERM LEASE (LTL) SPACES Source: 2017 Annual Registration			BASE RENTS RENT CONTROL SPACES (**Source: 2017 Adjusted Space Rents [CPI Increase])		
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Mobilehome Park	Address	Total Spaces	Park Owned	LT Lease	Rent Control	Vacant Pads	PO Vacant Coaches	RO Vacant Coaches	LTL High Base Rent	LTL Low Base Rent	LTL Average Base Rent	RC High Base Rent	RC Low Base Rent	RC Average Base Rent
Aladdin Mobilehome Park *	12813 7th Street	96	40	0	56	1	6	0	\$0.00	\$0.00		\$337.35	\$277.15	\$325.27
Avalon Mobilehome Park *	35011 Avenue E	85	47	0	38	0	13	0	\$0.00	\$0.00		\$363.06	\$339.23	\$359.68
Bel Aire Mobilehome Park	13060 2nd Street	111	25	14	72	8	2	0	\$499.00	\$300.55	\$395.05	\$595.11	\$299.63	\$367.30
Bonanza Mobilehome Park *	13645 5th Street	83	16	0	67	0	1	0	\$0.00	\$0.00		\$358.88	\$332.38	\$356.37
Caravan Mobilehome Park *	12656 2nd Street	70	1	0	69	1	0	0	\$0.00	\$0.00		\$313.92	\$258.65	\$275.49
Carriage Trade Manor MHP *	12874 California St	97	12	0	85	0	3	0	\$0.00	\$0.00		\$357.91	\$321.72	\$333.74
Crafton Hills Mobilehome Park	31816 Avenue E	159	3	115	41	0	0	0	\$384.15	\$301.36	\$348.87	\$390.37	\$315.81	\$341.06
Crestview I Mobilehome Park *	12220 5th Street	145	4	109	32	0	1	0	\$323.06	\$295.61	\$314.14	\$328.14	\$302.43	\$319.67
Crestview II Mobilehome Park	12821 4th Street	55	22	0	33	0	1	0	\$0.00	\$0.00		\$449.77	\$268.20	\$348.72
Eldorado Mobilehome Park ¹ *	35218 Fir Street	217	2	0	215	0	1	0	\$0.00	\$0.00		\$489.30	\$355.11	\$415.50
Executive Mobilehome Park	10622 Bryant Street	152	1	0	151	0	0	0	\$0.00	\$0.00		\$465.17	\$363.48	\$419.52
Fremont Heights Mobilehome Park *	12151 Fremont St	114	4	0	110	0	0	0	\$0.00	\$0.00		\$564.51	\$485.24	\$518.96
Grandview East Mobilehome Park ¹	12655 2nd Street	99	1	0	98	0	0	0	\$0.00	\$0.00		\$468.22	\$256.23	\$368.01
Grandview West Mobilehome Park *	12700 2nd Street	51	0	0	51	0	0	0	\$0.00	\$0.00		\$393.89	\$334.29	\$357.33
Green Valley Mobilehome Park	12414 4th Street	109	99	0	10	0	15	0	\$0.00	\$0.00		\$317.59	\$308.39	\$314.77
Hidden Valley Mobilehome Park *	12680 4th Street	60	0	0	60	0	0	0	\$0.00	\$0.00		\$324.09	\$312.08	\$319.73
Hidden Village Mobilehome Park*	12582 2nd Street	81	3	0	78	0	0	0	\$0.00	\$0.00		\$420.12	\$357.50	\$382.75
Hide-Away Mobilehome Park	34447 Yucaipa Blvd	46	1	24	21	0	1	0	\$750.00	\$400.00	\$571.46	\$354.66	\$352.62	\$354.56
Hillcrest Mobilehome Park *	33600 Calimesa Blvd	196	66	0	130	19	6	0	\$0.00	\$0.00		\$499.67	\$414.48	\$438.60
Hitching Post Mobilehome Park	34642 Yucaipa BLvd	110	11	0	99	4	0	0	\$0.00	\$0.00		\$505.24	\$276.29	\$366.41
Holiday Mobilehome Park	34184 County Line Rd	128	74	0	54	1	4	0	\$0.00	\$0.00		\$312.33	\$235.91	\$274.83
Knollwood Mobilehome Park	12941 2nd Street	124	39	25	60	5	5	0	\$485.11	\$315.32	\$384.69	\$465.18	\$301.47	\$356.32
Lakeview Mobile Estates	11050 Bryant Street	296	2	0	294	0	1	0	\$0.00	\$0.00		\$505.58	\$425.00	\$473.24

¹ Denotes Non-Profit Status

* Senior Park

** Base rents subject to change with City approval of annual CPI increases that take place throughout the year

2017 CITY OF YUCAIPA
General Services/City Clerk Dept.

		PARK SPACES Source: 2017 Annual Registration							BASE RENTS LONG-TERM LEASE (LTL) SPACES Source: 2017 Annual Registration			BASE RENTS RENT CONTROL SPACES (**Source: 2017 Adjusted Space Rents [CPI Increase])		
Mobilehome Park	Address	Total Spaces	Park Owned	LT Lease	Rent Control	Vacant Pads	PO Vacant Coaches	RO Vacant Coaches	LTL High Base Rent	LTL Low Base Rent	LTL Average Base Rent	RC High Base Rent	RC Low Base Rent	RC Average Base Rent
Las Casitas Mobilehome Park	33848 Avenue G	70	22	38	10	4	5	0	\$627.00	\$234.20	\$509.83	\$550.26	\$330.00	\$489.92
Melody Lane Mobilehome Park	12688 California St	32	5	0	27	0	0	0	\$0.00	\$0.00		\$341.16	\$259.73	\$301.22
Mission Valley Oaks Mobilehome Park *	12367 4th Street	76	3	73	0	1	2	0	\$560.00	\$463.05	\$537.34	\$0.00	\$0.00	
Mount Vista Mobilehome Park	13061 2nd Street	56	8	0	48	0	7	0	\$0.00	\$0.00		\$352.45	\$257.33	\$268.11
Mountain View Mobilehome Park	12726 California St	77	15	0	62	1	3	0	\$0.00	\$0.00		\$341.16	\$263.80	\$295.11
Northview Mobilehome Park *	10675 Bryant Street	129	4	23	102	1	2	0	\$256.53	\$226.34	\$237.41	\$261.04	\$222.86	\$242.73
Park Terrace Mobilehome Park *	12177 3rd Street	73	2	0	71	2	0	0	\$0.00	\$0.00		\$300.47	\$300.47	\$300.47
Patrician Mobilehome Park *	34480 Countyline Rd	137	8	1	128	1	4	0	\$400.00	\$400.00	\$400.00	\$347.49	\$319.96	\$328.83
Rancho Del Sol Mobilehome Park ¹	12351 4th Street	110	4	0	106	3	0	0	\$0.00	\$0.00		\$468.17	\$306.00	\$423.94
Skyline Village Mobilehome Park*	12650 California St	77	38	0	39	18	3	0	\$0.00	\$0.00		\$318.27	\$275.41	\$305.21
Twin Pines Mobilehome Park	12300 5th Street	93	80	0	13	0	10	0	\$0.00	\$0.00		\$563.74	\$307.79	\$335.87
Valley Breeze Mobilehome Park*	13576 California St	87	34	0	53	12	5	0	\$0.00	\$0.00		\$374.25	\$360.57	\$363.54
Valley View Mobilehome Park ^{1*}	12995 6th Street	75	11	0	64	3	0	0	\$0.00	\$0.00		\$342.22	\$262.35	\$302.98
Westwind Mobilehome Park	12380 4th Street	86	61	0	25	0	2	0	\$0.00	\$0.00		\$346.55	\$212.73	\$261.26
Wildwood Canyon Mobilehome Park	34111 Wildwood Cyn	147	1	0	146	0	0	0	\$0.00	\$0.00		\$331.38	\$256.22	\$288.91
Wishing Well Mobilehome Park*	13063 5th Street	73	19	0	54	1	1	0	\$0.00	\$0.00		\$315.34	\$208.04	\$257.56
Yucaipa Valley Mobilehome Park	12710 3rd Street	104	2	81	21	0	1	0	\$795.00	\$395.00	\$531.16	\$347.88	\$347.48	\$347.84
Yucaipa Village Mobilehome Park*	12830 6th Street	82	0	0	82	0	0	0	\$0.00	\$0.00		\$491.40	\$344.55	\$359.92
Total Spaces:		4,268	790	503	2,975	86	105	0						

¹ Denotes Non-Profit Status

* Senior Park

** Base rents subject to change with City approval of annual CPI increases that take place throughout the year

Yucaipa Mobilehome Residents Association (YMRA)

P.O. Box 1052, Yucaipa, CA 92399, (909) 797-9732

September 8, 2017

Ms. Jennifer Shankland
Director of General Services
City of Yucaipa
34272 Yucaipa Blvd.
Yucaipa, CA 92399

Dear Ms. Shankland,

Thank you for the opportunity of allowing our input to influence and/or encourage fair and positive ideas to enhance the City of Yucaipa's Administrative Rules and Rent Stabilization Ordinance.

Considering the 2015 review of the ordinance, we believe that everyone can agree that the issues are convoluted. It is difficult to discuss one issue without consideration of another.

We have many concerns to address in this cycle. We will attempt to address each one individually, however, bear in mind that there will be overlapping discussion presented that would need to be considered and incorporated as part of various main points. Any mention of an aspect, issue or consideration should be associated and incorporated to main points by reference.

We would like to start off by acknowledging that the Yucaipa Administrative Rules and Rent Stabilization Ordinance is an outstanding directive, well written and is necessary for the overall protections to mobile home park residents as well as mobile home park owners.

As with nearly all government codes, from the IRS, Federal and State law to the vehicle Code and local municipal ordinances, there are always efforts by some to find *opportunities* to avoid compliance or seek and find ways to undermine the true intent of the provisions for personal or corporate gain.

We believe that our input has considerable merit, as well as the input from others. We believe that many ideas and suggestions, individually or combined, if adopted, would help reduce city staff work loads, streamline processes, add protections and bring better legitimacy to a variety of areas.

At the same time, we want to be mindful of the possible ramifications that could lead to undesired costs and litigation. Most importantly, we do not want to rule out opportunities to enhance the ordinance, especially if it establishes better clarity and protections.

Due to the complexity and relative connections between issues, we believe it would be wise to conduct a study reflecting possible scenarios and impacts before adopting or ruling out proposed changes to the ordinance.

We respectfully request that a professional analysis be ordered to study and explore the consequences, pros and cons as well as the feasibility of proposed changes.

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We would like to begin with the **City of Yucaipa, Administrative Rules, Chapter 4, 4.0001.Fair Return (A) Purpose.** *It is the intent of YMC Section 15.20.100 to establish rents at a level which will provide park owners with a fair and reasonable return on investment while protecting the residents from excessive rent increases.*

Due to the fact that a municipality is mandating and regulating what a business owner can charge for a product or service (in this case rental pads and amenities in a mobile home park), it is not only reasonable, but required that a park owner have a means to present his or her arguments as to why a rent adjustment might be in order. Because of the imposed regulation, it is possible that a mobile home park owner through prudent, diligent, efficient and best efforts to manage a park, could experience diminishing profits. Without this provision, a municipality could be responsible for 'a taking of property'. The end result could be expensive litigation and the repealing or discontinuance of the ordinance.

Although this is a common clause in Rent Stabilization Ordinances across the State of California, this provision has now been exploited as a government guarantee to gain extremely large, illicit and unjustified rent increases.

We respectfully request that the language in this section be amended to clarify the true intent, meaning and spirit of the provision and include language that specifically forbids an investor from seeking a 'fair and reasonable return on investment' for 5 years from the date a mobile home park is purchased.

We submit that when an investor makes a purchase of a mobile home park, they are well informed, well educated, very aware if it will profit or not and by how much. The fact that they have made the decision to purchase the park and closed on the transaction is a park investors own admission and acknowledgement that he is in agreement with the terms and result of that decision.

Furthermore, after the purchase of a mobile home park, an investor will gain and enjoy annual automatic rent increases through the ordinance for the 5 year period. The automatic rent increases will provide a continued level of profit based on the park investors own decision in making that purchase. With that, **there is no government taking of property.**

In addition, currently, it is a common strategy (see mobilehomeuniversity.com) for an investor to purchase a mobile home park and spend as much as possible in repairs, maintenance and capital improvements to reflect higher operating costs to justify larger rent increases. After a rent increase is granted, a park owner could easily limit the amount of future spending on expenses, and enjoy the difference as additional profit. Adopting the above language and prohibiting an investor from filing for a special rent increase for 5 years would also create the needed income/expense documentation when a special rent increase application is filed.

We respectfully request that when an investor does make application for a special rent increase, (regarding a recently purchased park) the ordinance requires that the investor at least include the 5 years of documentation (income/expense, etc.) from the date the park was purchased as well as all the current requirements in effect.

Furthermore, when a special rent adjustment is granted, we request that a park investor

be required to report expenses for the three years following the rent adjustment, and maintain expenditures within a 10% range from the reported expenses that justified the rent increase. If funding of expenses has been decreased by more than 10%, accordingly, a relative rent decrease should be awarded to the park residents.

We submit that if the Administrative Rules, Chapter 4, 4.0001.Fair Return (A) is not amended to reflect the intended spirit of this provision, the provision assures that any investor can purchase any mobile home park, at any price, with any profit or lack thereof, and **will be guaranteed a profit** at the cost of the innocent residents through what is currently a **government guarantee**. Furthermore, the current language and the fact that this does not prohibit an investor from filing for a fair return **allows and encourages abuse** of the ordinance and of the residents living in the parks.

Also, regarding Definitions: YMC 15.20.20, we request that a definition be included to describe the exact and intended meaning of the ‘fair and reasonable return on investment’ provision, as well as describing in what cases the provision will be not be applicable; mainly on the initial purchase of a mobile home park for the first 5 years.

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Regarding the City of Yucaipa, Administrative Rules, Chapter 4, 4.0001.Fair Return (A)

When an investor purchases a mobile home park, there is little doubt that the purchase is for anything other than financial gain. Often, the purchase of a mobile home park is for the benefit of a single entity, while profit for the park owner is at the expense of the residents living in the park.

This is reasonable, however, often times an investor will purchase a mobile home park, well informed and well aware that IF the purchase were made, the park would not profit at a level that would bring a fair return on the investment.

We respectfully request that IF, the above request for ordinance changes (our original request which would forbid an investor from seeking a ‘fair and reasonable return on investment’ for 5 years from the date a mobile home park is purchased) were not possible, that the city draft and incorporate hearing guidelines that require close examination and consideration of park purchases of less than 5 years, that come before the Rent Review Commission for special rent adjustments to include extensive scrutiny of the mobile home park investors purchase to determine if proper due diligence had been exercised, expert opinions sought and/or the park owner had used good prudent judgment in the decision making of the purchase of the park.

Ordinance guidelines should give direction and guidance to insure that the park purchase was clearly NOT MADE with a premeditated intent to use the Rent Stabilization Ordinance to obtain a rent increase with illicit motives.

Guidelines should include measures that clearly scrutinize a park owners motives and intentions, if they really did their ‘homework’ before they purchased the park, if they knew if it would be profitable or not, and if they planned to use the ordinance as a ‘government guarantee’ to profit ahead of time or if the request is legitimate due to circumstances that might have been unforeseen.

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Rent Increase based on CPI
15.20.040 (A) Maximum Permitted Rent

Rent increases based on the Consumer Price Index (CPI) across the state tend to vary widely. One area with a measure of consensus is that inflation relative to operating mobile home parks does not include some aspects of the data included in the CPI calculations (food, gas, health care, transportation, clothing, etc.). Therefore, indexing at amounts less than 100% of the CPI is common and has been reported to be as low as 40% of the CPI. The approved annual *automatic* rent increases in Yucaipa, based on the ordinance, is currently 80% of the CPI.

During the recent rent increase hearing with Carriage Trade Manor, the city's own expert witness, Kenneth Baar, testified that rent increase rates as low as 40% are in place and used in some cities as well as have been upheld by the courts; determining that 40% does allow for reasonable rent increases for mobile home parks to maintain profits at a fair and reasonable level of return on investment. With that, it has been upheld that there is no government taking of property.

There has been an informal study conducted by Yucaipa's city staff using approximately eight years, from 2008 - 2015, of CPI data (included in the 2015 Biennial Review meeting minutes January 13, 2016), concluding that raising the annual automatic rent increase amount from 80% of the CPI to 100% would have minimal impact to mobile home park residents. The informal study was based on 'Post Great Recession' CPI figures, where inflation was basically non-existent or abnormally low. To be fair, the Rent Review Commission should only consider this conclusion in context with all relevant data available. This would include pre 'Great Recession' figures, economic cycles, highs and lows and periods of unusual circumstances as well as historical figures from other noteworthy economic events. In addition, although the Federal Reserve's inflation target rate is currently 2%, the rate of inflation may or may not be in line with this goal. At the very least, best and worst case scenarios should be considered.

When considering the appropriate rate (tied to the CPI) to determine a fair amount to allow in an '*automatic*' annual rent increase, it is easy to only look at the inflation numbers, and assume a park owner cannot remain consistently profitable with anything less than 100% of the CPI, however, other applicable factors must be considered.

As mentioned, a park owner does not pay for much of what the CPI includes in the overall data collected in determining the final number (groceries, medication, health care, gas, transportation, clothing, etc.)

A park owner enjoys 100% of the appreciation of the overall property value. Additional considerations should also be noted in this area. Although, it may not be the case across the board, it should be recognized that it is a park owners option and a reasonably good, common business practice to leverage investments. More often than not, a park owner might make a down payment on a park purchase and finance the balance.

For the sake of ease and a simple example to make the point: A mobile home park investor could purchase a park with 10 to 20% down (Mobilehome University teaches how to purchase a mobile home park with zero down). For every million dollars a park costs, it would cost the investor approximately one to two hundred thousand dollars (10 - 20%). When you factor inflation in this, it becomes clear that the leveraged investment returns a substantial profit in the form of equity. If it is a 1 million dollar investment with 100 - 200 thousand dollars down or a 10

million dollar investment with 1 - 2 million down, the inflation and resulting equity build is on the entire value of the property; not just the down payment.

Also, please see and factor in the Capital Improvement argument below - (YMC 15.20.085 A, 1. Rent Adjustment based on Capital Improvements)

We respectfully request that the Rent Review Commission maintain the 80% indexing for the automatic annual rent increases.

We also respectfully request that if the indexing number were to rise by any amount, that the annual rent increase no longer be automatic and that park owners should have to apply and report expenses, relative to revenues within industry averages to show justification that they are continuing to maintain their parks at reasonable levels. If expenditures were to fall out of established guidelines (for example 10% less than the industry average), a rent increase would not be warranted or granted. However, if park owners did maintain their level of maintenance and expenses, the increase would be granted. This would help to insure that mobile home parks are reasonably maintained and continue to operate at levels that would suggest prudent management and a basis for justifying the increased amounts of rents paid by the park residents.

Furthermore, we respectfully request that if the CPI indexing number were to rise by any amount, that the current cap of 5% be lowered to 4%.

Last, we respectfully request that if the CPI indexing number were to rise by any amount, our request for park owners to pay 50% of the costs of Capital Improvements be granted.

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**YMC 15.20.085 (A, 1.) Rent Adjustment based on Capital Improvements:
15.20.085 (A) General Procedures**

The benefits to the park owner far outweigh the benefits to the park residents.

It is and has been unfair that mobile home park residents pay the entire cost of Capital Improvements. Park owners should always have had to pay at least 50% of Capital Improvement costs.

With the current Rent Stabilization Ordinance, without any changes whatsoever and considering all aspects in context (80% of CPI factor for automatic annual rent adjustments, Vacancy Control, etc.) mobile home park residents should not and should never have had to pay for more than half of the cost of a Capital Improvement unless the Capital Improvement provided something that did not exist before; and even then, more than 50% may not be justified.

Example: Repaving of streets generally restores streets to their best (original) form. They replace or restore something that should have always been in good condition. When a Capital Improvement of streets is needed, the counter consideration is that park residents have most likely had sub-par conditions for many years leading up to the Capital Improvement.

When providing something that did not exist before (building a club house or a swimming pool

when one did not exist), an argument could be made that residents should contribute a higher amount, and that may possibly be warranted.

As with the Capital Improvement of the streets in Carriage Trade Manor (a recent and actual example), and some additional repairs in the park, the park owner's attorney (Mark Alpert) stated at the July 18, 2017, special rent increase hearing that the park was only worth one million dollars (at the time of purchase just over a year prior) and with the improvements 'the park owner made' is now worth three million dollars (\$3,000,000). The cost of those improvements were roughly \$352,000 (using the park owner's expert's numbers which were actually deemed to be inflated) [\$87,000 maintenance expenses - deemed inflated, and ~\$265,000 Capital Improvement cost for street resurfacing] and **the \$265,000 of this being 100% paid for by the park residents**).

The \$265,000 paid by the park residents equates to 75% of the investment in the park (of repairs, maintenance and capital improvements), that resulted in two million dollars (\$2,000,000) of added park value. In essence, 1.5 million dollars of value was added through the costs paid by the residents living in the park. ($\$2,000,000 \text{ added value} \times 75\% \text{ or } \sim \$265,000 = \$1,500,000$)

Considering that the Capital Improvement of the streets were paid for by the park residents (*as is for any other capital improvements, however, streets used in this example as an actual case and point*), and the multitude of lucrative benefits realized by the park owner, this more than supports the fact that the park owner's benefits far outweigh the benefits to the park residents.

Furthermore, until the last Biennial review of the ordinance (2015, completed late 2016), there was no oversight as to the legitimacy of costs, quality of work and materials. The 2015 biennial review of the ordinance attempted to include changes to the ordinance that may have provided a measure of accountability, however, those changes were not adopted. With a park owner investing 50% in the capital improvement, a park owner would be much more inclined to get the best bids possible, as well as the best quality of work and materials, resulting in a much greater level of accountability considering that the park owner would also be accountable to himself; his own financial and quality concerns.

Currently

Benefits to the park owner:

Increased park value as used in the above example: One million in value and after approximately \$352,000 (\$265,000 paid by the residents), a jump in value of two million dollars (\$2,000,000).

Note: Regarding Carriage Trade Manor, after this 'resident paid' improvement, the park owner's legal council argued that a large rent increase was in order due to the fact that the park was so greatly improved. Our argument was that the residents created that value and if anything warranted a rent decrease.

With the parks value increased (as in the above example, from one million dollars to three million dollars), the overall appreciation of the park is gained off of the full newly created value.

More often than not, a park is financed and due to leveraging, the park owner would then enjoy the additional benefit of receiving the appreciation on a fraction of investment money, however, the full benefit of appreciation on the entire value of the park.

For example, if a park had an original value of one million dollars and the park investor were able to make the purchase with 10 to 20% down (Mobilehome University teaches people how to

purchase mobile home parks with zero down), the investor would have as little as \$100,000 to \$200,000 out of pocket invested in the park. The result, after making repairs and improvements (as described above), would be a value of three million dollars (\$3,000,000) and any appreciation would be based on the entire value even though the park investor has very little out of pocket invested.

100,000 to 200,000 down payment and approximately \$352,000 repairs and improvements = 452,000 to \$552,000 invested in improving the park (\$265,000 paid by the residents), and appreciation based on \$3,000,000 of value.

The park owner also enjoys the benefits of 'Accelerated' Depreciation' (regarding streets) which can be depreciated over 15 years vs. 27.5 years on regular streets, interest earned (from residents) at prime rate plus 2.5% and if financed, interest is also tax deductible.

- **\$6,667.00** in depreciation **every year for every \$100,000 spent** on a street improvement. *Street Capital Improvements typically range anywhere from \$250,000 to \$500,000*
- Currently/recently, prime rate is 4.25%. At 2.5% above prime rate, a park owner would also gain interest paid to him at 6.75%, equating to approximately **\$6,750 interest earned from park residents for every \$100,000** spent on a capital improvement.
- **Interest deducted** (if financed), of **approximately \$6,000 per year** (using 6% as a reasonable number to express this point), for every \$100,000.

Other regular types of Capital Improvements would also lend to depreciation, interest earned from the park residents and interest tax deductions from any financing.

- Jump in park value due to enhancements (leveraged and/or partially subsidized by resident contributions)
- Leveraged gains on park value appreciation due to fractional down payments and full value appreciation
- Park owner's opportunity to borrow on equity gains and reinvest
- Opportunity to instantly resell (flip) at a very substantial profit
- Possibly lower maintenance costs

Burden to park owner:

Most likely before hand: Making application to the city for the recovery of costs from the park residents, as well as organizing and funding the effort.

A park owner might experience frustration from the filing requirements of the application to the city as well as opposition from the park residents - all in the process of establishing the Capital Improvement; very temporary and resulting in long term lucrative gains.

Benefits to residents:

Most likely mobile home value retained, however, in consideration of values and selling a home, the new buyer would also have to consider the additional monthly cost of the improvement and remaining duration of the obligation. (as described above, streets generally result in a temporary rent increase for 15 years)

The capital improvement would most likely result in an improved, nicer park.

Burden to residents:

A 'temporary' rent increase for streets is generally 15 years. In general, capital improvements are amortized by IRS guidelines. The cost to the residents is usually amortized accordingly. Most capital improvements are for a life of 3 years or greater (5 years or more in the Yucaipa ordinance). Temporary rent increases would generally be for the same duration as the (IRS) allowed duration of depreciation. This would result in added costs to residents in the form of a temporary rent increase.

We respectfully request that YMC 15.20.085 Rent Adjustment based on Capital Improvements (A), 1. In it's first sentence, be amended to: An application for a temporary rent increase based on 50% of the cost of a completed capital improvement may be filed with the rent administrator.

Also, amending any other language that would clarify that park residents and owners each pay 50% of the capital improvement costs.

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YMC 15.20.085 Rent Adjustment based on Capital Improvements
15.20.085 (B) Emergency Capital Improvements

Currently, a park owner needs at least a 51% vote from park residents to be approved by the city to be reimbursed for a capital improvement. Unfortunately, when the vote fails, the park owner turns to the Emergency Health and Safety provision of the ordinance to seek reimbursement from the park residents. There are qualifying conditions that must be met, however, in the past, the Rent Administrator has deemed that the park owners have met those conditions when they clearly have not.

The language in this section (excerpt and without taking out of context):

The purpose of this subsection is to allow the park owner an opportunity to seek approval of a capital improvement rent adjustment application in those situations in which compliance with the resident meeting and capital improvement ballot election procedures is not feasible or possible due to an imminent threat to public health and safety resulting from an emergency event which damages the park.

If it's a Health and Safety emergency, it should be approached as such from the initial start and the application should be made on those grounds. If a Capital Improvement is applied for as a regular course of action (as described in YMC 15.20.085 (A, 1.), attempting to obtain 51 or more percent of the residents vote and fails, the fact that the application was attempted with a resident vote, and denied, is in itself an acknowledgement that the improvement was not a Health and Safety emergency and should automatically obligate the park owner to a minimum of 75 - 100% of the cost of the Capital Improvement.

As in this last years capital improvement of the streets of Carriage Trade Manor, the resident meeting was held, however, in spite of the fact that there were enough people and the vote was taken, the park owner did not receive the needed votes for the resident approval.

In an effort for the park owner to recover costs, he filed for an Emergency Health and Safety capital improvement which resulted in the City of Yucaipa's Rent Administrator's approval.

This has been the process and result on more than one occasion leaving park residents feeling frustrated, taken advantage of and at a loss.

We respectfully request that the language in the ordinance be amended to reflect that a mobile home park owner be required to make an initial application for an Emergency Health and Safety capital improvement, if that is actually the case, or, if an attempt is made as described in YMC 15.20.085 A, 1. Rent Adjustment based on Capital Improvements, and fails, and then is followed by and application for an Emergency Health and Safety capital improvement, it be acknowledged that due to the fact that the initial application was submitted as described in YMC 15.20.085 A, 1. Rent Adjustment based on Capital Improvements, it clearly did not legitimately fall under the description of an Emergency Health and Safety Capital Improvement (YMC 15.20.085 B, and the park owner should be accountable for at least 75% of those costs.

Some additional considerations:

If a Capital Improvement is considered an emergency Health and Safety issue, more often than not, it would be due to a lack of maintenance. When a park owner fails to provide proper maintenance, the cost of maintenance is deferred and later, with the current provisions in the ordinance, the costs becomes the burden of the park residents (paid in full by the residents), rather than a maintenance expense (paid for by the park owner through rent revenues and normally tax deductible).

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15.20.050 Maximum permitted rent upon vacancy

There should never be a rent increase allowed when there is an in place transfer with family, relatives, due to a death and a transfer to a beneficiary as well as in other instances.

Vacancy Decontrol in any form should be carefully considered. We commonly address eviction issues. Too often they are not valid and are unethically motive driven. We do find that it is not uncommon that an eviction leans more to an attempt on a resident for the park owner to acquire the mobile home, and rent it as a park owned coach, avoiding rent control, than to a legitimate eviction based on park violations. We also commonly deal with people that are unable to sell their mobile homes due to park owners or management not qualifying buyers.

Even though, many buyers are rejected for legitimate reasons, many are not. Even though most park owners are fair and reasonable, there are those that look for any possible reasons to reject a potential buyer from qualifying to live in the park. The motives in these cases are usually to continually reject potential buyers while the seller continues to pay space rent. Often, park management or owners will make 'low ball' offers to the mobile home owners, and with this, does help reveal intentions, however, it is difficult to prove that a park owner or management is attempting to gain possession of someone's home.

The seller may have already moved or is a family member that has inherited due to a death. In

any event, by consistently denying potential buyers an approval to live in the park, the seller is eventually worn down as rents continue to become due. The end result is the sellers, selling their mobile homes to the park owners for pennies on the dollar.

This becomes a park owned coach and a space free of rent control. This is not an uncommon practice.

Added note: As we drafted this submission, we had sent it to various concerned park residents that we generally work with as well as our board and sub-committee members. A member of our Advocacy Committee, living at Carriage Trade Manor (the park that just raised rents on residents for a Capital Improvement of the streets, then again with a 'special' rent increase, and again to recover the cost of hearing application fees incurred in order to raise the rents, responded with the following (for the sake of privacy, proof and identification is available on request):

*"I think you covered it all... except Peter (aka Lil' Wang) has thrown a new wrench in the cog (is that the correct term?), my neighbors were both trying to sell their places and just like you wrote about, the buyers were not approved. He's covered his buns, by requiring an "equal rights for housing" application, which includes a credit rating of I think 680, the last 3 years in VERIFIABLE rent or mortgage payments with no more than one late payment per year, and no bankruptcies, etc AND a \$45 application fee and a warning about "don't waste our and your time" if you have any disparities in work history or credit and so on. The one man, who was leaving regardless on Sunday, when his kids were coming to move him to assisted living in Ariz. and **his 3rd perspective client failed, miraculously sold his trailer on Saturday ... (and then secretly confided... for just above nothing to park management). The application for our park rentals is not extensive like the one required for ownership.** So I am going to submit that we too should be able to rent out our mobilehomes. Otherwise, there are not enough "unicorns" (potential mobilehome resident/owners with unlimited income, and without some kind of questionable credit or employment or financing history) so Wang is going to ream us with rent AND then f**k us out of the little hope we have of getting a little equity out of our unmobile estate."*

When considering Vacancy Decontrol in any form, it can not be at a level that would encourage evictions. We have seen too often, evictions that were unfounded, however, meet legal guidelines (this can be done by simply giving repeated warnings about trash or weeds, that might be nothing more than a piece of paper blowing through someone's yard or a couple of sprouts of green stems and leaves). The point is that it happens, it is legal, it is too often frivolous and unfounded, but creates an opportunity for an unscrupulous park owner to obtain ownership of someone's home.

During the 2015 Biennial review of the ordinance, there were concerns expressed that park owners had no incentive to purchase newer coaches to place on vacant pads. We were in discussion with some industry people that represent the park owners. We were told that if they wanted to purchase a new or newer coach, they really did not have a way to effectively recover those costs.

We explored this further and could not find where this was an issue. What we did find was that park owners generally are well connected and if anything, could purchase a mobile home far cheaper than someone that was not in the business. A park owner has the ability to gain financing at better terms than someone not in the business. When a park owner purchases a new, or newer mobile home, that mobile home is owned by the park owner and not subject to rent control in any form; therefore, the park owner can rent the mobile home and space at any amount they desire. They are unrestricted and Vacancy Control is a non issue.

If at some point, the park owner decided to sell the mobile home, they would more than likely

sell at a profit. The space would then revert back to a rent controlled space, however, there is no disincentive that we could find. The conclusion is that the park owner has the option to continue to rent the mobile home and space at premium, or sell, profit and see a level of improvement in the park with an updated mobile home.

A mobile home is generally a depreciating asset. In consideration of home values, there needs to be a reasonable balance where a mobile home owner can maintain reasonable values while still accommodating the park owner if a form of Vacancy Decontrol were implemented.

For every \$10.00 rent increase, a mobile home will lose approximately \$1,000 of value.
(Mobile Home park Home Owners Allegiance)

We sincerely request that if there is serious consideration to grant Vacancy Decontrol in any form, it be limited with a reasonable formula that would not give rise to any possible abuse for unethical or exploitative practices.

Granting any form of Vacancy Decontrol could gravely impact the ordinance as such a divergence would most likely initiate an intense push for further decontrols.

Considering options that might moderate this, could be to disallow rent increases regarding 'in place transfers' as described above, however, regarding other types of vacancies, allow rents to rise to the combined average of rent controlled spaces in the park plus 5%, 5% or \$50, whichever is less and limit the increase to once every 3 years per space. Annual *automatic* rent increases would also continue to apply. Also, we should keep in mind that the ordinance is reviewed every two years; this could be re-evaluated.

Any change in Vacancy Control at all should without question result in Capital Improvement costs being shared at a minimum of 50/50% between park owners and park residents.

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Recovery of Application Costs (and Legal Fees)

15.20.116 Recovery of application costs in connection with successful approval of rent adjustment application to the commission.

15.20.116 (A) A park owner may seek a temporary rent adjustment to reimburse the park owner for the reasonable cost of professional services actually incurred by the park owner in preparing and presenting an application under Section 15.20.100 to the commission. The park owner shall bear the burden of proof and shall provide the evidence to justify a temporary rent adjustment submitted under this section, and approval of the application will be conditioned upon the park owners successfully obtaining approval of a rent adjustment pursuant to Section 15.20.100 of this chapter

A completed application is only a piece of a larger equation that should be factored and weighed against the actual main objective and incorporated with a final decision, which would be a successful conclusion to the original request applied for.

We submit that successful approval of a special rent adjustment application may be an aspect of an overall hearing, however, if an application is submitted, accepted and processed and a hearing granted, the recovery of application costs should directly relate to the success of the

hearing outcome.

Any adjustment (lower) than the originally requested rent increase amount in an application would only constitute partial success, regardless of a completed, accepted and approved application.

Furthermore, the cost of the application and related costs is a burden imposed on a park owner by the city ordinance, not by the residents of the park. A park owner should not be allowed to automatically recover the cost of an application from park residents if ultimately, the park owners end goal was not achieved in full to where 100% of the original request was awarded.

In what manner is there true accountability? If anyone, specifically a mobile home park investor, could file an application against another party, specifically mobile home park residents, knowing that all the costs will be recovered no matter the final outcome, why would the applicant use anything less than the very best and most expensive professionals, experts and their expertise, researchers, etc., *without limits*, as long as those expenses can be deemed reasonable and guarantees recovery of all costs?

Furthermore, a park owner making application for a Special Rent Increase or Capital Improvement can take whatever time they feel is necessary until their application, as well as arguments are completed and perfected; often taking a year or more. Whereas, the opposing party, more often than not, senior residents on limited, fixed incomes, with limited means and resources are generally allowed 20 days to respond.

This is a provision in the Yucaipa Rent Stabilization Ordinance where the structure is completely unfair and ‘the deck is clearly stacked’ against the innocent residents living in the mobile home parks.

Below is an example of the imbalance and what mobile home park residents are up against.

At the 8th Annual Property Rights Foundation of America

Quoting Mark Alpert, the attorney that recently represented Peter Wang, owner of Carriage Trade Manor, in Mr. Wang’s recent special rent increase adjustment, Mark Alpert publicly stated at the Property Rights Foundation of America at their Eighth Annual New York Conference:

“Make it expensive. Litigation is a strategy that works especially when cities are strapped for money. That often brings them to the table. It has worked for us.” “What happens is that the cities just get tired of fighting litigation. They can’t afford to protect the small group’s interest and bust the budget.”

Why is a park owner guaranteed recovery of application costs and associated fees regardless of the outcome of the request?

With respect to the City of Yucaipa and state law.

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Mobilehome Residency Law (MRL) 798.85 Attorney’s Fees and Cost

In any action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney’s fees and costs. A party shall be deemed the prevailing party for the

purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

Knowing that any amount of an award to a mobile home park owner regarding special rent adjustments warrants recovery of all legal fees has resulted in park owners spending 'whatever it takes' and will continually appeal to the highest courts to achieve their ends.

Though the City of Yucaipa must abide by state law, we believe that we have illustrated enough to support that at the very least, YMC Section 15.20.116 Recovery of application costs in connection with successful approval of rent adjustment application to the commission, should be equated to the end result awarded. Recovery of fees should be awarded as an equal percentage relative to the originally requested rent increase and the actual amount granted.

We respectfully request that this provision be amended to include language to express that the recovery of application costs in connection with the successful approval of rent adjustment application to the commission, directly relate to the outcome and the success of the applicant's original request; including that the award of application costs in connection with the application be proportionate to the award granted through the application, relative to the original request.

- A rent increase request of \$250, \$250 granted, 100% recovery of application related fees.*
- A rent increase request of \$250, \$125 granted, 50% recovery of Application related fees.*
- A rent increase request of \$250, \$25 granted, 10% recovery of application related fees.*
- A rent increase request of \$250, \$0 granted, 0% recovery of application related fees.*

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Deferment of application fees for mobile home park residents
(not a waiver of fees)

We have made this submission in the 2015 Biennial review of the ordinance, requesting that park residents be granted a deferment of the \$1,750 application fee if they were to meet certain conditions. As the request was paraphrased by city staff, it seemed that staff viewed the request specifically as a request for a waiver. Our request was, and still is, that the city grant park residents a temporary deferment of the \$1,750 fee for filing an application if park residents can obtain 51 percent of the resident votes to pursue an action (if for a rent reduction due to a discontinued amenity or to appeal an action, etc.). The \$1,750 filing fee is cost prohibitive for many people, especially the seniors residing in these parks.

We feel that this is a reasonable request that can be granted using the following formula:

First off, park residents do have to apply their own efforts. If residents feel they have an important issue that they need to address, they would need to get 51% or more of the residents votes. (This in itself illustrates that the issue is important to the residents). With that, the city allows acceptance of a completed application. The case is heard. If the residents prevail, the application fees would be paid by the park owner. If the residents fail, the \$1,750 fee would be divided by the park residents and with the annual adjustment calculations of maintaining the ordinance, that amount would be added to that particular park resident's rents.

During the 2015 biennial review, there were concerns expressed that there would be a 'run' of park residents that would be filing applications all the time. We feel this is only an option to help mitigate the impact of producing application fees in advance and with a 51% or greater vote from the residents, all residents would participate equally, rather than a few residents having to approach one another and obtain the funds by disproportionate donations where many might not contribute anything at all.

We request that a provision be included in the ordinance to accommodate the mobile home park residents by allowing a reasonable deferment of application fees as described above.

=====

Currently there is no requirement for park owners to notify or disclose to prospective park residents the differences between month to month tenancies and leases that are for a duration of more than one year; specifically, the month to month tenancy offering protections under the Yucaipa Rent Stabilization Ordinance, and the lease, which forfeits those protections. If this is a matter that could fall under the ordinance requirements, we respectfully request that this disclosure be added and park owners or management be required to inform prospective tenants in writing of these important differences.

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The 2015 Biennial review of the ordinance included staff recommendations with options that generally included the option of 'No Change', while with other issues did not include an option of no change. An option for 'no change' should not be assumed when it is a regular practice for staff to include an option for no change in other staff recommendations. This omission, while making recommendations could be leading the Rent Review Commission to believe that no change is not an option.

We request that staff include an option of 'no change' in all recommendations.

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We have become aware and reviewed a possible submission for this Biennial Review of the Ordinance by Robin Minnear, from Rancho Calimesa Mobile Home Ranch. YMRA has been reaching out to neighboring mobile home park residents that are concerned and share common interests in seeing the ordinances improved in various cities throughout California. Rancho Calimesa Ranch residents went through what residents felt was an unreasonable, basically 'predatory' rent increase attempt this last year and prevailed; no rent increase was awarded by the Rent Review Board, City Council or Appeal judge.

Robin Minnear was the park's resident representative that spearheaded the resident's opposition to the rent increase. We believe that Robin Minnear's submission is on point and addresses the abuses of city ordinances that are taking place across the state.

Robin Minnear has become an advocate in contributing time and effort in seeking just and reasonable ordinance revisions, since the attempted unjust rent increase at Rancho Calimesa Ranch.

We support Robin Minnear's submission and basically echo his issues and rational.

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Last, we respectfully request that on all issues, as per section 1.0031 Interpretation and Modification of Administrative Rules, (A), that the City Council support the ideas and amendments proposed and/or approve a study to explore the merits, feasibility, pros, cons and ramifications.

Again, we thank you for this opportunity to submit our input in this review.

Tony Slaick - Chairman YMRA
Yucaipa Mobilehome Residents Association

Subject: FW: 2017 RSO Biennial Review submission ...

From: tslaick ymra [mailto:ts.ymra@gmail.com]
Sent: Monday, September 11, 2017 9:49 AM
To: Tammy Vaughan
Subject: 2017 RSO Biennial Review submission ...

City of Yucaipa,
Jennifer Shankland, Rent Administrator,
Deputy City Manager/City Clerk

Dear Ms. Shankland,

It has recently come to our attention that additional submissions from people and organizations concerned and wishing to give input regarding the biennial review of the ordinance is still pending.

Due to the fact that they may not be acceptable as the deadline for submissions is today at 5p.m., I'd like to submit the following as topics and concerns that we would also like to address. We have copied the main points from an associate:

Park owners have learned how to take advantage of the MNOI calculation. New park owners should not be able to claim major repairs or property tax increases as expenses (those costs should be factored into the purchase price). We need to cite the Ninth Circuit Court rulings and judge comments as a basis of "investment-backed expectations" of park owners vs homeowners and as a way to deny "Galland" rent increases. We need to try to get the League of Cities policy committee involved to see if there can be a statewide "global" discussion for how to modify existing RSOs without inviting additional lawsuits.

Thank you for including this as areas we might also choose to address.

Tony Slaick, YMRA Chairman
Yucaipa Mobile home Residents Association



September 8, 2018

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Executive Director

- ickie Talley

Chair Caecilia Johns and Commissioners of the Mobile Home Rent Review Commission
 City of Yucaipa
 34272 Yucaipa Boulevard
 Yucaipa, CA 92399

Sent via Email

Re: Biennial Review of Mobilehome Rent Stabilization Ordinance

Dear Chair Johns and Commissioners:

The Manufactured Housing Educational Trust (MHET) serves the three Southern California Counties of Orange, Riverside and San Bernardino. The organization serves as an educational resource regarding the mobile home park industry and issues, and in the resolution of public policy issues affecting the manufactured housing industry and mobile home parks. MHET, on behalf of the mobilehome park owners of Yucaipa, appreciates the opportunity to provide a few suggested changes to the Ordinance that we feel would be a solid step forward in assisting in the continued viability of the mobilehome parks in the City, improve the quality of life for the residents, and in particular, limit the need for MNOI applications.

Initial Overview

You are all familiar with the laws surrounding MNOI increases, and the expense and difficulty surrounding them for all parties; the residents, the park owners, the Commission and City staff. To meet all of the legal requirements and complex rules and regulations in place requires extensive documentation which the City must analyze using experts that are paid for at taxpayer expense. There is the taxpayer cost of the attorneys utilized by the City. The park owner must pay for the same type of expenses, which the law requires be ultimately borne by the mobile home residents. This is all very complex and leads to very lengthy hearings, often over several days, and the potential of appeals to the City Council using up more time and expense. Over the years, this process has led to the City of Yucaipa being involved in costly litigation. The end result is often a significant increase to meet the legal requirements as opposed to gradual increases over numerous years.

You have been provided the opportunity to take action that can limit the need for the above scenario to play out. This can be done by allowing gradual increases to occur by amending the annual increase to 100% of the CPI and allowing for rents to increase at the time of a vacancy, Vacancy Decontrol.

Annual Adjustment – 100% of CPI

The sole purpose of the Ordinance is to prevent supposed “excessive” rent increases. A rent increase of 100% of CPI only allows the park owner to keep up with inflation. Nothing more. It is respectfully submitted that merely staying even with inflation cannot be seen by anyone as “excessive”.

What only allowing an annual increase of 80% of CPI means is that each year the rent falls further and further behind the increased costs of operating a park. Over time this leads to the need to request a larger rent increase through the MNOI process to catch up to what has been lost over the years. Not a gradual increase. Additionally, by not being able to keep up with costs means there is less and less revenue to put into the upkeep of the parks. The City Council has expressed concerns over the conditions of some parks even going to the extreme of indicating 7 parks should possibly be closed and reused.

Additionally, the fact that an annual adjustment of 100% is in no way excessive has forcefully been proven by City staff. Attached is a chart staff prepared in 2016. This chart shows what the impact would have been if the CPI annual increase had been at 100% instead of 80% for the 8 annual increases from 2008-2015. Using \$300 as the rent in 2008, the monthly rent would have been \$333.70 in 2015 using the current 80% CPI adjustment. Using 100%, over that same 8 years, the monthly rent would only have reached \$342.50, a difference of only \$8.80. This final difference is certainly not "excessive". Thus, the facts are clear that allowing 100% CPI fully meets the objectives of the Ordinance.

Possibly even more important, note the gradual increase of the rent. The total increase over the 8 years is \$42.50, which would occur incrementally. Nowhere near the \$95.94 with the additional legally required \$10.45 monthly increases that will occur in one year as was recently legally necessitated. And the \$42.50 increase would have occurred without any expense or hearings.

Furthermore, the Ordinance has a cap on the annual increase of 5%. Many of these types of Ordinances do NOT have any cap, and many that do have a cap also have a floor. It seems only fair that if the Commission wants to retain the 5% cap to protect the residents from high inflation for the residents, then the Commission should provide the same type of inflationary protection to the park owners. We would recommend a floor of 2.5%. Clear to all, fair, and certainly still preventing any "excessive" increases.

Therefore, MHET respectfully request the Commission support increasing the annual monthly rent adjustment to 100% of CPI, and support a 2.5% floor to create an equitable annual monthly rent adjustment.

Vacancy Decontrol

First, it is important to put into perspective just how few jurisdictions have rent control, and far fewer have vacancy control. There are 482 cities and 58 counties, 540 jurisdictions, in California. Only 97 jurisdictions have rent control ordinances; about 18%. Of that 97, only 54 have some form of vacancy control, 42 have vacancy decontrol. (For one city there is no information on vacancy controls) It appears there are only 28 jurisdictions that might have full vacancy control, about 5% total, as is currently the case in Yucaipa. 25 have some form of partial vacancy decontrol. So, 95% of the jurisdictions in the State do NOT have full vacancy control, and people are living in these parks, moving, selling homes, and there is no dire problem that requires government controls.

Again, the purpose of the Ordinance is to protect the residents living in the parks from supposed "excessive" rent INCREASES. Vacancy decontrol merely allows a NEW resident who is considering

living in a mobile home park to come to an agreement with the park owner on a rent level that is entirely acceptable and affordable to the new resident. The new residents' choice. Vacancy decontrol does NOT impact the rent level of the current residents. Once moved into the park, any future rent increase for the new resident of the park is fully regulated by the Ordinance. The objective of protecting all residents, new and old, against any supposed "excessive" rent INCREASES remains completely intact. At the same time, by allowing the new residents to choose the amount of their initial rent while providing them with the protection regarding future rent increases, also provides revenue that takes away from the need to pursue a MNOI increase. Again, a benefit it all parties; residents, park owners and the City.

Additionally, vacancy decontrol is a key element of achieving the goal of seeing parks rehabilitated as needed. The concept of 100% CPI solely keeps park owners even with increasing costs. Treading water so to speak. 100% CPI does not provide any of the revenue needed for rehabilitation projects. Vacancy decontrol helps provide a means of both encouraging rehabilitation and fully protecting all the residents of the park from potential "excessive" rent increases. This is a policy that should be fully endorsed.

Therefore, MHET respectfully requests the Commission approve amending the Ordinance to allow for vacancy decontrol.

Thank you for considering the above-referenced suggestions for amending the ordinance that we firmly believe would limit the need for the lengthy and expensive MNOI process and allow for the parks to provide the quality of life that we would all like to see throughout the City. These are two objectives we all agree on.

Sincerely,



Peter Herzog

Inland Empire Representative

Cc: Jennifer Shankland
Tammy Vaughan

applicable CPI indexing factor by February 1st of each year. Because the Bureau of Labor Statistics runs about two months behind in publishing the monthly CPI, the CPI most recently available to the City is the CPI reported in December of each year. (See YMC §15.20.080; Administrative Rules, §3.0001.)

Over the past few years, due to the state of the national economy, the increase in CPI over the prior year has been decreasing, and in the past few years has become quite low. The Annual Adjustment for 2015 was 0.58%. The following chart shows the CPI increases between 2008 and 2015:

2008 – 2015 CPI Calculations								
	2008*	2009*	2010*	2011	2012	2013	2014	2015
Prior Year	210.60	219.37	219.62	223.64	226.64	231.57	236.04	238.74
Current Year	219.37	219.62	223.64	226.64	231.57	236.04	238.74	240.48
CPI (100%)	4.16%	0.11%	1.83%	1.34%	2.17%	1.93%	1.14%	0.73%
CPI Factor (80%)**	3.33%	0.09%	1.47%	1.07%	1.74%	1.55%	0.92%	0.58%

* The reported CPI figure most recently available from the Bureau of Labor Statistics as of February 1st, generally is the CPI for December of the prior year.

** Used in calculating each park's Annual Adjustment to be imposed on or after February 1st of each year.

The following chart shows the difference between 80% CPI and 100% CPI using a hypothetical monthly space rent of \$300 beginning in 2008.

Hypothetical Rent Control Monthly Space Rent \$300.00								
	2008	2009	2010	2011	2012	2013	2014	2015
Rent	\$300.00	\$309.99	\$310.27	\$314.83	\$318.20	\$323.74	\$328.75	\$331.78
80% CPI Increase	3.33%	0.09%	1.47%	1.07%	1.74%	1.55%	0.92%	0.58%
	\$9.99	\$0.28	\$4.56	\$3.37	\$5.54	\$5.02	\$3.02	\$1.92
	\$309.99	\$310.27	\$314.83	\$318.20	\$323.74	\$328.75	\$331.78	\$333.70
100% CPI Increase	4.16%	0.11%	1.83%	1.34%	2.17%	1.93%	1.14%	0.73%
	\$12.48	\$0.34	\$5.72	\$4.27	\$7.01	\$6.37	\$3.83	\$2.48
	\$312.48	\$312.82	\$318.55	\$322.82	\$329.82	\$336.19	\$340.02	\$342.50
Difference	\$2.49	\$2.55	\$3.72	\$4.62	\$6.09	\$7.43	\$8.24	\$8.80



September 8, 2017

Jennifer Shankland, Deputy City Manager/Rent Administrator
City of Yucaipa
34272 Yucaipa Blvd.
Yucaipa, CA 92399

Ms. Shankland,

Thank you for the opportunity to provide input to the City of Yucaipa's review of the Mobilehome Rent Stabilization Ordinance.

This review comes fresh off of Carriage Trade Manor's MNOI application. This application resulted in a large increase for residents. I've read some of the letters the newspaper has published and I suspect the city will receive many suggestions how the ordinance should protect residents. In order to limit legal risk to the city, parkowner's right to a fair return on investment should remain.

After meeting several times with the residents during the city's last review, one goal we share is limiting the large, one time, rent adjustments that can accompany a park owner's application. Unfortunately, we don't agree on how to accomplish this goal.

Most park owners know the solution lies with vacancy decontrol. The single element of any mobilehome rent control ordinance that reduces or eliminates MNOI applications is that it contains some form of vacancy decontrol. The lack of applications in these jurisdictions are a good indication that park owners are willing to wait for spaces to naturally turn over, receive a slight increase on the new homeowner with no impact to the existing resident. Another benefit that should not be overlooked is the cost savings the non-existence of MNOI applications provide the city's tax base and the residents. Taxpayers don't have to pay for the legal and administrative costs associated with applications. Most importantly the mobilehome park residents aren't liable for the legal and expert costs that are inevitability passed through to them. These costs are somewhat of a double hit because they will always accompany a larger than normal rent adjustment.

No doubt this process is difficult to institute because some leaders use it to instill fear and suggest that residents will loose their homes when their homes can't be resold. Unfortunately, the data just don't support that claim. Home resale figures, generally speaking, are higher in communities with higher rents. It is actually in the residents' best interest to amend the ordinance to include some form of vacancy decontrol.

If the claim that homes were unsellable with vacancy decontrol were true, it would be leading the news every night. The fact is many ordinances permit for some form of an increase when a home sells. Here is a list of cities in the Inland Empire which permit some form of vacancy decontrol:

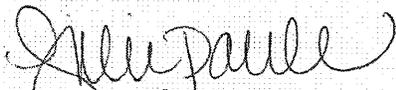
Beaumont
Cathedral City
Colton
Hemet
Menifee
Redlands
Riverside
County of Riverside
San Bernardino
Upland

In fact, the City of San Bernardino was just added to this list less than a year ago. They made amendments to their mobilehome rent control ordinance to permit a simple 10% increase on rent on turnover to settle litigation with multiple parks (same park owner for all parks) that had been dragged out for four years. It was estimated the residents' liability was upward of one million dollars just in legal fees. Residents supported the change to settle the lawsuits. This change can be done.

Finally, we agree with city staff's recommendation over the last two reviews to increase annual rent adjustments from 80% to 100% of CPI. Every year the park owner's purchase power diminishes with a sub-inflationary increase. This impacts our ability to operate and maintain our communities. Past analysis by city staff have shown that this change's impact to residents would be minimal.

Once again, thank you for the opportunity to participate in the biennial review. We believe these two substantive changes will provide all parties with needed outcomes. We look forward to the hearings and discussion of all suggestions.

Sincerely,


Julie Paule
Regional Representative

September 5, 2017

City of Yucaipa
Attn: Jennifer Shankland
34272 Yucaipa Blvd.
Yucaipa, CA 92399-9950

VIA EMAIL: tvaughn@yucaipa.org

Dear Ms. Shankland:

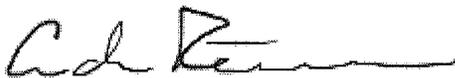
Thank you for the opportunity to submit our concerns for the biennial review of the Mobilehome Rent Stabilization Ordinance. We are surprised that the City is revisiting the review of the Ordinance after reviewing the Ordinance last year.

We request the Rent Review Commission consider the following changes to the Ordinance:

1. Allow for an administrative annual increase of 100% of the change in the CPI. Restricting a full adjustment by the change in the CPI only further erodes the overall maintenance standards of Mobile Home Parks and encourages MNOI applications.
2. Remove the 5% maximum annual increase provision and/or implement a minimum administrative 2.5% annual increase. A minimum fairly balances out unrecovered increases during periods of high inflation.
3. Provide for an increase of 5% in the then current monthly rent upon the resale of a mobilehome limited to once every 3 years per space. Without resale adjustments or vacancy adjustments coupled with only partial CPI adjustments, the difference between market rents and actual rents continues to increase. Since income requirements for new incoming homeowners are based on the current rent, the unintended consequence of the Ordinance is to lower income standards for new homeowners. A case can be made that lower income standards increase police involvement impacting the overall reputation of the City.
4. Implement vacancy decontrol on vacant spaces. A Park-owner should be encouraged to invest in their property. By allowing the market to determine the rent of a space for a new home, a Park-owner is encouraged to place a new home on a vacant space.

Thank you for your consideration.

Sincerely,



Andrew Rottenbacher
General Partner

cc: Julie Paule, WMA
Peter Herzog, MHET

To: Tammy Vaughan
Subject: RE: Biennial Review of RSO

From: Ian Dyer [REDACTED]
Sent: Monday, August 21, 2017 9:57 PM
To: Tammy Vaughan
Subject: Biennial Review of RSO

The RSO should be modified as follows:

- 1. Vacancy decontrol – when a home is vacant and is owned by the park, the park should be able to raise the space rent to market. This is a WIN-WIN. No existing resident is affected by higher rents. The park will be willing to pay MORE than outside buyers. And the park owner gets more revenue, which offsets rapidly rising expenses, such as minimum wages rising from \$8.00 to \$15.00 in less than 10 years, while space rents have hardly risen.**
- 2. Annual rent increases should be 100% of CPI, not 80%. Many parks are increasingly run down because owners don't get rent increases anywhere close to CPI, plus owners have to pay for half the cost of the RSO and have substantial expense to comply with the RSO, and have expenses like minimum wage going from \$8.00 to \$15.00 recently, with minimum salaried employee pay going from \$32,000 to \$60,000, costing employers \$44,000 to \$80,000.00.**

AUG 28 2017

GENERAL SERVICES/CITY CLERKS
DEPARTMENT



Ms. Elizabeth Sonderman

Dear Yucaipa City Members:

My suggestions for the review on the Mobilehome Rent Stabilization Ordinance § 15.20 are as follows:

1. Establish a normal waiting period of six to eight months after the new owner has appealed for a special rent increase. Any sooner will require a vote by the city to approve a shorter waiting period.
2. In the event that a special rent increase is approved, residents who cannot afford a sudden special rent increase will be allowed to pay for one over a period of time with only a low (3%) interest rate.

By These are my suggestions,
Sincerely yours,

Elizabeth Sonderman
resident of Northview
E. L. Sonderman

To: Tammy Vaughan
Subject: RE: Mobile Home Biennial Review

From: Barbara Kutra [REDACTED]
Sent: Saturday, September 09, 2017 12:06 PM
To: Tammy Vaughan
Subject: Mobile Home Biennial Review

Good Day,

I am writing you concerning the rent stabilization ordinance for mobile home parks. I don't want to take up a lot of your time but I would like to voice my opinion to this matter. Please keep rent control in place for the Yucaipa mobile home owners. There are many of us who can't pay more due to fixed incomes, and many people are living on social security alone. I'm sure the predators who are buying mobile home parks would love to see rent control abolished. They are predators looking for a fast buck and don't have a moral soul. The people who have lived in Yucaipa for many years are good citizens are dedicated to living in this wonderful place. I don't want to see any of those who can't afford a roof over their head to have to eat cat food in place of a meal or not get their medications. These people are human beings and need to be treated as human beings.

Thank You for spending time reading my request.

Have a good day,

Barbara Kutra

[REDACTED]

SEP 11 2017

GENERAL SERVICES/CITY CLERK'S
DEPARTMENT

9-11-17

CITY OF YUCAIPA, CALIFORNIA RENT CONTROL BOARD

cc Mayor Dick Riddel

cc CITY COUNCIL

Dale Ramsdell

Dear Representatives of the People of Yucaipa,

I am a long time resident of a 55+ Mobile Home Park for Seniors in the City of Yucaipa, and an active member of YMRA. I am concerned over the weakness of the current Rent Control Ordinance which can be so easily skirted against the "Spirit of the Law" and the will and wishes of the long time Residents of the 41 Mobile Home Parks in Yucaipa, as demonstrated in the recent Carriage Trade Manor Park episode, which has drawn considerable attention in the press, as you are well aware.

I believe that this is a "Civil Rights Matter" involving "Discrimination Against the Elderly and Handicapped" of this City, which is part of a wider Conspiracy that is going on Nationwide, insofar as Senior Mobile Home Parks are being "specifically targeted" for their vulnerabilities by a new breed of economic opportunists bent upon circumventing Local Rent Control Ordinances and violating the "Spirit of the Law" intended in the construction of those Ordinances put in place decades ago to protect these vulnerable populations.

Furthermore, I believe it is the "Legal Responsibility" of the Officers and Representatives of this City to resist any and all attempts to circumvent the "Spirit of the Law" embedded within those Ordinances as a matter of Protection of the "Civil Rights" of the Elderly and Handicapped Citizens of this Community residing in these 55+ Senior Parks. The obvious necessity of Strong and Definite Legal Language strengthening the Current Ordinance through Amendments to existing language is vital to upholding the Civil Rights of All Members of this community, particularly those Elderly and Handicapped Residents so largely affected by Recent Circumventions of the Ordinance.

Please know that "The Community is Behind You" in substantially strengthening the existing, but insufficient Ordinances, as evidenced by the 3 to 400 seniors who "filled City Hall" at the recent Hearing, as well as the continuous flow of Letters to the Editor in protest to the conspicuous flaunting of the Spirit of the Law intended in those Ordinances by Peter Wang and his attorney, Mark Alpert, who arrogantly expressed his views on the matter and exposed his true lack of moral values and vicious tactics before the "Property Rights Foundation of America" at their Eighth Annual New York Conference:

"Make it expensive. Litigation is a strategy that works especially when cities are strapped for money. That often brings them to the table. It has worked for us. "What happens is that the cities just get tired of fighting litigation. They can't afford to protect the small group's interest and bust the budget."

STRONGER RENT CONTROL ORDINANCES ARE NEEDED to combat the "Hostile Takeover Tactics" of Park Owners who raise rents to such an extent that:

- 1) many people can no longer afford to pay the hyper-inflated rents;
- 2) get behind in their hyper-inflated rents as a result;
- 3) cannot find a buyer for their homes in the climate of hyper-inflated rents which in turn, substantially devalue their property;
- 4) which results in having to turn over their homes to Park Owners or accept pennies on the dollar of their previous value;
- 5) that these are demonstrated, purposeful, and calculated "Hostile Takeover Tactics" developed to acquire property on the part of Park Owners;
- 6) which often occurs in Senior Parks, which are "Targeted" because of financial, emotional, and health vulnerabilities;
- 7) and that these same predatory new generation of sociopathic Park Owners "Intentionally Target Cities" with weak Rent Control Ordinances to exploit the poor and elderly by means of skilled attorneys who "Specialize in this Field" of railroading victims without regard to compassion or common consideration of the inability of the elderly and handicapped to cope with substantially "Higher costs of Living and of Litigation" than they can afford, in an "Atmosphere of Intimidation and Fear" of losing their homes;
- 8) which forces the City to choose between expensive litigation to defend the elderly and handicapped residents, or passively participate, and effectively aid and abet these vicious predators in their appetite for more blood money drawn from their defenseless victims who lack the means of defending themselves.
- 9) The only remedy is Stronger Laws in the form of revised Ordinances equal to the challenging times of greed and immorality, which is the New Reality in which we live. And... the "Will of the City" to face down in Court, if necessary, those who would yet attempt to invade our community and violate the Civil Rights of the aforementioned Citizens of Yucaipa.

Thankfully and Respectfully,

September 8, 2017

To: Ms. Jennifer Shankland
Director of General Services
City of Yucaipa
34272 Yucaipa Blvd.
Yucaipa, CA 92399

From: Robin L. Minnear



Subject: Biennial Review of the Mobile Home Rent Stabilization Ordinance
(Yucaipa Municipal Code [YMC] §15.20) and Administrative Rules.

Jennifer,

I would like to submit this document for consideration at the upcoming ordinance review.

Thank you,

Robin L. Minnear

Sent to: tvaughan@yucaipa.org, 9/8/17

Yucaipa Rent Stabilization Ordinance Reform

by **Robin L. Minnear**

The author of this document is not an attorney. The author has specific experience with conflicts between park owners and resident owners, municipal rent stabilization ordinances, Fair and Just Return petitions, Rent Stabilization Board hearings and Rent Stabilization Appeals to City Councils. The author is a non-paid advocate for residents in senior mobile home communities. The author is a resident owner in a local California senior mobile home community.

Objectives

The objective of this document is to provide guidelines for modifications to existing rent control ordinances that will better achieve the following:

- 1)-- To identify loopholes that allow investor/speculator owners to skirt the protections offered to residents by rent stabilization ordinances and become more aligned with the spirit of rent stabilization.
- 2)-- To recommend modifications that prevent the investor/speculator owners to overwhelm the city authorities with litigation, the threat of litigation and enormous legal and time costs.
- 3)-- To recommend changes that help create a framework which promotes a fair and balanced approach to issues such as sharing of capitol improvements costs between park owners and resident owners as an alternative to formal litigation.
- 4)-- To make recommendations that help create a more level playing field for park owners and resident owners when disputes arise that encourage negotiation rather than litigation. To acknowledge the undeniable fact that park owners and resident owners have a special relationship. This relationship exists more as equity partners rather than as landlord/tenant. The residents are owners, not tenants.
- 5)-- To recommend changes that create or modify ordinances, in the spirit of fairness, that better enable the city to perform their fiduciary responsibility to enforce their ordinances in a balanced manner that deny any party an unfair advantage.

Background

Rent Stabilization Ordinances have existed for decades. Recent history has shown a massive assault against these ordinances by a new breed of mobile home park investor/speculator that have in some cases eliminated such ordinances and in many cases rendered them impotent.

Most modern ordinances are modeled after ordinances that were created decades ago. They contain certain deficiencies and have not kept up with current litigation practices. They were not written in a way to adequately protect the resident owners, or their cities, from this new predatory type of owner and their horde of attorneys and experts. The cities that are responsible for enforcing these ordinances are often caught in the middle and become overwhelmed and find themselves in litigation defending these weakly written or dated ordinances.

Often a city will try to appease the investor/speculator owner to avoid costly litigation. This often results in the city finding themselves involved in multiple lawsuits. Once these aggressive park owners sense the city's reluctance to defend their ordinances, the city may find that they are inundated by like-minded investor/speculator owners.

All the while, the big losers are the resident owners. Most of the resident owners are lower income or fixed income families. A large portion of the resident owners are seniors living in mobile home parks. Many purchased older homes in parks so they could afford to live out their senior years never intending to move again. Even if a resident owner has the means to move his home, most of these homes are older and would not be accepted by other parks. The resident owners who planned to live out their retirement without ever moving are often trapped with no other option but to watch their meager spendable income disappear and what little equity they have in their home vanish.

Food For Thought

From the report commissioned by the city of Montclair June 30, 1998 page 10, authored by Kenneth K. Baar, Ph.D.

"It is a common rule of thumb that each \$100 increase in mobile home space rent reduces the value of the mobile home by as much as \$10,000. Such an estimate is consistent with the concept that for each \$10,000 in purchase costs, the monthly carrying costs are increased by roughly \$100. In cases where exceptional rent increases have been instituted upon vacancies, mobile homes have become nearly worthless."

Assumptions

The following assumptions form the foundation used to address certain deficiencies and loopholes in specific ordinance concepts. They are referenced to in the *Scope* section.

1)-- *SPECIAL RELATIONSHIP* The park owner and the resident owner have a special equity bound relationship; both parties have the right to protect their equity investments. Both parties are to be protected from the other's actions that jeopardize their investments. The resident owners are inherently at a disadvantage because it is near impossible for them to move their home. *They are essentially captive partners. This fact alone negates a normal landlord/tenant relationship.* Both parties should share in any costs for maintenance or improvements that result in equity building. Both parties should be part of any decision that affects the equity of the other or produces expenses that will be borne by the other. The U.S. Supreme Court and the California Supreme Court have both recognized that the relationship between the park owner and the resident owner is a special relationship, not just a landlord/tenant relationship, and that the park owner's interests must be balanced with the resident owner's interests.

2)-- *FIDUCIARY RESPONSIBILITY* The city has the responsibility to make sure that its ordinances are enforced in a manner in which the resident owners interests are considered as an equity partner and not just as a tenant. This assumes that the city will require that park owners that want special increases or reimbursements will provide *all* of the necessary documentation and information required by the ordinances. This assumes that the city advocates for the resident owners in cases in which the park owner is asking for a special increase in rent. This assumes that the city will advocate a balanced approach in which both parties' interests are considered when park owners are requesting reimbursement for capitol improvements or maintenance improvements since both parties benefit therefore both parties should share the expense.

3)-- *UNFAIR, ONE-SIDED OR ILLEGAL* No ordinance should be written in a way in which either party benefits without consideration of the other party. No ordinance should allow a no-win or a no-lose situation to occur which promotes reckless behavior or encourages failure to practice due diligence. No ordinance should be based on flawed case law or case law interpretations. This includes things like the assigning of legal costs of one party to the other party without peer review, or the assigning of legal costs of one party to the other party without the availability of a reciprocal case or condition.

Scope

The following guidelines identify certain deficiencies that affect specific ordinances. The assumption is that the specific ordinance(s) will be identified and modified into legal speak.

1)-- *FAIR AND JUST RETURN* This ordinance was originally designed to allow long-time owners to receive a rent adjustment when the automatic rent increases, usually tied to CPI, did not keep up with expenses or when extraordinary events caused dramatic changes in the park owner's profits. This was to protect long-time owners from being forced to operate at a loss. Currently, new park owners use these ordinances to achieve massive increases in rent shortly after purchasing a mobile home park. This violates the spirit of *Fair Return* and defeats the rent stabilization ordinances as a whole. **This loophole that new park owners exploit must be closed.**

2)-- *CAPITAL IMPROVEMENT REIMBURSEMENT* This ordinance allows for the park owner to pass all capital improvement and maintenance costs off to the resident owners. This is clearly flawed and promotes a situation that is one-sided. It creates a situation where the park owner can spend the resident owner's money, without the resident owners input, without competitive bidding, and opens the door for fraud. The park owner makes all the decisions and any mistakes are paid for by the resident owners. The park owner risks nothing and benefits greatly. **These ordinances need to be made fair and equitable.**

3)-- *LEGAL COSTS REIMBURSEMENT* This is probably the most unfair and illegal ordinance. Resident owners believe that any ordinance that automatically awards mobile home park owners legal fee reimbursement creates a totally one sided and a no-lose situation for the park owner. Many municipalities believe that the case law this type ordinance was previously based on is flawed and they have removed the ordinance. According to my sources as a member of GSMOL, a majority of municipalities that have rent stabilization ordinances have no such provision. After consulting multiple legal scholars, they concluded that such ordinances, as implemented, are on shaky legal ground. They conclude that, according to standard practices, legal compensation **MUST** be fair and reasonable. All parties affected have a right to review and dispute all claimed legal charges. Properly done, a review is conducted by a third party, usually a retired judge, to determine what is fair and reasonable. In keeping with the aforementioned assumptions of fairness, one-sidedness, and no-lose, this ordinance fails. What about legal fees incurred by the resident owners and the cities? Why is there no performance component to be met before reimbursement? It's clear that any city that

improperly awards legal fees reimbursements is in jeopardy of being sued. **This one-sided, unfair, and illegal as practiced ordinance needs to be totally revamped or removed.**

4)-- *REPETITIVE PETITIONING* Any ordinance that allows a park owner to repetitively petition for rent increases or compensation has to be modified in a way that discourages abuse. This is a well known tactic park owners use to bully cities and the resident owners. By modifying the associated ordinance's time components between petitions to longer periods, say from one year to five years, the park owners would be forced to be more precise and reasonable when requesting increases in rent or compensation for improvements. This will hamper the park owners with deep pockets from reducing or eliminating the resident owner's or the city's ability to properly present their case. At the very least, closing this loophole would discourage the worst of the investor/speculator owners from investing here. **These abuse attracting flaws must be corrected.**

5)-- *VACANCY DECONTROL* This has been sought after by the more radical of the investor/speculator owners for a number of years, knowing full well that they have yet been able to make a reasonable case for it. These predatory owners falsely insist that if vacancy decontrol is implemented that it would have little effect on the home values of the other park resident owners. This simply is not true. If implemented it would defeat the Rent Stabilization Ordinances in the near term and signs a death warrant for rent stabilization in the near future. The experts seem to agree that it would unfairly reduce the equity in ALL of the neighboring resident owner's homes. Upon a home resale and unbridled by rent stabilized rents, the park owner could raise the space rent to the point that a neighboring resident owner, should they decide to sell, may not be able to sell their home or get a fair price for their home. At the very least, the resident owner's homes value is substantially diminished. Please note Dr. Baar's comment earlier in this document. Many resident owners, including myself, specifically purchased their home in a rent stabilized park knowing that if the time came to sell, we would be able to take our equity to our next home. This includes equity increases realized by the improvements made to the homes. The resident owners that plan to never leave their home hope to have a little something to leave to their family. Faced with little or no ability to realize a return, these families most likely would just walk away from the home. The home then becomes the property of the park owner who can then make a special purchase/rent deal to the new buyer. This furthers hinders the other existing resident owners ability to sell their home at a fair price. **Any act that eliminates thousands or millions of dollars of home equity in these lower or fixed income households is unconscionable.**

6)-- *OTHER FLAWS AND LOOPHOLES* Time constraints would not allow an in-depth analysis of all of the Administrative Rules and Rent Stabilization Ordinances. It is clear that professional and legal analysis as a whole is warranted. The investor/speculator owners, and their attorneys, view these ordinances as *outdated and poorly written*. These exact words were recently used by a park owner's attorney in a *Fair Return* hearing that I participated in. These words say volumes about these investor/speculator owners and their attorneys and how they view our ordinances. It is in the best interest of both the city and the resident owners to begin to update and modernize these statutes. **IT is clear that a more comprehensive review of the existing Rent Stabilization Ordinances is called for along with a realistic time frame assigned for the process.**

There are other issues that can be addressed that will help reduce abuse and help facilitate the petition process. Some of these are listed below.

- 1)-- Time limits for oral arguments. This exists in many municipalities and will reduce costs and abuse.
- 2)-- Banning of documentation and evidence being submitted at hearing time. This tactic has been used by park owners to get their arguments in the record while preventing the resident owners or cities having an opportunity to examine them. I witnessed document submissions of 100 plus pages submitted by a park owner's attorney during hearing presentations. This left no time for the opposition to review, cross examine, or respond.
- 3)-- Simplify MNOI and CPI baseline year calculations. I recently witnessed a city's experts and park owner's experts squabbling for hours about baseline year calculations for the year 1992 in a 2015 Fair Return case. The problem was that practically no actual park records existed from 1992. This led to the experts' down-projecting current expenses back to 1992 level numbers. To address a similar situation, the City of Thousand Oaks, in order to simplify MNOI and CPI calculations, revamped its baseline year for calculations so that the baseline year is initially set to five years prior to the petition. This remains the baseline year for another five years. Then the baseline year is moved up five years. The result is a baseline year that is always between five and ten years prior to the petition. This limits the ability of anyone to shape the MNOI and CPI calculations to their advantage with imaginary or made up numbers when making their case.

Respectfully submitted
Robin L. Minnear

From: MJ Baretich [REDACTED]
Sent: Monday, September 11, 2017 9:42 AM
To: Tammy Vaughan
Subject: Biennial RSO Review Study Session

Mobilehome Rent Review Commission

City of Yucaipa

Attn. General Services/City Clerk Department,

34272 Yucaipa Blvd.

Yucaipa, CA 92399

RE: Biennial Review Study Session to review the Mobilehome Rent Stabilization Ordinance (YMC §15.20) and Administrative Rule

Dear Commissioners,

Let me introduce myself. I am the current Region 5 Manager and past President of the Golden State Manufactured-home Owners League, Inc. (GSMOL), the only statewide advocacy group in California for mobilehome homeowners. Our corporation was established in 1962 to protect the mobilehome homeowners, and our attorneys were instrumental in the beginnings of the Mobilehome Residency Law (MRL), Civil Code Section 798 et seq.

The State currently has over 100 cities and counties with some form of Rent Stabilization Ordinance (RSO). Over one third of these ordinances have a provision for rents to be raised at less than 100% of CPI.

At a time when the State of California is searching for ways to protect and enhance our affordable housing, I do believe, as a representative of mobilehome homeowners throughout the State, that the City of Yucaipa should not change the existing ordinance Section 15.20.080 by raising the amount of the annual rent increase from 80% of CPI to 100% of CPI as suggested by the Mobilehome Rent Review Commission Staff.

Mobilehomes are often owned by senior citizens, veterans, and other persons of low and moderate income. Because of these realities, any excessive rent increases pose serious problems for these people with even the possibility of becoming homeless. These vulnerable citizens need our protection.

The Mobilehome Rent Review Commission Staff's recommendation of the addition of **vacancy decontrol** would be another detriment to the homeowners who find it necessary to sell their homes (moving to assistant care living, a death of a homeowner or spouse, or other reasons to sell their homes). With vacancy decontrol, the park owner can raise the space rent for a new home buyer to more than what the seller was paying, thereby causing a delay in the sale, or no sale at all. In the case where the home does not sell and the homeowner can no longer pay the rent because of other obligations, the park owner takes the home. This is very well-stated in the Yucaipa RSO in Section 15.20.010D. We have seen this scenario occurring throughout the State where vacancy decontrol is allowed in rent-controlled cities.

Per the Yucaipa RSO in Section 15.20.010.E:

"The city council finds that control of rents upon vacancy will not prevent park owners from realizing a fair and just return on their property when seen in the context of mobilehome rent control which has been established in the city A. Upon "vacancy," as defined in Section 15.20.020, subsection (2) or (3), the park owner shall be prohibited from raising the space rent for that space. No park owner shall impose any space rent in excess of the current rent in effect immediately preceding the vacancy of the space."

Currently, the Yucaipa RSO (YMC §15.20) contains protections under Section 15.20.050.A:

"Upon "vacancy," as defined in Section 15.20.020, subsection (2) or (3), the park owner shall be prohibited from raising the space rent for that space. No park owner shall impose any space rent in excess of the current rent in effect immediately preceding the vacancy of the space."

The City of Yucaipa has a very fair RSO (YMC §15.20) in place, and that ordinance should be protected and kept intact. The revisions suggested by the City Staff are not in the best interests of protecting and enhancing this form of affordable housing in the City.

Respectively,

Mary Jo Baretich

GSMOL Region 5 Manager
Past GSMOL State President
(714) 960-9507

CA JURISDICTIONS with Mobilehome Park Rent Stabilization Ordinances
(Revised 2015)

City/County	DATE	# Pks/Spaces	% Increase	*Vacancy Control	**Committee/Board	Adopted by
Alameda County	12/1965	22 / 712	Automatic up to 5%	YES	Board of Supervisors	Ordinance
Azusa	01/1992	6 / 548	8%/75% of CPI	NO	-	Ordinance
Beaumont	10/1984	8 / 459	Established by Hearing	NO	2-2-1	Ordinance
Benicia	09/1978	4 / 317	Established by Hearing	NO	2-2-1	Ordinance
Calistoga	08/1984	5 / 569	Established by Hearing	NO	1-1-3	Ordinance
Camarillo	12/1981	4 / 747	Established by Hearing	NO	1-1-3	Ordinance
Capitola	11/1979 Repeal'd 8/11	8 / 623	Lesser of 5% or 60% CPI	YES	City Council	Ordinance
Carpinteria	03/1982	7 / 866	75% of CPI	YES	RentStabilization Commission	Ordinance
Carson	08/1979	28 / 2565	Set by Board	YES	2-2-3	Ordinance
Cathedral City	03/1983	10 / 2064	75% of CPI	YES	0-0-5	Initiative
Chino	08/1983	5 / 554	66% of CPI	NO	1-1-3	Ordinance
Cloverdale	08/1986	4 / 165	Set by Board	YES to 10%	0-0-3	Ordinance
Clovis	09/1978	6 / 582	Rent Review Commission	NO	1-1-3	Ordinance
Colton	06/1990	8 / 916	60% of CPI	NO	-	Ordinance
Cotati	11/1979	3 / 106	Set by Board	YES	Arbitration	Ordinance
Daly City	06/1980	1 / 501	Set by Board	NO	1-1-3	Ordinance

Delano	11/1984 Repeal'd '94	4 / 310	50% of CPI	YES	1-1-3	Initiative
East Palo Alto	11/1983	4 / 274	Set by Board	YES	-	Initiative
Escondido	06/1988	30 / 3585	Set by Board	YES	City Council	Initiative
Fairfield	11/1984	9 / 883	Set By Board	NO	1-1-3	Ordinance
Fontana	02/1987	10 / 684	100% CPI	NO	Rent Admin.	Ordinance
Fremont	02/1987	3 / 732	Greater \$10 or 70% CPI	YES	Hearing Officer	Ordinance
Fresno	12/1987	30 / 3942	Rent Review Commission	YES	1-1-3	Ordinance
Gardena	04/1987	27 / 1156	Rent Mediation With Arbitration	NO	3-3-3	Ordinance
Gilroy	05/1987	4 / 336	Less of 5% or 80% CPI	NO	NONE	Ordinance
Goleta	06/2002	4/500	75% CPI	10% 1-5 yrs	4-4-0 Meet & Confer Arbitration	Ordinance
Grover Beach	12/1987	3 / 140	Graduated CPI	YES 5%	City App. Mediator	Ordinance
Hawthorne	06/1979	11 / 327	Rent Mediation Board	NO	Rent Board	Ordinance
Hayward	02/1980	16 / 2160	Lesser of 3% or 60% CPI to 8%	NO	NONE	Ordinance
Hemet	05/1979	20 / 2805	Set by Board	NO	1-1-3	Initiative
Hollister	05/1989 Repeal'd '94	1 / 235	Lesser of 8% or 80% CPI	NO	1-1-3	Ordinance
Indio	03/1984	6 / 528	75% of CPI	NO	Fair Practice Commission	Initiative
Lancaster	03/1985	27 / 2584	Set by Board	YES	1-1-3	Initiative
La Verne	10/1994	8 / 1762	Lesser of 7% or CPI	No	Rent Admin	Ordinance
Lompoc	12/1983	7 / 654	75% of CPI to 10%	No	2-2-1	Ordinance

LA City	03/1988	62 / 5885	3-8% based on CPI	Lesser of 10% or comp rent in park \$25 or average	Determined by Rent Adj. Comm. Mediation/ Arbitration	Ordinance
Los Gatos	10/1980	2 / 137	100% CPI or 5%	To 10%		Ordinance
Malibu	12/1991	2 / 527	75% of CPI	5% every 2 yrs		Ordinance
Marina	11/2011	5 / 399	100% CPI	NO	Rent Admin	Ordinance
Merced	5/1982	3 / 574	Set by hearing		2-2-1	Ordinance
Milpitas	8/1992	3 / 521	50% CPI or 8%	Avg Rent	City Council	Ordinance
Modesto	10/2007	9 / 1400	100% CPI	10% every 5 yrs	Hearing Board	Ordinance
Montclair	11/1985	8 / 620	Lessor of 6% or 6% of CPI	NO	2-2-1	Ordinance
Moreno Valley	7/1987	7 / 809	Lessor of % or 65% CPI	With Limit	Park or Res Committee	Ordinance
Morgan Hill	03/1983	9 / 875	75% CPI	YES	1-1-3	Ordinance
Morro Bay	8/1986 Rev'sd 2004	15 / 641	75% of CPI 125% CPI Non-perm res	10-15% Cap	2-2-3	Ordinance
Napa	12/1983 Repeal'd '85	22 / 1605	8% cap	-	1-1-5	Ordinance
Oakland	9/1980	3 / 49	Automatic 5%	NO	-	Ordinance
Oceanside	5/1982	20 / 2401	Lesser of 8% or CPI	YES	0-0-5	Ordinance
Oxnard	3/1983 Rev'sd '98	25 / 2780	Lesser of CPI or 4%, see Ordinance	YES 15% avg space rent	Hearg Adm/ RentRev Bd	Ordinance
Pacifica	09/1991	1 / 93	75% of CPI	NO	NONE	Ordinance
Palmdale	10/1985	15 / 1455	CPI or Arb Award	NO	1-1-3	Ordinance
Palm Desert	04/1980	4 / 676	75% of CPI	YES	5 picked	Ordinance
Palm Springs	04/1980	14 / 2242	75% of CPI	YES	0-0-5	Ordinance
Paramount	07/1987	17 / 1228	100% CPI	NO	2-2-0	Ordinance

Petaluma	02/1994	9 / 1006	Lesser of 100% CPI or 6%	NO	Arbitration	Ordinance
Pismo Beach	04/1981	2 / 412	Lesser of 6% or 75% of CPI	YES 10%	City Admin.	Ordinance
Pleasanton	02/1993	4 / 412	Lesser of 100% CPI or 5%	To 25% in 5 years	2-2-1	Ordinance
Pomona	05/1992	19 / 1836	Mediation	NO	Hearing Rent Board	Ordinance
Rancho Mirage	07/1982	6 / 882	75% of CPI	Avg Rent	1-1-5	Initiative
Redlands	12/1982	8 / 684	Lesser of 6-9% or 75% CPI	NO	0-0-3	Ordinance
Rialto	03/1992	12 / 1425	Rent Review Commission	YES	0-0-5	Ordinance
Riverside County	08/1983	124/12376	100% CPI	NO	2-2-1	Ordinance
Rocklin	05/1982	3 / 384	Guaranteed CPI	NO	1 and up	Ordinance
Rohnert Park	12/1987	5 / 1314	75% CPI or 4% cap	YES	5	Initiative
Salinas	10/1990	11 / 1437	75% CPI or 8% cap	NO	Rent Review Board	Ordinance
San Bernardino	09/1984	16 / 1487	Lesser of 4% or 75 % CPI	NO	None	Ordinance
San Francisco	06/1970	1 / 56	4-7% or 60% CPI	YES	-	Ordinance
San Jose	07/1985	70 / 11435	3-7% or 75% of CPI	YES	None	Ordinance
San Juan Capistrano	03/1979	7 / 1209	100% CPI	YES	2-2-1	Ordinance
San Luis Obispo City	06/1988	15 / 1551	100% CPI up to 5%, if higher, .75 of diff.	YES 10% (1x in 3 yrs)	Hearing Officer	Initiative
San Luis Obispo County	06/1988	39 / 2408	60% CPI	YES 10%	3	Initiative
San Marcos	11/1980	17 / 3216	CPI or NOI	With Limit	Rent Review Bd Rent Review Commission	Ordinance
San Raphael	04/1990	1 / 397	3-7.5% or CPI	YES	None	Ordinance

Santa Barbara City	1984	5 / 232	75% CPI	10% 1-5 yrs	Arbitration	Ordinance
Santa Barbara County	09/1994	19 / 2161	75% CPI	10% 1-5 yrs	Arbitration	Ordinance
Santa Clarita	12/1990	15 / 2070	100% CPI with 6% cap	NO	-	Ordinance
Santa Cruz County	01/1979	36 / 2212	50% of CPI + pass through	YES	Hearing Officer	Ordinance
Santa Monica	04/1979	3 / 283	Set by Board	NO	-	Initiative
Santa Paula	06/1984	9 / 838	Lesser of 7% or 75% of CPI	10% 1-3 yrs	0-0-3	Ordinance
Santa Rosa	2004	14/2008	100% CPI or up to 6%	YES	Arbitration	Ordinance
Scotts Valley	11/1980	5 / 527	75% of CPI	YES	0-0-5	Ordinance
Sebastopol	Revised 08/1992	6 / 173	100% of CPI	NO	Arbitration	Ordinance
Simi Valley	03/1983	6 / 354	Rent Review Commission	NO	-	Ordinance
Sonoma County	06/1987	51 / 3736	100% CPI	YES	Arbitration	Ordinance
Thousand Oaks	07/1980 Rev'sd 2011	8 / 897	Designated 10 Yr Plan - see Ordinance	YES	Rent Review Board	Ordinance
Ukiah	02/11 orig 10/10	23/1043	100% CPI (cap 5% or less)	YES	Arbitration	Ordinance
Union City	05/1980	3 / 918	90% of CPI or max of 7%	YES	-	Ordinance
Upland	12/1985 Rev'sd 1992	6 / 866	80% CPI or max of 7%	YES	Arbitration	Ordinance
Vacaville	12/1977	12 / 1126	Graduated CPI	NO	0-0-3	Ordinance
Vallejo	02/1982	17 / 1990	5%	NO	1-1-3	Ordinance
Ventura City	06/1981	18 / 1087	Lesser of 7% or 75% CPI	YES to 15%	Rent Review Bd.	Ordinance
Ventura County	02/1983	24 / 1421	Soc. Sec COLA 2%-8%, see Ord.	YES to 15%	0-0-3	Ordinance

Watsonville	03/1989	5 / 717	70% of CPI or 5%	NO	—	Ordinance
West Covina	09/1984	2 / 265	Less of 5-9% or 100% CPI	NO	Human Resources Comm. Arbitration	Ordinance
Windsor	08/1992	4-5 / 567	100% CPI cap 6%	NO		Ordinance
Yucaipa	12/1990	42 / 4425	80% CPI 5% cap	Only annual increase allowed	Rent Review Commission	Ordinance

* **Vacancy Control** – **YES** indicates that there are % or \$ limits as to how much rents can be increased at change of ownership of the mobilehome. Some RCO's exclude any increase in inheritance situations; others do not.

** **Comm/Boards** – Refers to who decides whether a rent increase higher than the ordinance permits would be approved, disapproved or modified. Various jurisdictions responded with different types of comments. In a 3 number response, the first # equals how many park owner reps serve on a board or committee, the 2nd # equals how many resident reps and the 3rd # equals people who would "neutral".

Revised by GSMOL: March, 2015

Date: Oct. 16, 2017

From: Kenneth Baar, Consultant

To: City Yucaipa Rent Administrator

Comment on Proposal by Yucaipa Mobilehome Residents Association (YMRA) (Sept. 8, 2017) Regarding Fair Return Standards

I. YMRA Proposals and Rationale

In a letter submitted on Sept. 8, 2017, YMRA has submitted three proposals applicable to fair return applications:

1. A ban on fair return applications by new purchasers for the first five years of ownership

“the language [of the fair return] section be amended to clarify the true intent, meaning and spirit of the provision and include language that specifically forbids an investor from seeking a ‘fair and reasonable return on investment’ for 5 years from the date a mobile home park is purchased.”

2. A requirement that fair return applications include documentation of five years of expenses preceeding an application

“[require] that the investor at least include the 5 years of documentation (income/expense, etc.) from the date the park was purchased as well as all the current requirements in effect.”

3. A reduction in a fair return rent adjustment if operating expenses have declined by more than 10% after the adjustment is granted.

“when a special rent adjustment is granted, ... a park investor be required to report expenses for the three years following the rent adjustment, and maintain expenditures within a 10% range from the reported expenses that justified the rent increase. If funding of expenses has been decreased by more than 10%, accordingly, a relative rent decrease should be awarded to the park residents.”

The YMRA letter states that fair return provisions have been “exploited as a government guarantee to gain extremely large, illicit and unjustified rent increases,” and that new purchasers have assented to the rental terms in effect when they purchased the park.

“an investor makes a purchase of a mobile home park, they are well informed, well educated, very aware if it will profit or not and by how much. The fact that they have made the decision to purchase the park and closed on the transaction is a park investors own admission and acknowledgement that he is in agreement with the terms and result of that decision.”

II. Comment on Proposal to Require Five Years Ownership in Order to File a Fair Return Application

A. Annual Rent Increases and Fair Return Increases in Yucaipa

In Yucaipa, forty mobilehome parks have a total of 2,975 spaces which are covered by the ordinance. (790 spaces are not covered because they have park owned mobilehomes and 503 spaces are subject to leases which are exempted by state law from local rent regulations.)¹

Under the ordinance, from 1991 to 1996, annual rent increases were limited to 66% of the percentage increase in the CPI. Since 1996, park owners have been permitted annual rent increases equal to 80% of the percentage increase in the CPI.

Under the fair return standard, an owner is entitled to a net operating income equal to the base year net operating income (NOI) adjusted by a portion of the percentage increase in the CPI. This type of standard is known as a “maintenance of net operating income” (MNOI) standard,

A park owner is entitled to a rent adjustment if the current NOI is not equal to the base year NOI adjusted by 66% of the percentage increase in the CPI from 1987 to October 1996 and 80% of the percentage increase in the CPI from October 1996 to the date of the application. As of December 2016, a fair return (fair net operating income) is a net operating income that is 83.1% above the 1987 net operating income; this increase compares with an increase in the Consumer Price Increase of 117.6% during this period. Under the MNOI standard, purchase prices and mortgage payments are not considered in computing operating expenses and setting the allowable rent.

The concepts underlying the MNOI standard are that:

- 1) all park owners are entitled to an equal rate of growth in net operating income (NOI) regardless of their purchase and mortgage terms,
- 2) neither long-term owners or recent purchasers have an advantage or disadvantage under the standard, and
- 3) the standard cannot be manipulated through purchase and financing arrangements.

While the MNOI standard is facially neutral between long term owners and new purchasers, the YMRA letter indicates that it is common strategy for new purchasers to pack operating expenses into the current year in order to justify a larger rent increase.

it is a common strategy (see mobilehomeuniversity.com) for an investor to purchase a mobile home park and spend as much as possible in repairs, maintenance and capital improvements to reflect higher operating costs to justify larger rent increases.

¹ Staff Report, 2017 CITY OF YUCAIPA MHP BASE RENTS, updated 10/2/2017.

However, such a strategy may be undertaken by either a long-term owner or a new purchaser.

In the case of both recent purchasers and long-term owners, under the Administrative Rules the Commission has the authority to adjust the operating expense amounts that are allowed in making a fair rent determination. Grounds for making adjustments are that claimed operating expenses are not reasonable, are atypical compared to the expense levels of other years, are excessive by industry standards, or for other reasons in order to provide a “reasonable comparison of base year and current year expenses.” The park owner has the burden of proving that the operating expenses are reasonable.

The applicable section sets forth the bases for adjusting allowable operating expenses:

Section 4.0003.

D. 5.

In calculating operating expenses for any year, an expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may be otherwise adjusted in order to establish an expense amount for that item which most reasonably serves the objective of obtaining a reasonable comparison of base year and current year expenses, under any of the following circumstances:

- a. An expense item for a particular year is not representative; or**
- ...**
- c. In the case of current year expenses, when the expense is not a reasonable projection of future expenditures for that item.**

E. Reasonableness of Operating Expenses. The park owner shall have the burden of proving that all operating expenses are reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of establishing the reasonableness of the expense. To the extent that the Commission finds any such expense to be unreasonable, the Commission shall adjust the expense to reflect the normal industry or other comparable standard.

In fact, such adjustments have been made in the course of reviewing rent adjustment petitions.

This author has observed in fair return cases in other jurisdictions that a common occurrence is that new purchasers will spend more than prior owners at the outset of their ownership in order to compensate for deferred maintenance and/or to improve the condition of the mobilehome park. On the other hand, there also have been cases in which long term owners have reported operating expense levels for the current year that are exceptional relative to prior years.

If an increase in operating expenses is associated with catching up on deferred maintenance and/or an effort to improve the level of maintenance and/or services the park, the Commission can determine what portion of the increase in expenses is temporary, what portion is likely to be ongoing, and/or what portion should be amortized or averaged with other years.

In Yucaipa, since 2000, five fair return petitions, involving mobilehome parks with a total 391 spaces, have been filed. In four of the cases, involving parks with 317 spaces, adjustments in monthly space rents ranging from \$60 to \$95 were granted.

One of the five cases involved a recent purchaser and one involved a purchaser who had owned the property for four years. In the other three cases, the applicant had owned the property for ten or more years.

The outcomes in those cases have rested on a combination of low rent increases relative to the rate of increase in the CPI since the base year and/or a “Vega” adjustment of base year rents on the basis that they did not reflect market conditions.

The Administrative Rules (Sec. 4.0004.A.3) mandate that base year rental income must be adjusted for the purposes of conducting an MNOI analysis in the event that the base year rent was “disproportionately low.” This type of adjustment is known as a “Vega” adjustment. It is based on the appellate court case (*Vega v. City of West Hollywood*) establishing the principle that under an MNOI standard it is unreasonable to lock landlords into low rents (and therefore low levels of net operating income) as a result of the fact base year rents were exceptionally low.

In two of the five cases in Yucaipa the owners were entitled to “Vega” adjustments, which in turn resulted in the fair return rent increases that were authorized in those cases.

In two of the fair return cases issues were raised about the reasonability of current year expenses. In one of the cases (Grandview), the applicant had owned the Park for 45 years. In that case, for the purposes of the MNOI analysis, the claim of \$135,035 in operating expenses was reduced to \$109,261.² In the Carriage Trade Manor case in 2017, involving a recent purchaser, the Park Owner’s expense claim of \$324,503 was reduced to \$258,907 for the purposes of the MNOI analysis.³

In two cases (Valley Breeze and Grandview), the Park Owner was entitled to “Kavanau” rent adjustments in addition to the rent adjustment allowed under the MNOI standard because the Park Owner was not granted a rent increase that would provide a fair return in the initial hearing. (No rent increases were allowed in the original City decisions.). Instead, the rent increases were granted by the City after the Superior Court remanded the City’s original decisions and required a new hearing. As a result, in addition to obtaining fair return adjustments in the new hearing, the park owners were entitled to recover the rents that they would have obtained if the fair return adjustments were granted when the owners were originally entitled to them.

² The allowance for “legal and accounting” was reduced from the claimed amount of \$29,676 to \$7,654 and Franchise Tax Board fees were excluded.

³ Claimed amounts and allowed amounts were: repair and maintenance – claimed \$87,030, allowed \$50,000; Legal and Accounting – claimed \$13,135, allowed - \$6,973; Licenses and Permits – claimed \$23,447, allowed \$8,215; state taxes – claimed \$800, allowed none; Travel – claimed \$4,085, allowed none.

Outcome of Fair Return Applications 2000 - Present

Year Applied	MHP	Applicant Years of Ownership	Spaces	Vega Adjust. of Base Yr Rent	Rent Increase / CPI increase (base year, 1987 to application year)	Current Rent as of Application Date	Rent Increase Granted
2004	Wishing Well	4	74	None	32% / 51%	\$204	None
2005	Valley Breeze	45	87	\$74**	163%** / 70%	\$225	\$68 to \$73 + (\$44.13 for 5 years)*
2008	Grandview West	14	51	None	50% / 85%	\$255	\$60 + (\$13.60 for 5 years)*
2011	Yucaipa Village	11	82	\$30	53% / 88%	\$238	\$81
2017	Carriage Trade Manor	2	97	None	56%*** / 114%	\$273	\$95

* "Kavanau" adjustments

** In the base year, the average rent was \$85.

*** From 1987 to 2016, the overall rent increase including transfers of utility costs was \$98, an amount equal to \$3.38/year.

B. The Relationship Between the Annual Increase Standard and the Fair Return Standard

In order to place the role of the fair return rent adjustment mechanism in perspective, it is critical to understand the interplay between annual rent increase allowance and the increases that may be obtained under the fair return standard. Since operating expenses commonly increase at about the same rate as the CPI, when annual adjustments are limited to less than 100% of the percentage increase in the CPI, there is a greater likelihood of park owners qualifying for fair return rent adjustments.

About 40% of the mobilehome rent stabilization ordinances in the state allow annual increases equal to 100% of the percentage increase in the CPI. In addition to annual allowable rent increases, about 30 jurisdictions allow limited rent increases upon in-place sales – e.g. 5% or 10%. (About 14 jurisdictions allow unlimited rent increases upon in-place sales.)

C. The Right to Maintain Net Operating Income.

The right to maintain net operating income has been established in judicial doctrine as a basic right.

In *Birkenfeld v City of Berkeley*, the California Supreme Court struck down Berkeley's original rent control ordinance on the basis that it locked apartment owners into the same rent level for years.

While the Courts have not held that a particular rate of growth in NOI must be permitted, they have held that reducing or indefinitely freezing net operating income is confiscatory. In *Helsmley v. Borough of Fort Lee*, 78 N.J. 200; 394 A.2d. 65 (1978) the N.J. Supreme Court (in a decision that has been frequently cited by the California appellate courts) struck down an ordinance that would lead to a steady erosion of net operating income.

In *Fisher v. City of Berkeley*, the California Supreme Court held that it is not permissible to "indefinitely freeze" net operating income. The Court stated:

although defendants' ordinance may properly restrict landlords' profits on their rental investments, it may not indefinitely freeze the dollar amount of those profits without eventually causing confiscatory results. (Cotati Alliance, supra, at p. 293 ["If the net operating profit of a landlord continues to be the identical number of dollars, there is in time a real diminution to the landlord which eventually becomes confiscatory."].)(37 Cal.3d. 644, 683 (1984))

Furthermore, in virtually every appellate opinion on fair return issues there has been an underlying premise that park owners can recover increases in operating expenses that are reasonable. In *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside*, 157 Cal.App.3d 887 (1984) the Court stated:

"[Moreover] this standard gives an owner the incentive to spend money to properly maintain his property. Assuming those costs are reasonable, they will be paid from rental income and will be considered in computing an increase in net operating income." (*Id.* at 903)

In *Colony Cove MHP v City of Carson* (224 Cal. App.4th 840 (2013) the Court reiterated an opinion set forth in an earlier case that the MNOI standard was the best available option because it preserves prior net operating income levels. ("the MNOI approach was the best available option for a fair return standard rather than designating a particular rate of return as fair, [MNOI] standards pursue the best available option, which is to preserve prior [net operating income] levels." (*H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 9.)) (224 Cal.App.4th at 869).

As far as this author is aware, no jurisdiction has ever adopted a provision requiring five years of park ownership as a precondition to the right to file a fair return application.

III. Proposal to Require Five Years of Operating Expense Information in Fair Return Applications

Under the current ordinance, park owners are required to provide income and operating expense data for the past five years. (Sec. 15.20. 100). In the current fair return application form, park owners are required to provide income and operating expense data for the prior four years, as well as the current year.

IV. Proposal to Provide for Modifications of Fair Return Adjustments Subsequent to Granting a Fair Return Increase Based on Subsequent Review of Operating Expenses Levels

The adoption of a scheme providing for subsequent reviews of operating expenses and fair return adjustments in order to determine if operating expenses remained at the level set forth in the initial fair return hearing would be unprecedented. This type of requirement would place a “cloud” over every fair return rent adjustment. In each case there would be uncertainty, among both residents and the park owner, over whether all or part of the rent increases which were granted would be temporary or permanent. Also, in each fair return case there would be a possibility that multiple hearings would be required. To the extent that additional documentation and hearings are required park owners would be entitled to pass through these costs to the Residents on the basis that they are necessary in order to maintain a fair return.

As indicated, under the MNOI standard there are several bases for adjusting operating expense claims if they are not likely to reflect operating expense levels that are likely to recur in the years following a fair return adjustment.

V. Conclusion

The concerns that are raised about recent purchasers obtaining unjustified rent increases through their investments and/or packing operating expenses into the current year are not borne out in the experiences under Yucaipa’s ordinance. Furthermore, the current regulations address these concerns by allowing the Commission to make adjustments to claimed amounts of operating expenses when applying the MNOI formula.

The City’s limits on annual allowable rent increases for the past twenty-six years (66% of the CPI increase from 1991 to 1996 and 80% of the CPI increase since 1996) have stabilized rents in a region where cycles of steep and shocking increases in housing costs have occurred.

Assuming that operating expenses will increase at the same rate as the CPI, the limit on annual rent increases to 80% of the CPI increase increases the likelihood that in future years there will be more fair return petitions and that greater fair return increases would be justified. Apart from modifying the amount of the annual increase allowance, a small rent adjustment allowance upon

in-place sales – e.g. 5% - could reduce fair return applications and rent adjustments. The impacts of such changes may not be immediate, but could be significant over a longer period.