CITY OF ATASCADERO
CITY COUNCIL

MINUTES

Tuesday, April 23, 2019

City Hall Council Chambers, 4th floor
6500 Palma Avenue, Atascadero, California
(Entrance on Lewis Ave.)

City Council Regular Session:	**6:00 P.M.**

REGULAR SESSION – CALL TO ORDER: 6:00 P.M.

Mayor Moreno called the meeting to order at 6:01 p.m. and Council Member Fonzi led the Pledge of Allegiance.

ROLL CALL:

Present:	Council Members Fonzi, Funk, Newsom, Mayor Pro Tem Bourbeau and Mayor Moreno
Absent:	None
Staff Present:	City Manager Rachelle Rickard, Administrative Services Director Jeri Rangel, Public Works Director Nick DeBar, Police Chief Jerel Haley, Community Development Director Phil Dunsmore, City Attorney Brian Pierik and Deputy City Manager/City Clerk Lara Christensen

PRESENTATIONS:

1. **Proclamation recognizing the Atascadero Kiwanis 50 year anniversary**

The City Council presented a Proclamation to the Atascadero Kiwanis on the occasion of their 50 year anniversary.

2. **Presentation by SLOCOG/Rideshare about Commuter Challenges in May 2019 including Bike to School Day (May 8th) Bike to Coffee Day (May 11th) and Bike to Work Day (May 17th)**

Jackie Mansoor, Air Pollution Control District gave a presentation on behalf of Rideshare regarding Commuter Challenges coming in the month of May.

A. CONSENT CALENDAR:

1. **City Council Draft Action Minutes – April 9, 2019**
   - Recommendation: Council approve the April 9, 2019 Draft City Council Meeting Minutes. [City Clerk]

2. **March 2019 Accounts Payable and Payroll**
   - Fiscal Impact: $2,578,619.40
   - Recommendation: Council approve certified City accounts payable, payroll and payroll vendor checks for March 2019. [Administrative Services]

3. **2019 Pavement Resurfacing Project Construction Award**
   - Fiscal Impact: $592,000.00
   - Recommendations: Council:
     1. Award a construction contract for $502,665 to American Asphalt South, Inc. for the 2019 Pavement Resurfacing Project (Project No. C2018R03).
     2. Authorize the City Manager to execute a contract with American Asphalt South, Inc. for $502,665 for the construction of the 2019 Pavement Resurfacing Project.
     3. Authorize the Director of Public Works to file a Notice of Completion with the County Recorder upon satisfactory completion of the project. [Public Works]

4. **Alcoholic Beverage Control (ABC) License for On-site Alcohol Sales at 5840 Traffic Way "Raconteur Room" (Type 42 License)(Dole/TSAM LLC)**
   - Fiscal Impact: A slight positive fiscal impact expected from increased sales tax.
   - Recommendation: Council adopt Draft Resolution finding that a public convenience would be served by allowing the issuance of a Type 42 ABC, On-Sale Beer and Wine for Public Premises License for Raconteur Room, a bar located at 5840 Traffic Way. [Community Development]

5. **Adopting a List of Projects for Fiscal Year 2019-2020 Funded by SB1**
   - Fiscal Impact: None.
   - Recommendation: Council adopt Draft Resolution adopting a list of projects to be funded with Road Maintenance and Rehabilitation Account revenues from SB1 (The Road Repair and Accountability Act of 2017) for Fiscal Year 2019-2020. [Public Works]

MOTION: By Mayor Pro Tem Bourbeau and seconded by Council Member Fonzi to approve the Consent Calendar. *(#A-3: Contract No. 2019-003, #A4: Resolution No. 2019-012, #A5 Resolution No. 2019-013) Motion passed 5:0 by a roll-call vote.*

UPDATES FROM THE CITY MANAGER:

City Manager Rachelle Rickard gave an update on projects and issues within the City.

COMMUNITY FORUM:

The following citizens spoke during Community Forum: Margi Bauer, Geoff Auslen, William Vega, Peter Burns, Randal Sears, Clyde Sneider, Kelly A., Betty Lightfoot (Exhibit A), Karen Levanway (Exhibit B) and Kim Chang

Mayor Moreno closed the COMMUNITY FORUM period.

B. PUBLIC HEARINGS:

1. **Title 9 and Title 11 Planning and Zoning Text Amendments - Annual Code Update (ZCH19-0023)**
   - Ex-Parte Communications:
   - Fiscal Impact: Potential savings of staff time.
   - Recommendation: Council introduce for first reading, by title only, the Draft Ordinance amending the Atascadero Municipal Code, Title 9 Planning & Zoning, Section 9-1.110 Public hearings, Section 9-3.330 Nonresidential district allowable land uses, Sections 9-3.340 through 9-3.345 and 9-3.348 through 9-3.349 Property development standards, Section 9-6.112 Farm animal raising, Section 9-6.174 Seasonal or temporary sales, Section 9-12.104 Required approvals and Title 11 Subdivisions, Section 11-4.06 Noticing of planning commission hearing on tentative map and determining this Ordinance is exempt from review under the California Environmental Quality Act. [Community Development]

As this item was continued from the April 9, 2019 Meeting, Council Member Newsom noted that due to the potential conflict of interest disclosed, she was recusing herself from the discussion and vote for this item.

Community Development Director Dunsmore gave the presentation and answered questions from the Council.

Ex Parte Communications
All Council Members noted receiving an email from attorney Sophie Treder.

PUBLIC COMMENT:

The following citizens spoke on this item: Sophie Treder and William Vega

Mayor Moreno closed the Public Comment period.

MOTION: **By Council Member Fonzi and seconded by Council Member Funk to introduce for first reading, by title only, the Draft Ordinance amending the Atascadero Municipal Code, Title 9 Planning & Zoning, Section 9-1.110 Public hearings, Section 9-3.330 Nonresidential district allowable land uses, Sections**

9-3.340 through 9-3.345 and 9-3.348 through 9-3.349 Property development standards, Section 9-6.112 Farm animal raising, Section 9-6.174 Seasonal or temporary sales, Section 9-12.104 Required approvals and Title 11 Subdivisions, Section 11-4.06 Noticing of planning commission hearing on tentative map and determining this Ordinance is exempt from review under the California Environmental Quality Act.

Deputy City Manager/City Clerk Christensen read the title of the Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING THE ATASCADERO MUNICIPAL CODE, TITLE 9 PLANNING & ZONING, SECTION 9-1.110 PUBLIC HEARINGS, SECTION 9-3.330 NONRESIDENTIAL DISTRICT ALLOWABLE LAND USES, SECTIONS 9-3.340 THROUGH 9-3.345 AND 9-3.348 THROUGH 9-3.349 PROPERTY DEVELOPMENT STANDARDS, SECTION 9-6.112 FARM ANIMAL RAISING, SECTION 9-6.174 SEASONAL OR TEMPORARYSALES, SECTION 9-12.104 REQUIRED APPROVALS AND TITLE 11 SUBDIVISIONS, SECTION 11-4.06 NOTICING OF PLANNING COMMISSION HEARING ON TENTATIVE MAP AND DETERMINING THIS ORDINANCE IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (ZCH19-0023)

Motion passed 4:0 by a roll-call vote. Newsom abstained.

Council Member Newsom returned to the dais at 7:37 p.m.

C. MANAGEMENT REPORTS:

1. **Sphere of Influence Review**
   - Fiscal Impact: None.
   - Recommendation: Council review the City's Sphere of Influence and provide staff with feedback towards a future Sphere of Influence and City/County MOU update. [Community Development]

Community Development Director Dunsmore introduced the staff report and answered questions from the Council. David Church and Mike Prater of LAFCO also presented and answered question from the Council.

PUBLIC COMMENT:

The following citizens spoke on this item: None

Mayor Moreno closed the Public Comment period.

The City Council reviewed the City's Sphere of Influence and provided feedback to LAFCO staff to look at the four Sphere of Influence Study Areas and provide additional information on these areas to Council at a future meeting.

2. **Amendment to the Contract Between the City Council of the City of Atascadero and the Board of Administration of the California Public Employees' Retirement System (CalPERS)**
   - Fiscal Impact: None.
   - Recommendations: Council:
     1. Adopt Draft Resolution of Intention to approve an amendment to the contract between the City Council of the City of Atascadero and the Board of Administration of the California Public Employees' Retirement System; and
     2. Introduce for first reading by title only, the Draft Ordinance authorizing the Mayor to execute an amendment to the contract between the City Council of the City of Atascadero and the Board of Administration of the California Public Employees' Retirement System. [City Manager]

Deputy City Manager Christensen gave the presentation and answered questions from the Council. Administrative Services Director Rangel also answered questions from the Council.

PUBLIC COMMENT:

The following citizens spoke on this item: None.

Mayor Moreno closed the Public Comment period.

MOTION: **By Mayor Pro Tem Bourbeau seconded by Council Member Funk to adopt Draft Resolution of Intention to approve an amendment to the contract between the City Council of the City of Atascadero and the Board of Administration of the California Public Employees' Retirement System.**
Motion passed 5:0 by a roll-call vote. (Resolution No. 2019-014)

MOTION: **By Mayor Pro Tem Bourbeau seconded by Council Member Newsom to introduce for first reading by title only, the Draft Ordinance authorizing the Mayor to execute an amendment to the contract between the City Council of the City of Atascadero and the Board of Administration of the California Public Employees' Retirement System.**

Deputy City Manager/City Clerk Christensen read the title of the Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY COUNCIL OF THE CITY OF ATASCADERO.

Motion passed 5:0 by a roll-call vote.

Mayor Moreno recessed the meeting at 8:41 p.m.
Mayor Moreno reconvened the meeting at 8:49 p.m. with all present.

3. **Santa Lucia Road Pavement Rehabilitation Construction Award**
   - Fiscal Impact: Total project funding of $1,005,000.00
   - Recommendations: Council:
     1. Award a construction contract for $720,527 to Souza Engineering Contracting, Inc. for the Santa Lucia Road Pavement Rehabilitation Project (Project No. C2017R03).
     2. Authorize the City Manager to execute a contract with Souza Engineering Contracting, Inc. in the amount of $720,527 for the construction of the Santa Lucia Road Pavement Rehabilitation Project.
     3. Authorize the Director of Administrative Services to appropriate an additional $425,000 in Local Transportation Fund (LTF) balance toward the Santa Lucia Road Pavement Rehabilitation Project.
     4. Authorize the Director of Public Works to file a Notice of Completion with the County Recorder upon satisfactory completion of the project. [Public Works]

Public Works Director DeBar gave the presentation and answered questions from the Council.

PUBLIC COMMENT:

The following citizens spoke on this item: Marcel Schade

Mayor Moreno closed the Public Comment period.

MOTION: **By Mayor Pro Tem Bourbeau and seconded by Council Member Fonzi to:**

1. **Award a construction contract for $720,527 to Souza Engineering Contracting, Inc. for the Santa Lucia Road Pavement Rehabilitation Project (Project No. C2017R03).**
2. **Authorize the City Manager to execute a contract with Souza Engineering Contracting, Inc. in the amount of $720,527 for the construction of the Santa Lucia Road Pavement Rehabilitation Project.**
3. **Authorize the Director of Administrative Services to appropriate an additional $425,000 in Local Transportation Fund (LTF) balance toward the Santa Lucia Road Pavement Rehabilitation Project.**
4. **Authorize the Director of Public Works to file a Notice of Completion with the County Recorder upon satisfactory completion of the project.**

Motion passed 5:0 by a roll-call vote. (Contract No. 2019-004)

D. COUNCIL ANNOUNCEMENTS AND COMMITTEE REPORTS:

The following Council Members made brief announcements and gave brief update reports on their committees since their last Council meeting:

Mayor Moreno

1. County Mayors Round Table

Mayor Moreno noted that the proposed closure of the County Clerk's satellite office in Atascadero came as a surprise and she sent a letter out in opposition to the closure to the Board of Supervisors. She encouraged the rest of the Council, if they are so inclined, to also send a letter opposing the closure.

Mayor Moreno mentioned that the Block Party scheduled for May 4th on Entrada has been cancelled.

Mayor Pro Tem Bourbeau
1. City of Atascadero Finance Committee
2. Integrated Waste Management Authority (IWMA)

Council Member Fonzi
1. SLO Local Agency Formation Commission (LAFCo)

Council Member Funk
1. City of Atascadero Finance Committee
2. League of California Cities – Council Liaison

Council Member Funk noted that she sent a letter off in support of the H.E.A.P. funding request by the City of Paso Robles and ECHO.

Council Member Funk also noted that the next League of California Cities dinner will be held in the City of Paso Robles and she encouraged her colleagues to RSVP and attend.

Council Member Newsom
1. City of Atascadero Design Review Committee

E. ADJOURN

Mayor Moreno adjourned the meeting at 9:24 p.m.

MINUTES PREPARED BY:

Lara K. Christensen
Deputy City Manager / City Clerk

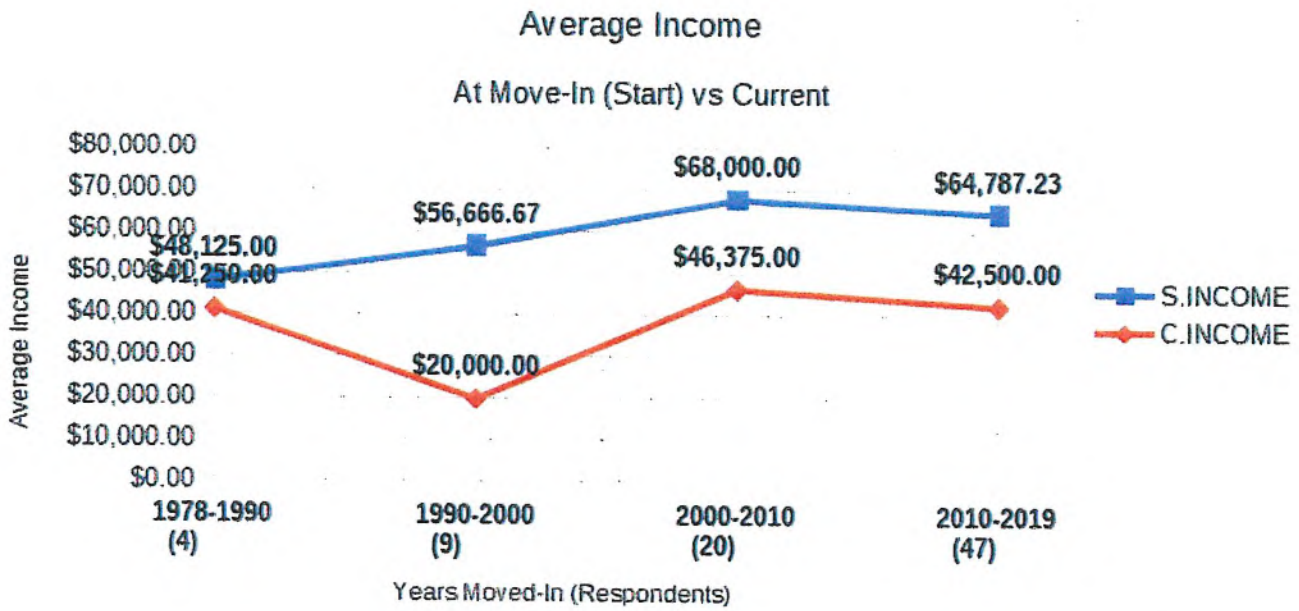
The following exhibits are available for review in the City Clerk's office:
- Exhibit A – Mobile Home Rent Stabilization Documents
- Exhibit B – Mobile Home Rent Stabilization Documents

APPROVED: May 14, 2019

Exhibit A
4.23.19

Rent Stabilization
Statistical report prepared by Kent Groseclose
Rancho Del Bordo
10025 El Camino Real
Atascadero, CA 93422

Information presented by Betty Lightfoot
(805) 461-9055



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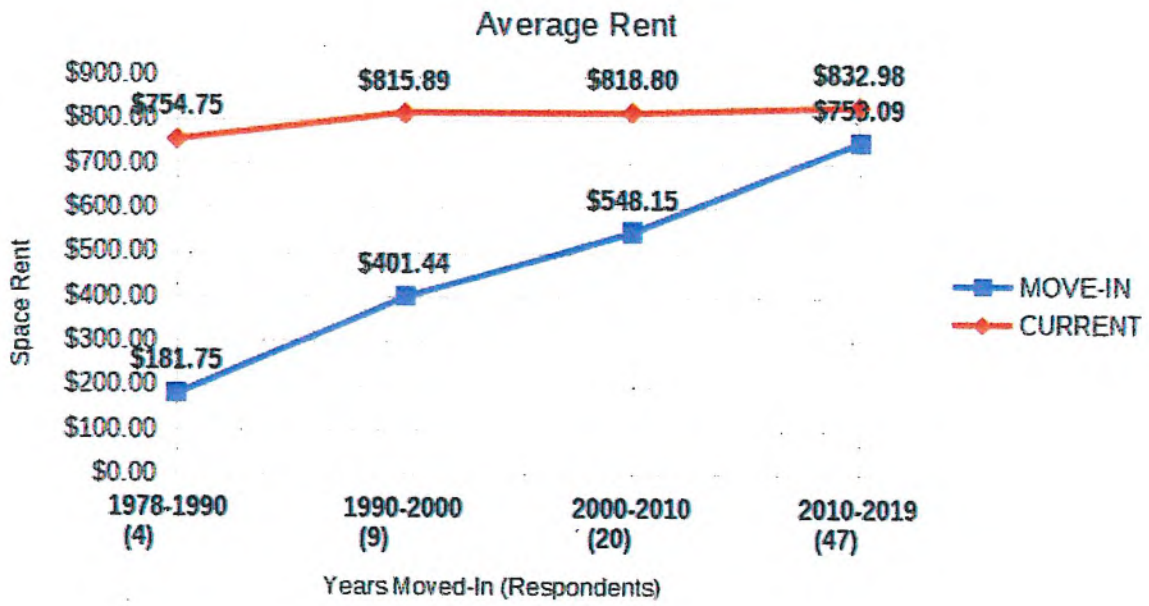

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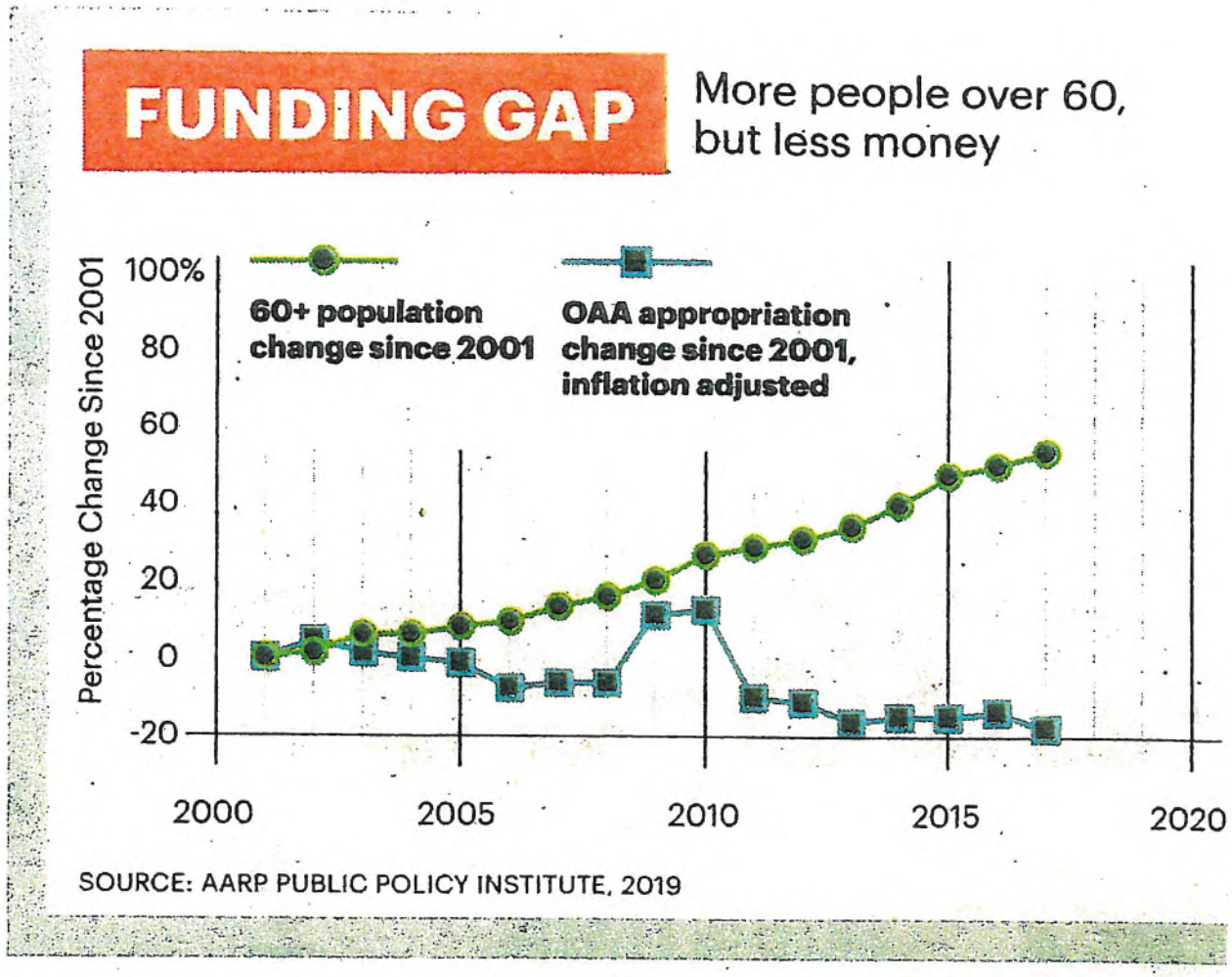

Exhibit B
4.23.19

Count/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name and Reference
Grover Beach	1987-12		3	140	Graduated CPI	Yes 5%	City Appointed Mediator	Ordinance	Grover Beach
Morro Bay	1986-08	Revised 2004	15	641	75% CPI	125% CPI Non-Permanent Resident 10-15% Cap	2-2-3	Ordinance	Morro Bay
Marina #1	2011-11		5	399	100% CPI	5% Every 2 Years	Rent Administration	Ordinance	Mobile Home Rent Stabilization Chapter 5.72
Pismo Beach #2	1981-04		2	412	Lesser of 6% or 75% CPI	Yes 10%	City Administration	Ordinance	Pismo Beach

San Luis Obispo City #3	1988-06		15	1,551	100% CPI to 5%, if Higher, .75 of Difference	Yes 10%, 1x in 3 Years	Hearing Officer	Initiative	San Luis Obispo City
San Luis Obispo County	1988-06	Does not apply to incorporated entities.	39	2,408	60% CPI	Yes 10%	Rent Review Board	Initiative	San Luis Obispo County

B

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name	Reference
	East Palo Alto	1983-11		4	274	Board	Yes		Initiative	Rent Stabilization Program	
	Escondido	1988-06		30	3,585	Board	Yes	City Council	Initiative	Mobilehome Rent Control Ordinance	Proposition K
	Fairfield	1984-11		9	883	Board	No	1-1-3	Ordinance		
	Fontana	1987-02		10	684	100% CPI	No	Rent Administration	Ordinance	Mobile Home Park Space Rent Stabilization	Chapter 14, Article III
	Fremont	1987-02		3	732	Greater $10 or 70% CPI	Yes	Hearing Officer	Ordinance	Mobile Home Space Rent Stabilization	Chapter 9.55
	Fresno	1987-12		30	3,942	Rent Review Commission	Yes	1-1-3	Ordinance		
	Gardena	1987-04		27	1,156	Rent Mediation, Arbitration	No	3-3-3	Ordinance		
	Gilroy	1987-05		4	336	Less of 5% or 80% CPI	No		Ordinance		
	Goleta	2002-06		4	500	75% CPI	10% 1-5 Years	4-4-0 Meet and Confer Arbitration	Ordinance		
	Grover Beach	1987-12		3	140	Graduated CPI	Yes 5%	City Appointed Mediator	Ordinance		
	Hawthorne	1979-06		11	327	Rent Mediation Board	No	Rent Board	Ordinance		
	Hayward	1980-02		16	2,160	Lesser of 3% or 60% CPI to 8%	No		Ordinance		
	Hemet	1979-05		20	2,805	Board	No	1-1-3	Initiative		
	Hollister	1989-05	Repealed 1994	1	235	Lesser of 8% or 80% CPI	No	1-1-3	Ordinance		
	Humboldt County	2017-01		42	1,095	100% CPI	Yes 5%		Ordinance	Mobile Home Rent Stabilization	Title IX - Division 10 - 9101
	Indio	1984-03		6	528	75% CPI	No	Fair Practice Commission	Initiative		
	La Verne	1994-10		8	1,762	Lesser of 7% or CPI	No	Rent Administrati	Ordinance		

California Rent Stabilization Ordinances (RSOs)

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name	Reference
	Alameda County	1990-09		22	712	Automatic to 5%	Yes	Board of Supervisors	Ordinance	Mobile Home Park Rent Stabilization	90-71
	Azusa	1992-01		6	548	8% / 75% CPI	No		Ordinance		
	Beaumont	1984-10		8	459	Hearing	No	2-2-1	Ordinance		
	Benicia	1978-09		4	317	Hearing	No	2-2-1	Ordinance		
	Calistoga	1984-08		5	569	Hearing	No	1-1-3	Ordinance	Mobile Home Park Rent Stabilization	Chapter 2.22
	Camarillo	1981-12		4	747	Hearing	No	1-1-3	Ordinance	Rent Review Mediation Commission	Chapter 10.50
	Capitola	1979-11	Repealed 2011-08	8	623	Lesser of 5% or 60% CPI	Yes	City Council	Ordinance		
	Carpinteria	1982-03		7	866	75% CPI	Yes	Rent Stabilization Commission	Ordinance		
	Carson	1979-08	Revised 2018-04	28	2,565	Board	Yes	2-2-3	Ordinance	Mobilehome Space Rent Control	79-485U
	Cathedral City	1982-00		10	2,064	75% CPI	Yes	0-0-5	Initiative	Mobile Home Rent Control Ordinance	48
	Chino	1983-08		5	554	66% CPI	No	1-1-3	Ordinance		
	Chula Vista			31	3,600					Mobilehome Park Space Rent Review	Chapter 9.50
	Cloverdale	1986-08		4	165	Board	Yes 10%	0-0-3	Ordinance		
	Clovis	1978-09		6	582	Rent Review Commission	No	1-1-3	Ordinance		
	Colton	1990-06		8	916	60% CPI	No		Ordinance		
	Concord	1994-01		11	1,446	80% CPI or 5%	Yes 10%	Hearing Officer	Ordinance	Mobile Home Parks Rent Stabilization	Chapter 15.105
	Cotati	1979-11		3	106	Board	Yes	Arbitration	Ordinance		
	Daly City	1980-06		1	501	Board	No	1-1-3	Ordinance		
	Delano	1984-11	Repealed 1994	4	310	50% CPI	Yes	1-1-3	Initiative		

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name	Reference
								on			
	Lancaster	1985-03		27	2,584	Board	Yes	1-1-3	Initiative		
	Lompoc	1983-12		7	654	75% CPI to 10%	No	2-2-1	Ordinance		
	Los Angeles City	1988-03		57	6,696	3-8% Based on CPI	Lesser of 10% or Comp Rent in Park	Rent Adjustment Commission	Ordinance		
	Los Gatos	1980-10		2	137	100% CPI or 5%	$25 or Average	Mediation, Arbitration	Ordinance		
	Malibu	1991-12		2	527	75% CPI	Yes 10%		Ordinance		
	Marina	2011-11		5	399	100% CPI	5% Every 2 Years	Rent Administration	Ordinance	Mobile Home Rent Stabilization	Chapter 5.72
	Merced	1982-05		3	574	Hearing	No	2-2-1	Ordinance		
	Milpitas	1992-08		3	521	50% CPI or 8%	Average Rent	City Council	Ordinance		
	Modesto	2007-10		9	1,400	100% CPI	10% Every 5 Years	Hearing Board	Ordinance	Mobile Home Rent Stabilization Program	Chapter 19
	Montclair	1985-11		8	620	Lessor of 6% or 6% CPI	No	2-2-1	Ordinance		
	Moreno Valley	1987-07		7	809	Lessor of % or 65% CPI	With Limit Park or Resident	Committee	Ordinance		
	Morgan Hill	1983-08		9	875	75% CPI	Yes	1-1-3	Ordinance		
	Morro Bay	1986-08	Revised 2004	15	641	75% CPI	125% CPI Non-Permanent Resident 10-15% Cap	2-2-3	Ordinance		
	Napa	1983-12	Repealed 1985	22	1,605	8% Cap		1-1-5	Ordinance		
	Oakland	1980-09		3	49	Automatic 5%	No		Ordinance		
	Oceanside	1982-06		20	2,401	Lesser of 8% or CPI	Yes	0-0-5	Ordinance	Manufactured Home Fair Practices	Chapter 16B, 82-87
	Oxnard	1983-03	Revised 1998	25	2,780	Lesser of CPI or 4%	Yes 15%, Average Space	Hearing Administration, Rent	Ordinance		

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control Rent	Committee Review Board	Adopted By	Ordinance Name	Reference
	Pacifica	1991-09		1	93	75% CPI	No		Ordinance		
	Palm Desert	1986-00		4	676	75% CPI	Yes	5 Picked	Ordinance	Mobile Home Rent Control Program	456
	Palm Springs	1980-04		14	2,242	75% CPI	Yes	0-0-5	Ordinance	Rent Control	
	Palmdale	1985-10		15	1,455	CPI or Arbitration Award	No	1-1-3	Ordinance		
	Paramount	1987-07		17	1,228	100% CPI	No	2-2-0	Ordinance		
	Petaluma	1994-02		9	1,006	Lesser of 100% CPI or 6%	No	Arbitration	Ordinance	Mobilehome Park Space Rent Stabilization Program	Chapter 6.50
	Pismo Beach	1981-04		2	412	Lesser of 6% or 75% CPI	Yes 10%	City Administration	Ordinance		
	Pleasanton	1993-02		4	412	Lesser of 100% CPI or 5%	To 25% in 5 years	2-2-1	Ordinance		
	Pomona	1992-05		19	1,836	Mediation	No	Hearing Board	Ordinance		
	Rancho Mirage	1982-07		6	882	75% CPI	Average Rent	1-1-5	Initiative		
	Redlands	1982-12		8	684	Lesser of 6-9% or 75% CPI	No	0-0-3	Ordinance		
	Rialto	1992-03		12	1,425	Rent Review Commission	Yes	0-0-5	Ordinance		
	Riverside County	1983-08		124	12,376	100% CPI	No	2-2-1	Ordinance	Mobile Home Parks Rent Stabilization Procedures	Chapter 5.75
	Rocklin	1982-05		3	384	Guaranteed CPI	No	1 and up	Ordinance		
	Rohnert Park	1987-12		5	1,314	75% CPI or 4% Cap	Yes	5	Initiative	Mobile Home Ordinance	Chapter 9.7
	Salinas	1990-10		11	1,437	75% CPI or 8% Cap	No	Rent Review Board	Ordinance		
	San Bernardino	1984-09		16	1,487	Lesser of 4% or 75% CPI	No		Ordinance		
	San	1970		1	56	4-7% or	Yes		Ordinance		

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name	Reference
	Francisco	-06				60% CPI					
	San Jose	1985 -07		70	11,435	3-7% or 75% CPI	Yes		Ordinance	Mobilehome Rent Ordinance	Chapter 17.22
	San Juan Capistrano	1979 -03		7	1,209	100% CPI	Yes	2-2-1	Ordinance	Mobile Home Rent Control	Article 9
	San Luis Obispo City	1988 -06		15	1,551	100% CPI to 5%, if Higher, .75 of Difference	Yes 10%, 1x in 3 Years	Hearing Officer	Initiative		
	San Luis Obispo County	1988 -06		39	2,408	60% CPI	Yes 10%	Rent Review Board	Initiative		
	San Marcos	1980 -11		17	3,216	CPI or NOI	With Limit	Rent Review Commission	Ordinance		
	San Raphael	1990 -04		1	397	3-7.5% or CPI	Yes		Ordinance		
	Santa Barbara City	1984 -08		5	232	75% CPI	10% 1-5 Years	Arbitration	Ordinance	Mobilehome and Recreational Vehicle Parks - Residents' Rights	Title 26, Chapter 26.04
	Santa Barbara County	1994 -09		19	2,161	75% CPI	10% 1-5 Years	Arbitration	Ordinance	Mobilehome Rent Control	Chapter 11A
	Santa Clarita	1990 -12		15	2,070	100% CPI, 6% Cap	No		Ordinance	Manufactured Home Park Rent Adjustment Procedures	Chapter 6.02
	Santa Cruz County	1979 -01		36	2,212	50% CPI, Pass Through	Yes	Hearing Officer	Ordinance	Mobilehome Rent/Sale Stabilization	Chapter 22.01
	Santa Monica	1979 -04		3	283	Board	No		Initiative		
	Santa Paula	1984 -06		9	838	Lesser of 7% or 75% CPI	10% 1-3 Years	0-0-3	Ordinance		
	Santa Rosa	2004 -00		15	2,198	100% CPI, Up to 6%	Yes	Arbitration	Ordinance	Mobilehome Rent Control Program	Chapter 6-66
	Santee			12	2,328				Ordinance	Mobile Home Park Rent Control Ordinance	Chapter 2.44
	Scotts Valley	1980 -11		5	527	75% CPI	Yes	0-0-5	Ordinance		
	Sebastopol		Revised	6	173	100% CPI	No	Arbitration	Ordinance		

#	County/City	Date	Notes	Parks	Spaces	Increase	Vacancy Control	Committee	Adopted By	Ordinance Name	Reference
			1992-08								
	Simi Valley	1983-03		6	354	Rent Review Commission	No		Ordinance		
	Sonoma County	1987-06		51	3,736	100% CPI	Yes	Arbitration	Ordinance	Mobilehome Park Space Rent Stabilization	Article XIX
	Thousand Oaks	1980-07	Revised 2011	8	897	Designated 10 Year Plan	Yes 10-15%	Rent Review Board	Ordinance		
	Ukiah	2011-02	Original 2010-10	23	1,043	100% CPI, 5% Cap or Less	Yes 10%	Arbitration	Ordinance	Mobilehome Rent Stabilization	Chapter 8
	Union City	1980-05		3	918	90% CPI or 7% Max	Yes		Ordinance		
	Upland	1985-12	Revised 1992	6	866	80% CPI or 7% Max	Yes	Arbitration	Ordinance		
	Vacaville	1977-12		12	1,126	Graduated CPI	No	0-0-3	Ordinance		
	Vallejo	1982-02		17	1,990	5%	No	1-1-3	Ordinance		
	Ventura City	1981-06		18	1,087	Lesser of 7% or 75% CPI	Yes 15%	Rent Review Board	Ordinance		
	Ventura County	1983-02	Revised 2014-06	24	1,421	Social Security COLA 2%-8%	Yes 15%	0-0-3	Ordinance	Mobile Home Park Rent Control	4462
	Watsonville	1989-03		5	717	70% CPI or 5%	No		Ordinance	Mobile Home Park Rent Stabilization	Chapter 3
	West Covina	1984-09		2	265	Lesser of 5-9% or 100% CPI	No	Human Resources Committee	Ordinance		
	Windsor	1992-08		5	567	100% CPI, 6% Cap	No	Arbitration	Ordinance	Rent Stabilization	Chapter 1
	Yucaipa	1990-12		42	4,425	80% CPI, 5% Cap	Annual Increase Only	Rent Review Commission	Ordinance	Mobilehone Park Rent Stabilization Program	Chapter 15.20
			Totals:	1,394	144,121						

1,391,441 - Parks

124 - Cities, Towns, Counties

 B

FULLERTON'S ONLY INDEPENDENT NEWS – EST. 1978 – YEAR 41

Fullerton Observer

LOCAL NEWS

Seniors Facing Drastic Rent Increases at Rancho La Paz Mobile Home Park

BY EDITOR ON MARCH 10, 2019 • (18 COMMENTS)

It's a tragically familiar story for many Californians. You receive notice that the home you are renting has been sold and the new owners are dramatically increasing the rent, because there is no rent control and, under California law, there's no limit on the amount rents may be increased. Property owners are protected by Prop 13. Renters have no such protection.

For most folks who cannot afford the new rent, they simply move. But what if you are a senior on a fixed income or social security? And what if you live in a mobile home park where you actually own your home, but must pay rent in the form of "lot fees"? If the new owner dramatically increases your lot fees, what are your options then?

These are the questions that hundreds of senior residents of the Rancho La Paz mobile home park in Fullerton and Anaheim are now facing. On February 28, over 380 residents of Rancho La Paz received word that the mobile home park had been sold, and the new owners were increasing rents by an average of $300 per month for residents who were paying around $680 per month—a 44 percent increase.

"Since this is a senior park and most of the seniors here live on fixed incomes this is a travesty," said one resident of Rancho La Paz, "We have people so frightened they are talking about suicide."

Most of the mobile home owners are on fixed incomes and over 70 years old. Some are still paying a mortgage on their mobile homes, and the lot increase puts their living expenses above what they can afford on Social Security. Residents are also still responsible for their own utilities.

According to the notice residents received, if they call a Mr. Michael Cirillo of Star Management (the property management company) there may be some assistance up to $200 for those who can't afford the increase and qualify.

"However calls to that number have not been answered and many residents are panicking," said one resident who lives at the park and has been trying to find help for her neighbors.

The Observer also tried to contact Mr. Cirillo and Star Management, and his various other companies including one that buys up mobile home parks across several states, and another which purchases and resells mobile homes. Observer attempts to contact Cirillo by both phone and e-mail, have received no response to date.

In desperation, one resident contacted local elected officials of both cities, and reached out to the California Mobile Home Assistance Center, and Orange County Fair Housing, among other agencies. So far only Anaheim Councilmember J. Moreno and Fullerton Councilmember Ahmad Zahra have returned the resident's call for help saying they would look into it.

The residents are holding a meeting on the topic on March 20 at 6pm at the Rancho La Paz clubhouse.

Orange County Fair Housing, reached for comment, told the resident and the Observer that "the notice appears to comply with California's Mobilehome Residency law. Under Civil Code §798.30 rent can be increased without limit by way of a 90-day notice, provided that any such increase is also consistent with the provisions of any fixed-term lease that may be in place. Unfortunately, without any restraints on rent increases put in place by the local government the park operators can increase rents to levels that they believe the market will bear without consideration of the ability of the current residents to pay those increased rents. Mobile homes, once thought to be a portion of the housing stock considered as affordable, are now becoming out of reach to many people in the same way as apartments and for sale properties."

"It's obviously a very disturbing trend in Orange County where we're seeing significant rent increases in apartments, and now also in mobile home parks, which have traditionally been more affordable housing," said Cesar Covarrubias, Executive Director of the Kennedy Commission, a local group that advocates for affordable housing.

According to Covarrubias, "There would have to be a local measure, or a city would have to see this as a crisis and then enact a local ordinance that would allow for some measure of control over the rents."

Both Fullerton and Anaheim contracted with the Fair Housing Foundation in Long Beach for matters concerning fair housing. The Observer contacted that agency for a comment but did not receive a call back by press time.

The notice sent to residents claims that with the increase, the lot rents will still be "substantially below the fair market value for housing and amenities of the same quality." A quick check of lot fees in the area found them ranging from $500 to $1,250. According to a resident with the increase the fee to rent the lot beneath their homes will cost park residents from $1,000 to over $1,500 depending on whether they live on the Anaheim or more expensive Fullerton side.

Many residents fear that they will have to sell their homes and move though selling and moving out in 90 days seems an impossible task even if they could find another affordable option in this area where but low income housing is hard to find.

However, an interested buyer is waiting in the wings. The very same Michael A. Cirillo of Star Mobilehome Park Management may be in charge of future sales of units at the park if the elderly homeowners are forced to sell. His company shares a Santa Ana address with M. A. Cirillo & Associates, and Star Mobile Home Sales Inc. All the corporations list Michael Cirillo as president. In addition, Cirillo is a partner in Pacific Current Partners LLC which

buys up and operates mobile home parks in Las Vegas, Nevada, Utah, and California (where it has purchased 25 mobile home parks througout the state including Orange County cities of Anaheim and Placentia).

According to the notice from Star Management and Paracorp, LLC (the agent for the new owner Peace Ranch LLC), "We are a long-term, 'buy and hold' park ownership and need to increase park revenue to maintain our plan for continuation of the community."

New owner Peace Ranch, a Limited Liability Company registered in Delaware in January 2019, but has no website. However, its agent Paracorp LLC is also the agent for a Peace Ranch LLC registered as a foreign company in 2018 with address 1830 E. Sahara Dr., Ste 114, Las Vegas, Nevada 89104.

The legality of this situation is being researched by the Observer.
The plight of the Rancho La Paz residents perhaps speaks to the larger need for rent protections in California, especially for seniors and those on fixed incomes.

At the March 18 Anaheim Council meeting, there will be a presentation and discussion regarding rising rents and affordable housing.

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B

Mobile Home Park Rent Stabilization Ordinance Title 25

What is this service?

The County has a rent control ordinance that applies to mobile home parks. It applies to residents who have a month-to-month space rent agreement rather than a long term lease. The county code is known as Title 25 - Mobilehome Rent Stabilization. Title 25 limits the yearly rent increase on a mobile home space to 60% of the cost-of-living index (i.e., to 60% of the Consumer Price Index, or "CPI").

A mobile home park owner can apply for a larger rent increase. But he must demonstrate that the cost of operating the mobile home park exceeds the amount that the park earns even with the rent increase. Any increase in government fees (i.e., county, state and federal fees) can "pass-through" directly to the residents without approval from the County's Mobilehome Rent Review Board.

County of
San Luis Obispo
Ordinance

B

ORDINANCE NO. 499
AN ORDINANCE OF THE CITY OF MORRO BAY
REPEALING, AMENDING, AND REENACTING
CHAPTER 5.32 OF THE MORRO BAY MUNICIPAL CODE
(MOBILEHOME AND RECREATIONAL VEHICLE
PARK RENT STABILIZATION ORDINANCE)

THE CITY COUNCIL
CITY OF MORRO BAY, CALIFORNIA

WHEREAS, in November 1986, the City Council adopted Ordinance No. 294 which codified the Mobilehome and Recreational Vehicle Park Rent Stabilization Ordinance as contained in Chapter 5.32 of the Morro Bay Municipal Code; and

WHEREAS, in April 2003, the City Council authorized the creation of an Ad Hoc Subcommittee to review the aforementioned Mobilehome and Recreational Vehicle Park Rent Stabilization Ordinance; and

WHEREAS, such Ad Hoc Subcommittee consisted of ten voting members, five of whom were selected by park owners and five of whom were selected by park residents; and

WHEREAS, the Ad Hoc Subcommittee met fifteen times and made numerous recommendations for changes to the existing Mobilehome and Recreational Vehicle Park Rent Stabilization Ordinance; and

WHEREAS, all ten members of the Ad Hoc Subcommittee unanimously approved the final draft of the attached revisions to the Mobilehome and Recreational Vehicle Park Rent Stabilization Ordinance, Chapter 5.32 of the Morro Bay Municipal Code; and

WHEREAS, City Council desires to implement the revisions to the Mobilehome and Recreational Vehicle Park Rent Stabilization Ordinance, Chapter 5.32 of the Morro Bay Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES ORDAIN AS FOLLOWS:

Chapter 5.32 of the Morro Bay Municipal Code is hereby repealed, amended, and reenacted to read as follows:

Morro Bay
Park Rent Stabilization
Ordinance.

Chapter 5.32

MOBILEHOME AND RECREATIONAL VEHICLE PARK RENT STABILIZATION

Sections:

5.32.010	**Findings and purpose.**
5.32.020	**Definitions.**
5.32.030	**Exemptions.**
5.32.040	**Mobilehome rent review board—Established—Members—Terms.**
5.32.050	**Mobilehome rent review board—Powers and duties.**
5.32.060	**Residential rent increase limitations.**
5.32.070	**Increases upon change of occupancy.**
5.32.080	**Information to be supplied to tenants.**
5.32.090	**The rent dispute resolution process.**
5.32.100	**Standards of reasonableness to be applied to rent increases.**
5.32.110	**Obligations of the parties.**
5.32.120	**Rights of a "tenant-to-be."**
5.32.130	**Tenants' right of refusal.**
5.32.140	**Retaliatory acts—Tenants' right to organize.**
5.32.150	**Solicitation of any petition by the park owner is without force or legal effect within city's program.**
5.32.160	**Nonwaiverability.**
5.32.170	**Penalties and remedies.**
5.32.180	**Rights of affected tenants reserved.**
5.32.190	**Tenant complaints.**
5.32.200	**Severability.**

5.32.010 Findings and purpose.

In November 1986, the city council adopted Ordinance No. 294, a mobilehome and recreational vehicle park rent stabilization ordinance providing a formula for maximum annual rent increases and providing a procedure for hardship exceptions, the provisions of which were set forth in former Chapter 5.32 of this code. The findings and purpose set forth in Ordinance No. 294 referred to the following conditions:

A. There is presently within the city a shortage of spaces for the location of existing mobilehomes and recreational vehicles. Because of this shortage, there is a very low vacancy rate.

B. Within the city there are a number of persons who reside permanently in units which today meet the legal definitions of recreational vehicles. Often these persons subsist on low fixed incomes and are unable to afford standard housing.

C. Because of the high cost and impracticability of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, including permits, building requirements, landscaping and site preparation, the lack of alternative home sites for mobilehome residents, and the substantial investment of mobilehome owners in such homes, it is necessary to protect the owners of mobilehomes from unreasonable rent increases, while at the same time recognizing the need of park owners to receive a suitable profit on their property with rental income sufficient to cover increases in the costs of repair, insurance, maintenance, utilities, employee services, additional amenities, and other costs of operation, and to receive a fair return on their property.

D. However, it is recognized that a rent stabilization ordinance must be fair and equitable for all parties and must provide appropriate incentives for mobilehome park operators to continue their parks profitably and to upgrade and improve mobilehome parks, as well as to attract additional investors for new parks.

In April of 2003, the city council established a mobilehome rent stabilization subcommittee to review and consider amendments to the ordinance. The subcommittee consisted of ten members: five park owners and five tenants. The subcommittee held fifteen meetings to consider changes to the ordinance and received public comment. At the end of the meetings the subcommittee unanimously approved the recommended changes to the ordinance and submitted them to the city council.

The city council hereby finds that the conditions stated in subsections A through D of this section still exist; therefore, the purpose of the city council in enacting these provisions is: to prevent an exploitation of the shortage in vacant mobilehome spaces in the city, to preserve affordable housing as prescribed by the city's general plan/housing element, to provide mobilehome park owners a guaranteed rate of annual space rent increase that more accurately reflects the rate of inflation given their usual expenses, and to establish an improved process for providing mobilehome park owners a fair return on their property in those cases where the guaranteed annual space rent increase provided by these provisions proves to be insufficient. (Ord. 499 (part), 2004)

5.32.020 Definitions.

For the purposes of this chapter, certain words and phrases are defined as follows:

"Affected tenants" means those tenants whose space is not covered by a valid lease meeting the requirements as outlined in Section 798.17(b) of the California Civil Code or otherwise legally exempt from local rent control regulation as set forth in Section 798.21, or as set forth in Section 5.32.030 of this chapter. Affected tenants are to be notified that a space rent increase is to become effective. For purposes of providing notice of the increase, each space subject to a rental increase shall be deemed to have only one "affected tenant" for administrative convenience to the park owners. The reference to "all affected tenants" will refer to one representative tenant from each space subject to the proposed rental increase.

"Base rent" means the authorized space rent plus any rent increase allowed under Section 5.32.060 or any rent adjustment attributable to an increase upon change of occupancy as provided in Section 5.32.070. Base rent does not include rent increases for capital expenses or capital improvements.

"Capital improvements" means those improvements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, and which may be amortized over the useful remaining life of the improvement to the property. The term "capital improvements" does not include those costs associated with the normal maintenance and upkeep of facilities and premises which were reasonably intended to be part of consideration provided by the mobilehome park as rent. Substantial rehabilitation of the park that is necessitated as a result of the park owner's neglect, permissive waste, deferred maintenance or acts of God shall not be regarded to be capital improvements to the extent that they restore facilities and premises to the conditions reasonably bargained for by the mobilehome park tenants. Proposed capital improvements claims must set forth an amortization table spreading the cost of the improvement over its proven useful life. Rents based on such costs, if approved, must be separately itemized on the monthly rent invoice. In addition, the beginning date upon which such rents may be imposed and the ending date upon which such rents may no longer be imposed, must be stated on each monthly rent invoice submitted during the time such rents are charged to the tenant. Monthly rent shall be decreased for such amortized capital improvement expenses at the end of the amortization period. Failure to do so shall be regarded to be an unauthorized increase in rent. Capital improvements must be for the primary benefit, use and enjoyment of the tenants of the entire park, and costs must be allocated over all beneficiaries of the improvement.

"City manager" means the city manager of the city of Morro Bay or his or her designee.

"Consumer Price Index" means the Consumer Price Index for All Urban Consumers Los Angeles, Long Beach, Anaheim Area, published by the U.S. Department of Labor, Bureau of Labor Statistics.

"Debt service costs" means the periodic payment or payments due under any security or financing device which is applicable to the mobilehome park including any fees, commissions, or other charges incurred in obtaining such financing.

"Housing service" means a service provided by the owner related to the use or occupancy of a mobilehome space, which is neither a capital improvement nor substantial rehabilitation as those terms are defined in this chapter, including but not limited to, repairs, replacement, maintenance, painting, lighting, heat, water, laundry facilities, refuse removal, recreational facilities, parking, security service, and employee services.

"Just and reasonable return on the property" means there is a range of rents which could be allowed in any one mobilehome park subject to this chapter, all of which could be characterized as allowing a "just and reasonable return." There is no one precise formulation; rather, there are a variety of formulations which produce a zone of reasonableness.

"Maintenance and operation expenses" means all expenses incurred in the operation and maintenance of the mobilehome park, including but not limited to: real estate taxes, business taxes and fees, insurance, sewer service charges, utilities, janitorial services, professional property management fees, pool maintenance, exterior building and grounds maintenance, supplies, equipment, refuse removal, and security services or systems.

"Mobilehome" means a structure designed for human habitation as defined by Section 798.3 of the California Civil Code, provided, however, that recreational vehicles, as defined in Section 799.29 of the California Civil Code and Section 18010 of the California Health and Safety Code, which have occupied the same mobilehome or recreational vehicle park space continuously for nine months or more shall be considered mobilehomes.

"Mobilehome park" or "recreational vehicle (RV) park" means an area of land where two or more mobilehome or RV sites are rented, or held out for rent, to accommodate mobilehomes or RVs used for human habitation. This rent stabilization chapter shall apply to those spaces in recreational vehicle parks that are continuously occupied by an affected tenant for nine months or longer.

"Mobilehome park owner" or "owner" means the owner, lessor, operator or manager of a mobilehome park.

"Mobilehome rent review board" or "board" means the mobilehome rent review board established by this chapter.

"Mobilehome space" means any site within a mobilehome park located in the incorporated areas of the city intended, designed, or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith except "new construction" as defined by Civil Code Section 798.45. The term "mobilehome space" shall also include, for purposes of this rent stabilization ordinance, rentable spaces within mobilehome parks which have been occupied by a "recreational vehicle" as defined by Civil Code Section 799.29 continuously for a period of nine months or more.

"Mobilehome tenant" or "tenant" means any person entitled to occupy a mobilehome within a mobilehome park pursuant to ownership of the mobilehome.

"Net operating income" means gross income less operating expenses. All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that the board finds any such expense to be unreasonable, the board shall adjust the expense to reflect the normal industry or other comparable standard.

"Nonpermanent resident" means any tenant who does not meet the criteria set forth for a permanent resident.

"Party" means any affected mobilehome tenant and/or owner involved in proceedings under this chapter.

"Percent change in Consumer Price Index" means the annual percent change in the Consumer Price Index ("CPI"), calculated to the nearest tenth, for the twelve-month period from September through August.

"Permanent resident" means any person who manifests intent to live or be located in a mobilehome park on more than a temporary or transient basis. Presence in a mobilehome park for two hundred seventy days or more in any twelve-month period shall establish permanent residence, or meeting at least half of the following criteria shall establish permanent residence within a mobilehome park:

1. Address where registered to vote;
2. Location of employment or place of business;
3. Attendance of dependents at a primary or secondary school;
4. Not receiving a homeowner's exemption for another property or mobilehome in this state nor having a principal residence in another state;
5. DMV license address;
6. Mailing address;
7. Vehicle insurance address;
8. Bank account;
9. IRS address;
10. Local club/association membership.

"Rent increase" means any additional space rent demanded of or paid by a tenant for a mobilehome space including any reduction in housing services without a corresponding reduction in the amount demanded or paid for rent.

"Space rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received by a mobilehome park owner for or in connection with the use or occupancy of a mobilehome space or any housing services provided with the mobilehome space, but exclusive of (1) any amount paid for the use of the mobilehome, (2) security deposits and special amortized or limited rent increases, (3) user fees for services or facilities which may be utilized at the option of the affected tenant and are not included in monthly space rent, and (4) utility charges for those mobilehome parks which charge affected tenants separately, whether or not the mobilehome homes are individually metered.

"Substantial rehabilitation" means that work done by an owner to a mobilehome space or to the common areas of the mobilehome park, exclusive of a capital improvement as that term is defined in this chapter, the value of which exceeds two hundred dollars and which is performed whether to secure compliance with any state or local law or to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such work is not reimbursed by insurance.

"Tenant-to-be" means a person who is not currently a tenant in a mobilehome park but is a prospective mobilehome space tenant who desires the use of a mobilehome space as defined in this chapter and has presented himself or herself to the park owner as such and who would not be exempt under any of the provisions set forth in Section 5.32.030. (Ord. 499 (part), 2004)

5.32.030 Exemptions.

The provisions of this chapter shall not apply to the following tenancies in mobilehome parks:

A. Mobilehome park spaces rented for nonresidential uses;

B. Mobilehome parks managed or operated by the United States Government, the state of California, or the county of San Luis Obispo;

C. Tenancies which do not exceed an occupancy of thirty days and which do not contemplate an occupancy of more than thirty days;

D. Tenancies exempt from rent regulation by federal or state law or regulation, including but not limited to, tenancies governed by Civil Code Sections 798.17 rental agreements and 798.21 not principal residence;

E. Mobilehome parks which sell lots for factory-built or manufactured housing, or which provide condominium ownership of such lots, even if one or more homes in the development are rented or leased out.

F. Mobilehomes that are owned by the park owner.

G. Spaces that are vacant or become vacant after the effective date of the ordinance codified in this chapter are, upon subsequent occupancy, exempt from this chapter. "Vacant," for the purposes of this section, means that the park owner has lawfully obtained the rights to occupancy of a space through, for example, the purchase of a mobilehome from a mobilehome owner, eviction or abandonment. This exemption does not apply if an affected tenant sells to a third party. This exemption shall apply only where the park owner, prior to entering into a rental or lease arrangement with subsequent homeowners, gives written notice that the unit or space is not subject to Morro Bay Municipal Code 5.32. The notice shall be in substantially the following form:

> THE MOBILEHOME SPACE OR UNIT SPECIFIED BELOW IS NOT SUBJECT TO RENT CONTROL UNDER THE MORRO BAY MUNICIPAL CODE. BECAUSE THE MOBILEHOME SPACE OR UNIT SPECIFIED BELOW IS NOT SUBJECT TO RENT CONTROL, THE LANDLORD MAY RAISE THE RENT WITHOUT ANY LIMITATION OR REVIEW BY THE CITY OR OTHER GOVERNMENT OR ADMINISTRATIVE AGENCY. YOU ARE SOLELY RESPONSIBLE FOR INFORMING YOURSELF OF YOUR RIGHTS AND OBLIGATIONS IN THIS MATTER AND FOR PROTECTING YOURSELF AGAINST FUTURE RENT INCREASES. I HEREBY ACKNOWLEDGE THAT I HAVE READ AND HAVE RECEIVED A FULLY COMPLETED COPY OF THIS NOTICE PRIOR TO ENTERING INTO A RENTAL OR LEASE ARRANGEMENT INVOLVING THE BELOW DESCRIBED MOBILEHOME SPACE OR UNIT.

(Ord. 499 (part), 2004)

5.32.040 Mobilehome rent review board—Established—Members—Terms.

A. There is established a mobilehome rent review board consisting of seven members.

B. The city manager shall appoint a staff member to be liaison and secretary to facilitate the formation of the board. The secretary shall maintain an accurate public record of the activities and official actions of the board.

C. The mobilehome rent review board shall be comprised of: two Morro Bay mobilehome park owners; two Morro Bay mobilehome affected tenants (one permanent and one nonpermanent); and three individual members residing in San Luis Obispo County who are neither mobilehome park owners nor mobilehome tenants, nor have any financial interest (as defined by state law) in any mobilehome park. The first four board members shall be chosen by lottery from a list of candidates. The first four board members shall not have a stake or financial interest in the dispute. The list of candidates shall include all park owners and any affected tenants who have volunteered to serve on the board. The three at-large members shall be mutually acceptable to the first four members.

D. Board members shall not be compensated for their services as such, but may receive reimbursements as provided by the city budget for traveling.

E. The formation of the board shall occur upon receipt of a written petition as set forth in Section 5.32.090 and shall continue until a formal written statement of decision is rendered by the board. (Ord. 499 (part), 2004)

5.32.050 Mobilehome rent review board—Powers and duties.

Within the limitations provided by law, the board shall have the following powers and duties:

A. To receive, investigate, hold hearings on and render opinions upon a dispute relating to this mobilehome and recreational vehicle park rent stabilization ordinance;

B. To make or conduct such independent hearings or investigations as may be appropriate to obtain such information as necessary to carry out its duties; and

C. To render after every rent review hearing a written report concerning its activities, holdings, actions, results of hearing, and all other matters pertinent to this chapter which may be of interest to the public in general. (Ord. 499 (part), 2004)

5.32.060 Residential rent increase limitations.

A. Except as provided in subsections C and D of this section, from and after the effective date of the ordinance codified in this chapter, the space rent payable for use or occupancy of any mobilehome space shall not be increased within twelve months of the effective date of any preceding rent increase.

Base rent increase shall not exceed:

1. Seventy-five percent of the percent change in the Consumer Price Index for permanent residents; or

2. One hundred twenty-five percent of the percent change in the Consumer Price Index for nonpermanent residents who are not exempt from this chapter pursuant to Civil Code Section 798.21.

B. Any dispute as to whether an affected tenant is a permanent or nonpermanent resident or is exempt from this chapter pursuant to Civil Code Section 798.21 shall be resolved pursuant to Section 5.32.190 and the tenant shall have the burden of proof to prove that he or she is a permanent resident or is not exempt from this chapter.

C. An owner shall be exempt from this section and the need to meet and confer as set forth in Section 5.32.090 if the owner is able to obtain written consent of sixty-six percent of all the affected tenants in the park agreeing to the increase in space rent to an amount greater than allowed in this chapter once each year.

D. In the event an owner wishes to increase the rent payable for any mobilehome space within the twelve-month period more than the amount permitted in subsection A of this section and the owner cannot obtain the consent of sixty-six percent of the affected tenants, a mandatory meet-and-confer meeting shall automatically be required to show good cause why such an increase is necessary.

E. Any notice of rent increase given by an owner pursuant to this section shall be given in writing at least ninety days before any rent increase is to take effect.

F. A notice of rent increase incorporating within it a proposed or completed capital improvement which is not otherwise authorized as a pass-through pursuant to Civil Code Section 798.49 must be claimed within twelve months of the completion of the project or construction or the owner's receipt of the final billing for same, whichever occurs later. (Ord. 499 (part), 2004)

5.32.070 Increases upon change of occupancy.

Notwithstanding the twelve-month limitation set forth in Section 5.32.060, upon change of occupancy of a mobilehome, the rent increase upon sale shall be limited to:

For affected tenants who are permanent residents, ten percent of the current existing space rent or the average of the lowest and highest space rent for all the affected tenants of that particular park, whichever is greater.

For affected tenants who are nonpermanent residents, fifteen percent of the current existing space rent or the average of the lowest and highest space rent for all the affected tenants of that particular park, whichever is greater.

Resident status pertains to the selling tenant, not the tenant-to-be.

The limitations of this increase shall not apply if change in occupancy is due to the involuntary eviction of a tenant.

No rent increase under this section shall be allowed due to the death of the tenant wherein the deceased tenant's spouse, parents or children take over the occupancy. (Ord. 499 (part), 2004)

5.32.080 Information to be supplied to tenants.

A. Within thirty days after the effective date of the ordinance codified in this chapter and prior to the re-renting of each mobilehome space thereafter, the owner shall supply each affected tenant with a current copy of this chapter.

B. Whenever the owner serves a notice of rent increase, except a notice of rent increase provided pursuant to Sections 5.32.060(A), (C), or (D) or 5.32.070, the owner shall at the same time and in the same manner serve the affected tenant with a notice that sets forth all of the following information:

1. The amount of the rent increase both in dollars and as a percentage of existing rent and documentation supporting the level of increase desired;

2. The identity of all other affected tenants and the spaces that they rent;

3. The park owner shall place on file with the city manager two copies of documentation supporting the level of increase desired.

C. An owner failing to provide an affected tenant and the city manager with the notices required by this section shall not be entitled to collect any rent increase otherwise authorized by this chapter from that tenant. (Ord. 499 (part), 2004)

5.32.090 The rent dispute resolution process.

A. Mandatory Meet-and-Confer Meeting. Except when a park owner elects rent increases permitted under Section 5.32.060(A) or is able to obtain written consent of sixty-six percent of the tenants as set forth in Section 5.32.060(C), the tenants and park owners must, within thirty working days of the notice of rent increase, meet and confer with each other's representatives. Written notice of the time, place and date of the meeting should be arranged within fourteen days of the notice of rent increase. If the park owners or tenants fail to agree on the time, place and date of the hearing and to provide due notice to the city manager, the meeting shall be set at the convenience of the city manager. At the meeting, representatives of the parties should exchange documentary evidence that the parties in good faith then know will be used to support their respective positions in any rent review board hearing and discuss the issues in dispute. In the case of a park owner, all financial data upon which any proposed increase is claimed shall be supplied to tenant representatives at the time of the meet-and-confer meeting.

1. Meet-and-Confer Information. The park owner has a duty and burden to provide adequate information in regard to the rental increase to allow the tenants to make a reasonably sophisticated inquiry into the requested rental increase.

B. Petition. If discussions between owner and tenants do not resolve the dispute between them, the tenants or their representative shall file with the city manager a petition for space rent review and a copy of the notice of rent increase within thirty days of the meet-and-confer meeting. The city manager shall not accept a petition for filing unless it has been signed by at least fifty-one percent of the affected tenants who are subject to the rent increase. Upon the filing of a petition, the rent increase is not effective and may not be collected until and to the extent it is awarded by the board or until the petition is abandoned. As used in this chapter, the term "abandoned" refers to lack of prosecution of the arbitration by the mobilehome tenants' representative(s). The term "prosecution" refers to actively pursuing necessary steps toward preparing the tenants' case for the arbitration hearing.

C. Contents of Petition.

1. The petition for space rent review shall set forth the total number of affected rented spaces in the mobilehome park, shall identify the space occupied by each tenant and shall state the date upon which the notice of the rent increase was received by the tenant(s).

2. After obtaining the required signatures, the tenant(s) shall deliver the petition or mail it by registered or certified mail to the city manager at the following address: 595 Harbor Street, Morro Bay, California 93442 (or other address as determined by the city manager). No petition shall be accepted unless it is accompanied by the requisite number of signatures and is received in the office of the city manager within the thirty-day period set forth in subsection B of this section. The city manager shall provide a copy of the completed petition form to both parties forthwith or within five working days of the petition's receipt.

D. Assignment to Board and Hearing Date. Upon receipt of the petition, or upon notice of any other dispute that requires board resolution, the city manager shall, within thirty working days, commission a mobilehome rent review board as established by Section 5.32.040. The owner and affected tenant(s) shall be notified immediately in writing by the city manager of the date, time, and place of the hearing and this notice shall be served either in person or by ordinary mail.

E. Rent Review Board Hearing.

1. The owner and tenant(s) may appear at the hearing and offer oral and documentary evidence. Both the owner and tenant(s) may designate up to three representatives to appear for them at the hearing. The board may grant or order one continuance not to exceed five days to each party from the date of the hearing. The burden of proving that the amount of rent increase is reasonable shall be on the owner by a preponderance of the evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of evidence and manner of producing evidence shall be those rules set forth in Section 11513 of the California Government Code for the conduct of hearings under the Administrative Procedure Act. These rules may be relaxed at the discretion of the board in the interests of justice. The board shall have the ability to close the hearing to the general public if confidential financial information may be disclosed during the hearing.

2. The board shall, within fourteen days of the hearing, submit by mail a written statement of decision and the reasons for the decision to the city manager who shall forthwith distribute by mail copies of the decision to the owner and tenant(s). The board shall determine the amount of rent increase, if any, which is reasonable based upon all the provisions of this chapter.

3. Excluding rent increases permitted under Sections 5.32.060(A) and 5.32.070, the board shall not allow more than one rent increase per park per twelve-month period.

4. The decision of the board, rendered in accordance with this section, shall be final and binding upon the owner and all affected tenants. The decision of the board will be subject to the provision of Code of Civil Procedure Section 1094.5.

5. Any party may have electronic recording equipment or a court reporter present to record and prepare a transcript of the hearing before the board; however, such equipment or reporter shall be provided at that party's own expense.

6. The board is authorized to modify the basic time periods set forth in this chapter at its discretion to promote the purposes of this program provided a final decision is rendered within ninety days of the notice of rent increase.

7. Any procedural or jurisdictional dispute regarding the processes set forth in this chapter may be decided by the board. (Ord. 499 (part), 2004)

5.32.100 Standards of reasonableness to be applied to rent increases.

A. The board shall determine whether rent increases that exceed Section 5.32.060(A) are reasonable under the circumstances, taking into consideration that the purpose of this chapter is to protect home owners from arbitrary, capricious, or unreasonable rent increases, and at the same time permit park owners to receive a just and reasonable return on their investment. The board, in making the determination, may, but is not required to, look at the following standards:

1. Beneficial increases in maintenance and operating expenses, including but not limited to the reasonable value of the owner's labor and any increased costs for services provided by a public agency, public utility, or quasi-public agency or utility;

2. The substantial rehabilitation or the addition of capital improvements, including the reasonable value of the owner's labor, as long as such rehabilitation or improvement has been completed and is:

a. Distinguished from ordinary repair or maintenance,

b. For the primary benefit, use, and enjoyment of the tenants,

c. Permanently fixed in place or relatively immobile and dedicated to the use of the property,

d. Not coin-operated nor one for which a "use fee" or other charge is imposed on tenants for its use,

e. Cost-factored and amortized over the good faith estimate of the remaining useful life of the rehabilitation or improvement, and

f. Does not constitute maintenance of the infrastructure of gas or electrical lines within the mobilehome park for which the public utility has permitted the park owner a special premium with the intent that it be used to replace or otherwise maintain the system within the mobilehome park;

3. The rental history of the mobilehome park;

4. The occupancy rate of the mobilehome park in comparison to comparable parks in the same general area;

5. Existing rents for spaces in other Morro Bay mobilehome parks;

6. The physical condition of the mobilehome park, including the quantity and quality of maintenance and repairs performed during the last twelve months, provided, however, that if the home owners raise a lack of maintenance or physical deterioration as an issue, the board shall also consider to what extent the home owners notified the park owner of the physical condition, and to what extent the home owners gave the park owner a reasonable opportunity to cure the physical condition;

7. Any increases or reduction in housing services during the twelve months prior to the effective date of the proposed rent increase;

8. Debt service costs used for the servicing of existing debt;

9. Debt Service Costs Due to Refinancing. If the refinancing is used for extracting equity from the park, the rent increase shall be deemed unreasonable, and the rent increase shall not be allowed. The board may also require that the debt service costs be amortized over a period of years which is determined by the board to be reasonable;

10. A decrease in "net operating income" as defined in Section 5.32.020(P);

11. A decrease in the owner's "just and reasonable return on the property" as defined in Section 5.32.020(H);

12. Other financial information that the owner is willing to provide;

13. Any costs incurred as a result of a natural disaster and only to the extent such costs have not been reimbursed to the owner by insurance or other sources and where such costs could not have been prevented by normal maintenance and repair.

B. In any determination of what constitutes a reasonable rent increase under the circumstances, the board shall consider and weigh evidence establishing the nature and extent of any existing and/or outstanding

violations by either the park owners or home owners. Any rent increase or decrease may be disallowed, reduced, or made subject to reasonable conditions, depending on the severity of such violations.

C. Changes in ownership of the park after the effective date of this chapter shall not entitle any succeeding park owner to higher rents than would have been paid if the original owner had remained the park owner without board approval. (Ord. 499 (part), 2004)

5.32.110 Obligations of the parties.

A. If a final decision by the board finds that a proposed increase or any portion thereof that was previously inoperative is justified, the tenant shall pay the amount found justified to the owner within thirty days after the decision is made or as otherwise ordered by the board.

B. If a final decision by the board finds that an increase or any portion thereof is not justified, the owner shall refund any amount found to be unjustified, but that had been paid, to the tenant within thirty days after the decision is made or as otherwise ordered by the board. If such refund is not made within the applicable time period, the tenant may withhold the amount from the next space rent(s) due until the full amount of the refund has been made. Notwithstanding the foregoing, in the event that the tenancy of tenant is terminated for any reason prior to full credit against rent, the balance of the credit due the tenant shall be paid by the owner within thirty days from the date of the termination of the tenancy.

C. Any sum of money that under the provisions of this section is the obligation of the owner or tenant, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts. (Ord. 499 (part), 2004)

5.32.120 Rights of a "tenant-to-be."

Any person who is a "tenant-to-be" as defined in Section 5.32.020(X) must be offered the option of renting a mobilehome space in a manner which will permit the tenant-to-be to receive the benefits of the mobilehome space rent stabilization program described in this chapter, which includes, but is not limited to, rental of a mobilehome space on a month-to-month basis, and a new base rent. Such a person cannot be denied the option of a tenancy twelve months or less in duration. The park owner shall provide each "tenant-to-be" with a written notification of the option which shall make the following recitation:

> UNDER MORRO BAY MUNICIPAL CODE SECTION 5.32 YOU ARE LEGALLY ENTITLED TO ELECT A MONTH-TO-MONTH TENANCY OVER ANY OTHER LONGER PERIODIC TENANCY. YOU ARE ADVISED THAT YOU MAY NOT BE ENTITLED TO RENT STABILIZATION (RENT CONTROL) PROGRAM BENEFITS IF YOU ELECT A LEASE OF MORE THAN TWELVE MONTHS IN DURATION IF THAT LEASE MEETS THE REQUIREMENTS OF CIVIL CODE SECTION 798.17 WHICH HAS BEEN ATTACHED HERETO.

Any effort to circumvent the requirements of this section is unlawful, as well as an unfair business practice subject to enforcement under Business and Professions Code Section 17200 et seq. The rights set forth in this section have no application to mobilehome spaces subject to a more-than-twelve-month lease. By definition, tenants-to-be are prospective "mobilehome tenants," and such "affected tenants" are defined by Section 5.32.020.

Providing a copy of this chapter to tenants shall be deemed compliance with this section.
(Ord. 499 (part), 2004)

5.32.130 Tenants' right of refusal.

A tenant may refuse to pay any increase in rent which is in violation of this chapter, provided a petition has been filed and either no final decision has been reached by the board or the increase has been determined to violate the provisions of this chapter. Such refusal to pay shall be a defense in any action brought to recover possession of a mobilehome space or to collect the rent increase. (Ord. 499 (part), 2004)

5.32.140 Retaliatory acts—Tenants' right to organize.

No owner may retaliate against a tenant or tenant-to-be for the tenant's or tenant-to-be's assertion or exercise of rights under this chapter in any manner, including but not limited to, threatening to bring or bringing an action to recover possession of a mobilehome space; engaging in any form of harassment that causes a tenant to quit the premises; dissuading a tenant-to-be from freely exercising his or her legal options to chose a month-to-month rental; decreasing housing services; increasing the space rent; or imposing or increasing a security deposit or any other charge payable by a tenant. The tenants have a right to organize a tenants' association without hindrance from the park owner to exercise the rights provided under the provisions of the Morro Bay Municipal Code. This association may be referred to as "The Park Tenants' Association at (Park Name)." (Ord. 499 (part), 2004)

5.32.150 Solicitation of any petition by the park owner is without force or legal effect within city's program.

The distribution of a petition or other documents seeking to have mobilehome tenants waive rights, abandon a filed petition or in any way affect the entitlement of the tenants to participate in the rent stabilization process authorized under this chapter shall be without force or legal effect within the city's rent stabilization program. Such documents shall not affect the right of any tenant to participate in the rights, remedies, procedures and processes set forth in this chapter. Efforts to utilize such documents to discourage participation in the city's rent stabilization program may be deemed retaliatory. (Ord. 499 (part), 2004)

5.32.160 Nonwaiverability.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived or modified, is against public policy and void, except with respect to any rental agreement complying with all of the terms and conditions set forth in Section 798.17 of the California Civil Code. (Ord. 499 (part), 2004)

5.32.170 Penalties and remedies.

Any owner who demands, accepts, receives, or retains any money as rent from a tenant to which the owner is not entitled under the provisions of this chapter shall be liable to the tenant for any actual damages, attorney's fees, and costs incurred by the tenant as a consequence and the tenant may seek relief in a court of appropriate jurisdiction for injunctive relief and damages. (Ord. 499 (part), 2004)

5.32.180 Rights of affected tenants reserved.

This chapter shall not be construed to limit or curtail any other action or proceeding which may be pursued by an affected tenant against an owner before any court or other body having jurisdiction thereof. (Ord. 499 (part), 2004)

5.32.190 Tenant complaints.

Any affected tenant may file a complaint with the city manager for the purpose of contesting any rent increase and/or to enforce any provision of this chapter. Prior to and as a condition to such filing, the tenant must meet and confer with the owner to attempt to informally resolve their differences. The owner shall make himself or herself available for the meeting and conferring within a reasonable time after being requested to do so by the tenant, but no later than thirty days thereafter. If applicable, the owner shall comply with Section 5.32.080. If such informal resolution cannot be had, then the tenant (hereinafter referred to as "complainant") may file with the city manager (and contemporaneously deliver a copy to the owner) his or her complaint. All such complaints shall describe in detail the basis therefor and shall attach, where available and necessary to a full understanding of the complaint, documents and writings which support the complaint. Upon receiving such a complaint, the city manager shall assign the matter to the board in accordance with Section 5.32.090(D) and the matter shall be arbitrated in conformance with Section 5.32.090(E). (Ord. 499 (part), 2004)

5.32.200 Severability.

The ordinance enacting this chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity. (Ord. 499 (part), 2004)

INTRODUCED at the regular meeting of the City Council held on the 8th day of December 2003, by motion of Councilmember Peters and seconded by Councilmember Winholtz.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay on the 12th day of January 2004, by the following vote to wit:

AYES: Elliott, Peirce, Peters, Winholtz, Yates
NOES: None
ABSENT: None

William Yates, Mayor

ATTEST:

Bridgett Bauer, City Clerk

B

ORDINANCE NO. 0-97-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA, AMENDING TITLE 5 OF THE PISMO BEACH MUNICIPAL CODE

WHEREAS, the City Council of the City of Pismo Beach has found that certain inequitable mobilehome space rental rates may exist in the mobilehome parks of the City of Pismo Beach, and that such rental rates may have been imposed in response to or in anticipation of the City's mobilehome rent control regulation (Pismo Beach Municipal Code section 5.20 et seq.) and overall rent control scheme; and

WHEREAS, the City Council of the City of Pismo Beach recognizes the need to protect owners and occupiers of mobilehomes from unreasonable and inequitable space rents, while at the same time recognizing the need of the mobilehome park owners to make a "just and reasonable" rate of return; and

WHEREAS, the City Council makes the findings below which indicate that space rents in mobilehome parks in the City may be arbitrary and excessive as a result of responses to the City's rent control regulations; and

WHEREAS, eliminating these inequitable rental rates is in the public interest in that it will assure fair and proper implementation of the rent control ordinance, and will not result in preventing a mobilehome park owner from receiving a "just and reasonable" rate of return;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PISMO BEACH DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Pismo Beach hereby makes the following findings.

a. It has been brought to the City Council's attention that certain mobilehome spaces within the City are potentially being charged an arbitrary and excessive rent in light of the City's rent control scheme.

b. The City Council desires to assure all mobilehome space tenants are treated equitably, especially in light of the fact that it is impractical for mobilehome tenants to move their mobilehomes when inequity occurs; and, the City Council understands the need to balance protection of the mobilehome tenant's substantial investment interest while at the same time assuring that the mobilehome park owners receive a just and reasonable rate of return.

c. In November 1982, the City Council adopted Ordinance No. 305, a "mobilehome rent stabilization ordinance...providing a formula for maximum annual rent increases."

d. On August 27, 1990, the City Council passed and adopted rent control ordinance (O-90-15) that allowed the establishment of use of the current fair market rent upon the change of ownership of a mobilehome, i.e., vacancy decontrol. The vacancy decontrol ordinance was adopted very reluctantly by the City Council, but the City Council passed the ordinance

due to pressures of threatened litigation as a result of the decision in the case of *Hall v. City of Santa Barbara,* 833 F.2d 1270.[1]

e. Except for this interim period when vacancy decontrol was in effect, the City's overall rent control scheme had formal provisions to prevent excessive rent hikes upon vacancies. Allowing arbitrary rent hikes can seriously diminish a tenants investment and ability to sell a mobilehome, resulting in substantial losses to a tenant.

f. On October 8, 1991, the City Council held a rent control hearing on the application of Hacienda Del Pismo Mobilehome Park for a $50 per space per month increase. Evidence and arguments were received by the City Council. The City Council made findings with respect to the proper "fair return" basis for the park within the rent control scheme.

g. Regardless of whether vacancy decontrol is in effect, by increasing rents to a levels outside of the envisioned rent control scheme, a mobilehome park owner could effectively usurp a city's rent control authority with respect to determinations of proper rent levels and fair profit.

h. Mobilehome tenants purchasing mobilehomes during this interim period when vacancy decontrol[2] was in effect may have been required to pay an arbitrary and excessive rent in light of the rent control scheme. There are also indications that some of these tenants were given assurances from the mobilehome park owner that their rents would be reduced to levels within the rent control scheme after formal repeal of vacancy decontrol by the City.

i. A city can impose a rollback of rents in order to counteract a mobilehome park owner's charging of arbitrary and excessive rent in light of the current rent control scheme, and in anticipation of rent control. (*Adamson Companies v. City of Malibu* (1994) 854 F.Supp. 1476, 1491.) A rollback provision aimed at relieving arbitrary levels of rent has a rational relationship to a legitimate governmental purpose. And, roll back provisions that do not remove all economically viable use of a property do not result in a taking.

j. Adequate due process provisions exist within the current rent control ordinance (City of Pismo Beach Municipal Code, Chapter 5.20, which allow the mobilehome park owner to present evidence that a just and reasonable rate of return can or cannot be obtained, and adjusted accordingly. (Pismo Beach Municipal Code, §5.20.031.)

k. The information necessary for an adequate determination of a just and reasonable rate of return is solely in the hands of the mobilehome park owner. Thus it would be appropriate to place the burden on an owner to show that a just and reasonable rate of return is not being received.

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[1] Vacancy decontrol gives complete freedom to a mobilehome park owner to charge rent to a new tenant based on whatever he thinks the market will bear. The *Hall* decision effectively made vacancy control unconstitutional when embodied in a rent control ordinance. However, the subsequent decision in *Yee v. City of Escondido* (1992) 112 S.Ct. 1522 has been interpreted to overrule *Hall,* reinstating vacancy control as an appropriate provision for controlling mobilehome rents.

[2] It has now been established that vacancy control with respect to mobilehomes does not constitute a physical or regulatory taking. *Yee v. City of Escondido,* 112 S.Ct. 1522 (1992).

Section 2. Chapter 5.20 of Title 5 of the Pismo Beach Municipal Code shall be amended to add the following section 5.20.100 to read as follows:

5.20.100 Rent Rollback.

A. The City Council has made findings that certain mobilehome spaces in mobilehome parks within the City of Pismo Beach are possibly being charged an inequitable rental rate for mobilehome spaces, and that inequitable rates may have been imposed on spaces transferred just prior to and in anticipation of enactment of these rent control regulations, and in derogation to the City's overall rent control scheme.

B. A mobilehome owner within the City of Pismo Beach may petition for a roll back of rent pursuant to the standards and procedure as set forth in this section. In order to be considered for a rent rollback, a petitioner for a rent roll back must submit a formal written petition to the City Manager (or designee) requesting consideration of a roll back of rent. The City Council may set by resolution a fee to be paid by the petitioner. In order to be considered by the City Council, the petition must provide evidence that, 1) the rate was imposed in response to or in anticipation of the City's regulation of mobilehome rent, and 2) the rate is arbitrary and excessive in light of the rent control scheme.[3]

C. If the petition meets the criteria established above, pursuant to review by the City Manager, the City Clerk shall set the matter for hearing before the City Council within 45 days of receiving the petition. The affected mobilehome park owner shall be provided notice of the public hearing at least 30 days prior to the public hearing. The mobilehome park owner can submit a formal written protest against a roll back of rent. The protest and supporting documents must be submitted to the City Manager no later than 10 days prior to the scheduled hearing date. The City Council shall make written findings and determinations supporting its decision based upon the testimony and documents presented to it at the hearing, and shall adopt its written findings and determinations within 14 days of the close of the hearing on the matter.

D. A rolled back equitable space rental rate will be determined by adding 10 percent to the rent as paid by the prior tenant, or in excess of 10 percent as determined to be equitable by the City Council. The rent will then be adjusted to account for increases up to the current year. Unless otherwise determined, tenants shall not be reimbursed for rents paid to date as an allowance for any possible transfer of value for a mobilehome at the time of purchase.

E. All decisions of the City Council shall be conclusive and final. Enforcement actions can be instituted by the City, or any affected mobilehome tenant, or the mobilehome park owner. A tenant may refuse to pay any rent in

[3] Under the City's rent control scheme with vacancy control, a mobilehome park owner can only increase the rent to a new tenant by 10% over the prior tenant's rent.

excess of the determinations of the City Council, and this shall be a defense in any action brought to recover possession of a space or to collect the unlawful rent.

F. A homeowner must petition the City Council for a rent roll back by January 1, 1998, or within three (3) years from the date of the initially imposed arbitrary and excessive rent.

Section 3. This ordinance shall go into effect and be in full force and operation 30 days after its final passage and adoption.

Section 4. The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of the City; and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted. Before the expiration of 15 days after the passage of this Ordinance, it shall be posted with the names of members voting for or against the same in three public places within the City of Pismo Beach, to wit, 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office substation Price Street, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

INTRODUCED at a regular meeting of the City Council held this 19th day of August, 1997 on motion of Councilmember Halldin, seconded by Councilmember Reiss, and on the following roll call vote, to wit:

AYES: Councilmembers Halldin, Reiss, Rabenaldt
NOES: Mayor Brown
ABSENT: Councilmember Mellow
ABSTAIN: none

PASSED AND ADOPTED at a regular meeting of the City Council held this 2nd day of September, 1997 on motion of Councilmember Rabenaldt, seconded by Councilmember Halldin, and on the following roll call vote, to wit:

AYES: Councilmembers Rabenaldt, Halldin, Mellow, Reiss and Mayor Brown
NOES: none
ABSENT: none
ABSTAIN: none

Mayor John Brown

ATTEST:

City Clerk
Sharon Jones

APPROVED AS TO FORM:

City Attorney
David R. Hunt

drh/pbcty.rda/rollback.ord

Chapter 5.44
MOBILE HOME PARK RENT STABILIZATION*

Sections:

5.44.010 Purpose and intent.

5.44.020 Definitions.

5.44.030 Exemptions.

5.44.040 Mobile home park owner exemptions under Section 5.44.030(F).

5.44.050 City council—Powers and duties.

5.44.060 Base space rent—Determination—Allowable increases without hearing.

5.44.070 Application for rent adjustment—Fee—Contents—Notice of request—Hearing.

5.44.080 Application for rent adjustment—Conduct of hearing.

5.44.090 Application for rent adjustment—Evaluation—Relevant factors.

5.44.100 Application for rent adjustment—Hearing—Determination.

5.44.110 Application for rent adjustment—Hearing—Appeal.

5.44.120 Rent increases not made in conformity with provisions—Tenant's right to refuse to pay.

5.44.130 Actions brought to recover possession of mobile home space—Retaliatory eviction grounds for denial.

5.44.140 Owner to provide tenants with copy of this chapter.

5.44.141 Amendment.

5.44.142 Severability.

* Prior history: Ords. 923, 1020, 1077, 1079 and 1091; prior code §§ 4800 through 4802, 4804 through 4809 and 4811 through 4813.

5.44.010 Purpose and intent.

A. There is presently within the city and the surrounding areas a shortage of spaces for the location of mobile homes. Because of this shortage, there is a very low vacancy rate, and rents have been for several years, and are presently, rising rapidly and causing concern among a substantial number of San Luis Obispo residents.

B. Mobile home tenants, forced by the lack of suitable alternative housing, have had to pay the rent increases and thereby suffer a further reduction in their standard of living.

C. Because of the high cost and impracticability of moving mobile homes, the potential for damage resulting therefrom, the requirements relating to the installation of mobile homes, including permits, landscaping and site preparation, the lack of alternative homesites for mobile home residents, and the substantial investment of mobile home owners in such homes, this council finds and declares it necessary to protect the owners and occupiers of mobile homes from unreasonable rent increases, while at the same time recognizing the need of park owners to receive a suitable profit on their property with rental income sufficient to cover increases in costs of repair, maintenance, insurance, utilities, employee services, additional amenities, and other costs of operation, and to receive a fair return on their property.

D. This council finds that the present low vacancy rate and frequent increases are particularly hard upon and unfair to residents of mobile home parks within the city. Large numbers of these residents are senior citizens and others on fixed incomes who installed their mobile homes in the city when the present inflationary rent increases could not reasonably have been foreseen.

E. Tenants in mobile home parks desiring to sell their mobile homes may have difficulty finding buyers because, upon a change of ownership, the park owner is able to raise the rent without regard to the city's mobile home rent stabilization ordinance.

F. This council finds that it is in the best interests of the citizens of the City of San Luis Obispo to assist those who are seeking to sell their mobile homes and those who are seeking to buy such homes to have the same fair rental protection as is afforded to those who remain in their mobile homes without sale. This council finds that the vacancy control provisions originally included in the mobile home rent stabilization ordinance when it was approved by the voters was an effective and beneficial provision for the people of San Luis Obispo living in mobile home parks, and should be reinstated. This council further finds that

provisions allowing annual rent increases together with provisions allowing rent increases upon a showing of necessity protect the park owner's right to a fair return on investment, thus eliminating the need for rent increases above ten percent upon change of ownership.

G. However, this council recognizes that a rent stabilization ordinance must be fair and equitable for all parties and must provide appropriate incentives for mobile home park operators to continue their parks profitably, as well as to attract additional investors for new parks. (Ord. 1226 § 1, 1992: Ord. 1117 (part), 1988)

5.44.020 Definitions.

For the purpose of this chapter, certain words and phrases used herein are defined as follows:

A. "Capital improvements" means those improvements, not previously located in the mobile home park, that materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, and which may be amortized over the useful life of the improvement in accordance with the Internal Revenue Code and regulations issued pursuant thereto; provided, that this definition shall be limited to capital improvements approved by more than fifty percent of the tenants in the affected park.

B. "Mobile home park" means an area of land which rents spaces for mobile home dwelling units.

C. "Mobile home park owner" or "owner" means the owner, lessor, operator or manager of a mobile home park.

D. "Mobile home tenant" or "tenant" means any person entitled to occupy a mobile home within a mobile home park pursuant to ownership of the mobile home or under a rental or lease agreement with the owner of the mobile home.

E. "Rehabilitation work" means any renovation or repair work completed on or in a mobile home park performed in order to comply with the direction or order of a public agency or public utility, or to maintain existing improvements in a safe and usable condition, or to repair damage resulting from fire, earthquake or other casualty.

F. "Space rent" means the consideration, including any security deposits, bonuses, benefits or gratuities, demanded or received in connection with the use and occupancy of a mobile

home space in a mobile home park, or for housing services provided, but exclusive of any amount paid for the use of a mobile home dwelling unit.

G. "Change of ownership" means the sale, rental transfer, or exchange of a mobile home subject to the provisions of this chapter, excepting the transfer to tenant's spouse by gift, bequest or devise.

H. "Hearing officer" means the duly appointed hearing officer selected from a panel of qualified hearing officers. A hearing officer shall have no financial interest in either a mobile home park or a mobile home nor have been a resident of nor reside in a mobile home park.

I. "Appellate panel" means a panel of three qualified hearing officers. A panelist shall have no financial interest in either a mobile home park or a mobile home nor have been a resident of nor reside in a mobile home park.

J. "CPI" means the Consumer Price Index (1967 = 100) All Items, All Urban Consumers, for the Los Angeles/Long Beach/Riverside standard metropolitan statistical area published by the Bureau of Labor Statistics, United States Department of Labor. If the CPI is not hereafter published, then any substitute index, or, if none, then the index most closely resembling the CPI shall become the new CPI.

K. "Qualified Hearing Officer." The city administrative officer shall maintain a list of available qualified hearing officers. Qualified hearing officers shall be persons experienced in financial and accounting methods with knowledge of mediation process and rules of evidence. (Ord. 1117 (part), 1988)

5.44.030 Exemptions.

The provisions of this chapter shall not apply to the following tenancies in mobile home parks:

A. Mobile home park spaces rented for nonresidential uses;

B. Mobile home parks managed or operated by the United States Government, the state of California, or the county of San Luis Obispo;

C. Tenancies which do not exceed an occupancy of twenty days and which do not contemplate an occupancy of more than twenty days;

D. Tenancies for which any federal or state law or regulation specifically prohibits rent regulation;

E. Tenancies covered by leases or contracts which provide for a tenancy of more than a year, but only for the duration of such lease or contract. Upon the expiration of or other termination of any such lease or contract, this chapter shall immediately be applicable to the tenancy. No rent increases other than that allowed under the provisions of the lease shall be allowed during the duration of such a lease or contract.

F. Spaces in a mobile home park which sells lots for factory-built or manufactured housing, or which provides condominium ownership of such lots, but only when the dwelling unit and the underlying interest in the space it is located upon are in the same ownership. (Ord. 1228 § 1, 1992: Ord. 1117 (part), 1988)

5.44.040 Mobile home park owner exemptions under Section 5.44.030(F).

A. Any mobile home park owner claiming an exemption under Section 5.44.030(F) shall comply with the following requirements and procedures:

1. Such mobile home park owner shall file with the city clerk a statement setting forth the basic facts upon which the claim for exemption rests, such as total number of spaces, number on long-term leases, identity of spaces on long term leases, expiration date for each long-term lease and any other information determined necessary by the city administrative officer to evaluate the claim.

2. The statement shall include a listing, by space number and name, of each tenant not on a long-term lease and who would be affected by the claim of exemption. In addition, the owner shall provide proof of service that all tenants have been notified of the claim of exemption and of the fact that a tenant may file an objection within thirty days.

3. The statements required to be filed above shall be confidential and not public records unless and until a hearing officer determines otherwise as necessary to conduct a hearing as set forth in subsections (D) or (F) of this section.

B. An objection to the claim of exemption may be filed with the city clerk within thirty days after the notice of claim has been served. The objection shall state the grounds of the objection. The only acceptable grounds for objection is that the owner in fact does not have two-thirds of the spaces in the park on long-term leases.

C. If an acceptable and timely objection is received the owner and the tenant(s) filing the objection shall meet and confer to negotiate in good faith and attempt to reach an agreement. If no agreement is reached within thirty days of the date of filing of the objection, the owner shall within ten days notify the city administrative officer that an agreement or resolution to the objection has not been reached. The city administrative officer shall proceed to select a hearing officer as set forth in Section 5.44.070(E).

D. The hearing officer shall set and conduct a hearing as set forth in subsections (E) and (G) of Section 5.44.070. The hearing officer shall determine whether the claim of exemption is valid, taking into account all relevant evidence, facts and circumstances necessary to come to a decision.

E. The hearing officer's charges shall be paid by the city.

F. An appeal may be taken from a decision of the hearing officer as set forth in Section 5.44.110, including the obligation for the costs of the appellate panel as set forth in subsection (D) thereof. (Ord. 1146 § 1, 1989)

5.44.050 City council—Powers and duties.

Within the limitations provided by law and in addition to any other powers and duties the council has, the city council shall have the following powers and duties:

A. To meet from time to time as required to receive, investigate, hold hearings on, and pass upon the issues relating to mobile home park rent stabilization as set forth in this chapter;

B. To direct staff to make or conduct such independent hearings or investigations as may be appropriate to obtain such information as is necessary for the council to carry out its duties;

C. To adopt, promulgate, amend and rescind administrative rules, as it deems appropriate to effectuate the purposes and policies of this chapter. (Ord. 1117 (part), 1988)

5.44.060 Base space rent—Determination—Allowable increases without hearing.

A. The "base space rent" for purposes of this chapter shall be the monthly space rent charged as of March 15, 1982 plus any increases otherwise allowed, pursuant to this chapter. The maximum monthly space rent for any space under a lease, upon expiration of the lease, shall be no more than the rent charged in the last month of said lease. In parks where there is an exemption because 66.67 percent of the spaces are governed by a lease

with an initial term of no less than one year, then the maximum monthly space rent shall be the space rent designated in leases for comparable spaces. A schedule of current rents in the park shall be posted in a conspicuous place in the park.

B. Except as otherwise provided in this chapter, the maximum monthly space rent may be increased no more than once a year based on the percentage change in the CPI, or nine percent, whichever is less, calculated as follows:

1. The maximum monthly space rent may be increased at a rate equal to one hundred percent of the CPI up to five percent and seventy-five percent of the CPI in excess of five percent calculated as follows:

a. The change in space rent shall be calculated by dividing the ending CPI index by the beginning CPI index.

b. If the resulting quotient is less than 1.05, then it shall be multiplied by the space rent. The resulting product shall be the new space rent.

c. If the resulting quotient is greater than 1.05, then the difference between the resulting product and 1.05 shall be multiplied by seventy-five percent. The resulting product shall be multiplied by the space rent and that product shall be added to the sum derived from Section 5.44.060(B)(1)(b) above. The sum shall be the new space rent.

d. The beginning CPI index shall be the index for the month used as the ending index for the last CPI adjustment.

e. The ending CPI index shall be the index for the month twelve months after the beginning index.

2. At least every two months the city administrative officer shall publish, by means of an advertisement or similar notice in the newspaper, the percentage change of the CPI allowed under this subsection B for the twelve-month period immediately preceding the month for which CPI information has been most recently published by the appropriate federal agency.

3. It is the intention of this subsection B to allow for automatic increases in space rent based on changes in the cost of living as measured by the CPI. The limitations on such increases are intended to minimize the immediate impact

drastic changes in the CPI might have on residents. The limitations are not intended to prevent ultimate adjustments to allow owners to receive a fair return on their property.

C. The maximum monthly space rent of a tenant may be increased by the owner when there is a change of ownership affecting a mobile home. However, such increase shall not exceed ten percent of the then existing space rent and may not be relied upon any more often than once in any thirty-six-month period as the basis to increase rent. In the event of change of ownership resulting from subletting of the mobile home space as may be allowed by state law, should such become state law, then upon any such subletting the space rent may be increased up to ten percent of the then existing space rent. In the event of change of ownership resulting from vacation of the space, then the space rent may be adjusted to fair market rent in the community. Nothing in this paragraph shall preclude an adjustment as may otherwise be provided for in this chapter.

D. No owner shall either (1) demand, accept or retain a rent of or from a tenant in excess of the maximum rent permitted by this chapter, or (2) effect a prohibited rent increase by a reduction of general park facilities and services. However, an owner may modify the nature of park services if reasonable allowance is provided to the tenant. For example, if the owner elects to submeter water so that tenants pay for water consumed by them, then tenants shall receive a reasonable reduction from their base space rent.

E. Space rent may be automatically adjusted based on increases or decreases in expenses for common area utilities, new government-mandated services, garbage service and cable television, where applicable, excluding capital improvements or ongoing maintenance costs. The space rent may be adjusted by dividing the total increase or decrease in any such expenses incurred during a twelve-month period by twelve, less the percentage in the CPI index for the twelve-month period. The quotient shall be allocated to the space rent for each space in the park based on the amount the space rent relates to total space rent for the park. Automatic adjustments to rent authorized by this paragraph E shall not be included in "base space rent" for the purpose of determining CPI increases pursuant to Section 5.44.060.B, but shall be considered as additional rent. Notice of the increase, or decrease, shall be in writing and shall be given as required by law no less than ninety days prior to any such increase or decrease being effective. The notice shall state the amount of the rent increase or decrease, the new space rent, the amount of the total increase or decrease in expenses and the nature of the expense. A copy of the notice shall be given to the city administrative officer. The city administrative officer shall have the authority to

resolve questions regarding computation of the space rent increase or decrease based on this section. There shall only be one such increase or decrease in any twelve-month period. (Ord. 1279 § 1, 1995; Ord. 1268 § 1, 1994; Ord. 1226 § 2, 1992; Ord. 1173 § 1, 1990; Ord. 1167 § 1, 1990; Ord. 1146 § 2, 1989: Ord. 1117 (part), 1988)

5.44.070 Application for rent adjustment—Fee—Contents—Notice of request—Hearing.

A. Except for automatic increases in base rent allowed under Section 5.44.060, an owner or tenant may file with the city clerk an application for a rent adjustment ("application"). The application shall state the amount of the adjustment for each space affected and the reasons for the adjustment.

1. An application shall be accompanied by the payment of a fee as may be established from time to time by the council.

2. An application filed by an owner shall be accompanied by a statement that the tenant for each space affected has been served either personally or by mail with a notice describing the application and the change in rent or services.

3. An application filed by a tenant shall be accompanied with a statement stating that the owner has been either personally or by mail served with the application and with a statement designating not more than three persons to act as representatives for the spaces affected and containing the names and addresses of tenants representing no less than fifty-one percent of the spaces affected by the application and supporting the application and established by a secret election.

4. A statement shall accompany the application and shall notify the receiving party that he/she has thirty days to file an objection and if one is not filed within the time allowed, then the application will be automatically granted.

B. An objection to the application may be filed with the city clerk within thirty days after the notice of application has been served.

The objection shall identify the portions of the application objected to and shall state the grounds of the objection.

1. A copy of an objection filed by an owner shall be mailed to each of the designated tenant representatives.

2. A copy of an objection filed by a tenant shall be mailed to the owner. The tenant's objection shall designate not more than three persons to act as representatives for the objecting tenants. The objection must be accompanied by a statement containing the names and addresses of tenants representing no less than fifty-one percent of the spaces affected by the owner's application and verifying that they object to the application, established by secret ballot election.

C. If no objection is filed to an application within the time allowed, or if less than fifty-one percent of the tenants support an objection to an application, then the application will be automatically granted.

D. If an objection is filed within the time provided, then the owner and the tenant representatives shall meet and confer to negotiate in good faith an agreement regarding the application. Either party may request a mediator of their choice to assist in the negotiations, but this is not required. If an agreement is reached within sixty days, then the tenant representatives shall notify all tenants affected by the agreement. The tenants shall have ten days to approve or disapprove of the agreement. If tenants representing a majority of the spaces affected fail to disapprove of the agreement then the agreement shall be binding on the owner and all tenants affected. The city clerk shall be notified that an agreement has been reached. The statements made in negotiations and any agreements reached but not approved shall not be admissible in any subsequent hearings regarding the application.

E. If the owner and the tenant representatives fail to reach an agreement within the time provided or if a majority of the tenants disapprove of an agreement reached, then the applicant shall within ten days notify the city administrative officer that an agreement has not been reached. The city administrative officer shall obtain a list of no less than five qualified hearing officers. Owners and tenants may each delete one person from the list of qualified hearing officers seven days and one of the remaining persons shall be selected by the city administrative officer as the hearing officer. Appointment of the hearing officer shall be completed no later than twenty-one days after filing of the notice that an agreement has not been reached.

F. The hearing officer shall set a hearing on the application complying with the requirements of this section no less than ten days and no more than thirty days after his or her

appointment. The hearing officer shall notify the owner and tenants, in writing, of the time, place and date set for the hearing. No hearing or any part thereof may be continued beyond thirty days after the initial hearing date, without the applicant's consent. If the hearing officer approves an application as requested or as modified, the same shall take effect as noticed by the owner or as the hearing officer may otherwise direct. (Ord. 1117 (part), 1988)

5.44.080 Application for rent adjustment—Conduct of hearing.

A. All review hearings conducted by the hearing officer shall be conducted in accordance with the Ralph M. Brown Act, at Section 54950 et seq. of the California Government Code and according to the rules of the American Arbitration Association.

B. All interested parties to a hearing may have assistance from an attorney or such other person as may be designated by the parties in presenting evidence or in setting forth by argument their position. All witnesses shall be sworn in and all testimony shall be under penalty of perjury.

C. In the event that either the owner or the tenant(s) should fail to appear at the hearing at the specified time and place, the hearing officer may hear and review such evidence as may be presented and make such decisions as if all parties had been present.

D. Owner and affected tenants may offer any testimony, documents, written declarations or other relevant evidence.

E. Formal rules of evidence shall not apply.

F. Minutes shall be taken at all review hearings. (Ord. 1117 (part), 1988)

5.44.090 Application for rent adjustment—valuation—Relevant factors.

In evaluating the application the council may consider, along with all other factors it considers relevant, changes in costs to the owner attributable to increases or decreases in master land and/ or facilities lease rent, utility rates, property taxes, insurance, advertising, variable mortgage interest rates, employee costs, normal repair and maintenance, and other considerations, including but not limited to, rehabilitation work, capital improvements, upgrading and addition of amenities or services, net operating income, and the level of rent necessary to permit a just and reasonable return on the owner's property.

A. In applying the foregoing factors, the hearing officer shall utilize the maintenance of net operating income (MNOI) formula. Under the MNOI allowable gross rents are calculated as

follows: all operating expenses for the twelve-month period ending December 31, 1981 are subtracted from all operating expenses for the twelve-month period immediately preceding the date of the application for which expense data is available. In the event operating expenses are not available for the period ending December 31, 1981, then expenses for a twelve-month period reasonably close to December 31, 1981 may be substituted. The difference shall be added to gross annual rent based on rental rates in effect on March 15, 1982. The sum shall be the allowable gross annual space rent. The allowable gross space rent shall be fairly apportioned between all spaces in the park. The space rent determined under the MNOI formula shall be adjusted as follows:

1. There shall be an adjustment to allow for inflation calculated as follows: the net operating income (NOI) for the base period shall be calculated by subtracting the park's operating expenses for the twelve-month period ending December 31, 1982, from the park's annual gross space rent based on the space rent in effect on March 15, 1982. The CPI index for the month most recently available prior to filing the application shall be divided by the CPI index for March, 1982. The resulting quotient shall be multiplied by the base period NOI. This shall be the adjusted NOI. The operating expenses for the twelve-month period immediately preceding the date of the application for which information is available shall be added to the adjusted NOI. The sum shall be the inflation-adjusted gross space rent. The allowable space rent shall be the greater of the space rent calculated using the MNOI formula and the space rent adjusted for inflation.

2. In calculating MNOI there shall be an adjustment to the gross space rent in effect on March 15, 1982, if the hearing officer determines that the gross space rent in effect on that date did not allow the owner to receive a just and reasonable return on his or her property.

3. If the hearing officer concludes that the MNOI formula, and the adjustments thereto, does not provide a just and reasonable return to the owner, then the hearing officer may apply any reasonable formula, including a return on investment, a return on fair market value, or return on equity, to determine a space rent which will allow the owner to receive a fair and reasonable return on his or her property.

B. The hearing officer shall not consider income arising from spaces leased in the park pursuant to Section 5.44.030E of this chapter. Likewise, the hearing officer shall not

consider a pro rata portion of the expenses of park operation attributable to the leased spaces. (Ord. 1117 (part), 1988)

5.44.100 Application for rent adjustment—Hearing—Determination.

A. The hearing officer shall make a final decision no later than twenty days after the conclusion of the hearing. The hearing officer's decision shall be based on the preponderance of the evidence submitted at the hearing. The decision shall be based on findings. All parties to the hearing shall be advised by mail of the hearing officer's decision and findings.

B. Pursuant to his or her findings, the hearing officer may:

1. Permit the requested adjustment to become effective, in whole or in part; or

2. Deny the requested adjustment; or

3. Permit or deny, in whole or in part, requested reductions of, or charges for, facilities or services.

C. Any decision of the hearing officer shall be final unless, within fifteen days after mailing of the decision and findings, the owner or any affected tenant appeals the decision.

D. The hearing officer's charges shall be paid by the city. (Ord. 1117(part), 1988)

5.44.110 Application for rent adjustment—Hearing—Appeal.

A. Any appeal from a decision of the hearing officer shall be filed with the city clerk. The appellant shall also mail a copy of the appeal to the responding party. The appeal shall state the grounds on which it is based. An appeal filed by a tenant shall be accompanied by a statement continuing the names and addresses of the tenants supporting the appeal. The appeal must be supported by at least fifty-one percent of the tenants affected by the appeal.

B. Upon filing of a valid appeal, the city administrative officer shall obtain a list of no less than seven qualified hearing officers. The hearing officer who previously acted shall not qualify. Owners and tenant representatives may each delete one person from the list of qualified hearing officers within seven days, and three of the remaining persons shall be selected by the city administrative officer as the appellate panel. Appointment of the appellate panel shall be completed no later than twenty-one days after filing the appeal.

C. At the time set for consideration of the appeal, the appellate panel shall review and consider the record of the hearing officer's hearing as well as the decision and finding of the hearing Officer. After review and consideration, the appellate panel may either (1) determine that a further hearing shall be held, or (2) ratify and adopt the decision and findings of the hearing officer. If a further hearing is conducted, the appellate panel may, upon conclusion of that hearing and in no event more than thirty days thereafter, modify or reverse the decision of the hearing officer, only if the appellate panel finds that there has been an abuse of discretion or that there is no substantial evidence to support the hearing officer's decision. The appellate panel's decision shall be final and no appeal may be taken to the council.

D. If the party filing the appeal is unsuccessful, then that party shall pay the appellate panel's charges. If the responding party is unsuccessful, then both parties and the city shall share equally in payment of the appellate panel's charges. (Ord. 1117 (part), 1988)

5.44.120 Rent increases not made in conformity with provisions—Tenant's right to refuse to pay.

A tenant may refuse to pay any increase in rent not made in conformity with this chapter. Such refusal to pay shall be a defense in any action brought to recover possession of a mobile home space or to collect the rent increase. (Ord. 1117 (part), 1988)

5.44.130 Actions brought to recover possession of mobile home space—Retaliatory eviction grounds for denial.

Notwithstanding Section 5.44.120, in any action brought to recover possession of a mobile home space, the court may consider as grounds for denial any violation of any provision of this chapter. Further, the determination that the action was brought in retaliation for the exercise of any rights conferred by this chapter shall be grounds for denial. (Ord. 1117 (part), 1988)

5.44.140 Owner to provide tenants with copy of this chapter.

Any tenant offered a lease or contract which if accepted and fully executed would be exempt from the provisions of this chapter (Section 5.44.030(E)) shall at the time of the offer also be provided with a copy of this chapter. (Ord. 1117 (part), 1988)

5.44.141 Amendment.

The provisions of this chapter may be amended by a majority vote of the city council. (Ord. 1117 (part), 1988)

5.44.142 Severability.

If any portion of this chapter is found to be invalid, then that shall in no way affect the validity of the remaining portions of this chapter. (Ord. 1117 (part), 1988)

B

APPENDIX C

December 31, 2008

Marina Home Rent Stabalization.

We like this Ordinance as #1 Choice

Kenneth K. Baar, Ph.D.
Dorina Pojani, MCP

[Mobilehome Parks and Mobilehome Space Tenancies in Marina]

This report was commissioned by the City of Marina. The opinions and conclusions herein are those of the authors and do not necessarily represent the views of the City.

SUMMARY

The City has five mobilehome parks with a total of 399 mobilehomes. These homes are nearly evenly divided between singlewides and doublewides. The sizes of parks are similar, ranging from 61 to 99 spaces.

Average space rents in the parks range from $349 to $608 per month. Apart from space rents, mobilehome owners pay for utility costs, which in most parks include water, sewer, and trash costs, as well as gas and electricity. These costs are typically in the range of $100 per month. Also, mobilehome owners pay property taxes and have insurance costs.

Long term residents typically paid prices in the range of $20,000 to $40,000 for their homes. Residents who have moved in since 2000 have paid an average of $95,000 for their mobilehomes. The majority of mobilehomes were manufactured before 1980. However, 27% were manufactured since 2000.

The mobilehome park owner-mobilehome owner landlord-tenant relationship is not a market relationship in the conventional sense. Mobilehome owners have homes which as a practical matter are "immobile", and therefore, they have no bargaining power as long as they desire to retain their mobilehomes or recover their investments in their mobilehomes. Current rent levels vary among the parks and may be considered reasonable or unreasonable depending on what standard of reasonableness is used. However, in any case, mobilehome owners have no security against exceptional rent increases in the future. Since mobilehomes are "immobile", conventional market deterrents to exceptional increases in space rents are undercut by the fact a substantial portion or virtually all of the value of a mobilehome may be capitalized into the rents for the underlying land.

Exceptional rent increases can lead to a situation in which mobilehome owners cannot afford to remain in their mobilehomes and/or lose most of the value of their mobilehomes.

A substantial portion of the mobilehome owner households are low income. 33% of the households have an annual income of less than $20,000. 28% have an annual income between $20,000 and $29,999.

A substantial portion (60%) of the mobilehome occupants are senior citizens.

A substantial portion of the mobilehome owner households have housing cost burdens in excess of federal affordability standards (30% of income). This phenomenon is standard among low-income households in all types of housing.

Consistent with trends in house prices (but not consistent with trends in apartment rents), since 2002 rent increases in the mobilehome parks have substantially exceeded the percentage increase in the CPI. In four of the five parks, rent increases have exceeded 40% compared to a 16% increase in the CPI. In one park, rents have increased by 64% during this period.

The Authors

Kenneth Baar has a Ph.D in urban planning and is an attorney. Dorina Pojani has a Master's degree in urban planning.

Baar has researched and published extensively on housing policy and other public policy issues. His publications have been cited frequently by California Courts of Appeal and the State Supreme Court.

He has served as a consultant to the following cities on issues related to mobilehome park space rents: Azusa, Capitola, Carpenteria, Carson, Ceres, Citrus Heights, Clovis, Cotati, Escondido, Fremont, Fresno, Healdsburg, Milpitas, Modesto, Montclair, Oceanside, Palmdale, Palm Desert, Riverbank, Rohnert Park, Salinas, San Marcos, Santa Rosa, Santa Cruz County, Santee, Simi Valley, Sonoma, Vallejo, Ventura, Watsonville, and Yucaipa.

His curriculum vitae is attached as an Appendix to this report.

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I. Introduction

Within the City of Marina, there are five mobilehome parks with 399 mobilehome spaces. The parks range in size from 61 to 99 spaces.

The purpose of this study is to provide information and analysis about mobilehome park residents and mobilehome park space rentals in the City of Marina in order to assist the City in considering policies in regards to mobilehome parks and mobilehome park tenancies.

This report provides information about the mobilehome owners and trends in rents, mobilehome prices in the parks which are privately owned.

The study is largely based on:

1. Information contained in responses from 276 households and five park managers to a mail survey.

2. Mobilehome sales data from 1997 through 2008 obtained from a private service which compiles sales data from sales reports supplied to the California Dept. of Housing and Community Development.

II. The Special Nature of the Parkowner-Mobilehome Owner Relationship

At the expense of reciting information that is commonly but far from universally known, an introductory explanation of the nature of the parkowner-mobilehome owner relationship is essential in order to provide a perspective on the information and analysis provided in this report.

As a practical reality, mobilehomes that are placed in mobilehome parks are actually "immobilehomes". They are prefabricated homes, that generally are comparable in size to apartments or small houses. A substantial portion of all mobilehomes are "doublewide" structures that consist of two 10 or 12 foot wide sections that are joined together when they are installed on a lot on top of a simple foundation. Mobilehomes are rarely moved after they are placed in mobilehome parks. When mobilehome park residents move they sell their mobilehomes in place.[1]

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

1. The "historical" investments of the mobilehome owner (tenants) in mobilehomes in mobilehome parks generally exceed those of the landlord parkowners.

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1 For background see Hirsch, "Legal - Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol", 35 UCLA Law Review 399-466 (1988); and Baar, "The Right to Sell the 'Im'mobile Manufactured Home in Its Rent Controlled Space in the 'Im'mobile Home Park: Valid Regulation or Unconstitutional Taking?", Urban Lawyer Vol. 24, 107-171 (Winter 1992, American Bar Ass'n)

2. The physical relocation of mobilehomes is costly.

3. Relocation within metropolitan areas is practically impossible because there are virtually no vacant spaces in mobilehome parks.[2]

4. Parkowners generally will not permit older mobilehomes to be moved into their parks when they do have vacant spaces for rent.

5. The supply of mobilehome park spaces in urban areas in California is either frozen or declining. Mobilehome park construction in urbanized areas of California virtually ceased by the early 1980's as alternative land uses became more profitable and land use policies continually tightened restrictions on the construction of new mobilehome parks.

The investments of mobilehome park residents in their mobilehomes are "sunk" costs. The benefits of these investments can only be realized by continuing occupancy in the mobilehome or by an "in-place" sale of the mobilehome.

In 2001, the California Supreme Court explained:

2 Exceptions to this pattern occur when there are exceptional increases in space rents, and mobilehome owners, unable to afford the increases, abandon their mobilehomes creating vacancies in parks.

BACKGROUND:
THE MOBILEHOME OWNER/MOBILEHOME PARK OWNER RELATIONSHIP

> This case concerns the application of a mobilehome rent control ordinance, and some background on the unique situation of the mobilehome owner in his or her relationship to the mobilehome park owner may be useful. "The term 'mobile home' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. [Citation.] A mobile home owner typically rents a plot of land, called a 'pad,' from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located." (Yee v. Escondido (1992) 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153.) Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances - typically a greater investment in his or her space than the mobilehome park owner. [cite omitted] The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners. [3]

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

> Where a rent increase by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial rental agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving. The "absence of meaningful choice" for these residents, who find the rent increased after their mobile homes have become affixed to the land, serves to meet the class action requirement of procedural unconscionability.[4]

In 1994, a federal district court in California stated:

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3 Galland v. Clovis, 24 Cal.4th. 1003, 1009-1010 (2001)

4 Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121, 1124 (Fla.), cert. denied, 493 U.S. 964 (1989)

> Mobile homes, despite their name, are not really mobile. Once placed in a park few are moved. This is principally due to the cost of moving a coach which is often equal to or greater than the value of the coach itself. Also, many mobile home parks will not accept older coaches so that after a time, the coach may be rendered effectively immobile... the park owner, absent regulation, theoretically has the power to exact a premium from the tenant who, as a practical matter, cannot move the coach.[5]

In response to the special situation of mobilehome park residents, California has adopted a set of landlord-tenant laws which provide special protections for mobilehome park tenants. In addition, approximately one hundred jurisdictions in California have adopted some type of rent control of mobilehome park spaces. Typically the rent control ordinances tie annual allowable rent increases to the percentage increase in the Consumer Price Index (CPI)-all items. Most of the ordinances do not permit additional rent increases (vacancy decontrol) when a mobilehome is sold in place. Under all ordinances, park owners are entitled to petition for additional rent increases in order to obtain a fair return.

III. The Supply of Mobilehome Park Spaces

In California, currently, there are approximately 374,000 spaces in about 5,700 mobilehome parks.[6] Monterey County has 45 mobilehome parks with 20 or more spaces. These parks contain a total of 3640 mobilehome spaces. Santa Cruz County has 100 parks with 20 or more spaces. They contain 11,990 mobilehome spaces. mobilehome parks. Santa Clara County has 101 mobilehome parks with 20 or more spaces; they contain 18,140 spaces.

Mobilehome park construction virtually ceased in urban areas in California by 1980. In Marina all of the mobilehome parks were constructed between 1958 and 1965.

5 Adamson Companies v. City of Malibu, 854 F.Supp. 1476, 1481 (1994, U.S.D.C. Central Dist. Cal.)

6 Source for data in this section: Disc produced by the State Department of Housing and Community Development.

Mobilehome Parks within the City of Marina

Park Name	Year Opened	Address	No. of Spaces	Type of mobilehome: Single Wide	Double Wide	Triple Wide
Cypress Square	1961	347 Carmel Ave.	87	8	76	3
El Camino	Early 60's	3320 Del Monte Blvd.	61	14	47	0
El Rancho	1958	356 Reservation Rd	99	78	18	0
Lazy Wheel	1965	304 Carmel Ave.	69	46	29	0
Marina del Mar	1958	3128 Crescent Ave.	83	58	24	1
Total			399	204	194	4

* Source: Survey of park managers.

IV. Resident Survey

A. The Number and Distribution of Survey Responses

As a part of this study, a mail survey of mobilehome owners was conducted. This survey included questions about when mobilehome owners moved into their mobilehomes, the size of their mobilehome, the rent at the time of moving in and the current rent, the ages and employment or retirement status of household members, the income of the household, and the cost and financing of the purchase of the mobilehome.

Responses were received from the residents of 276 mobilehome spaces, 73% of the spaces in the City. The response rates from all of the parks exceeded 60%.

B. Household Size

About half of the households are single person households and another 31% are two person households. 18% of the households have three or more persons.

Household Size

Household Size	Pct. of Households
1	51%
2	31%
3	7%
4 or more	11%

The average household size reported by survey respondents was 1.83 persons. Based on this average, the total number of mobilehome park residents in the City is estimated to be about 730 persons.[7]

C. Age

More than half of the residents in the respondent households are 60 years old or older. 12% are 18 years old or younger.

In terms of household composition, in 62% of the households, all members were 60 years old or older. 15% of the households include children (18 years old and younger).

Age of Residents

Age	Percentage of Residents
18 and under	12%
19-39	13%
40-59	21%
60-69	23%
70-96	31%

This distribution contrasts with some cities, where most of the parks have only seniors.

7 The number of residents has been estimated by multiplying the approximate number of occupied mobilehome park spaces in the City by 1.83.

D. Length of Tenancy in Mobilehome Park

Approximately half of the households moved into their mobilehomes since 2000. 28% moved into their mobilehomes in the 1990's and 23% moved in before 1990.

Year Household Moved into Mobilehome Park

Year Household Moved into Park	Percentage of Households
Before 1990	23%
1990-1999	28%
2000-2004	25%
2005-2008	24%

E. Prior Residence

1. Type of Dwelling

58% of the respondents were renters in houses or apartments prior to moving into their current residences. 28% of the respondents had owned their own houses or condominiums.

39% of the former homeowners (25 out of 65 respondents) were very low income (under $20,000/year). Approximately 6% of the respondents (15 respondents) had lived in other mobilehome parks. Two respondents indicated that they had been homeless prior to moving into their mobilehome.

Type of Dwelling prior to moving into Mobilehome Park

Prior Residence Type of Dwelling	Percentage of Households
rented apartment	37%
rented house	21%
owned home	28%*
mobilehome in other mobilehome park	6%
Other (living with family, RV, military housing, room rental, live-in caregiver)	10%

*Includes two percent condominium owners

2. Location of Prior Residence

94% of the respondents were already California residents prior to moving into the mobilehome park; only 15 respondents had come from out of state. 28% of the respondents already were Marina residents prior to moving into the mobilehome park. 79% of the respondents were already residents of Monterey County.

F. Employment or Retired Status

Two thirds of the adults in the respondent households are not working, and less than a quarter are working fulltime.

Employment or Retirement Status of Mobilehome Park Residents

Employment or Retirement Status	Percentage of Residents
working full-time	23%
working part-time	11%
not working	26%
Retired	40%

Furthermore in one third of the households none of the members are employed.

Overall Household Employment or Retirement Status Mobilehome Park Households

Employment or Retirement Status	Percentage of Households
one or more persons working fulltime	23%
no one working fulltime, one or more persons working part-time	44%
all persons retired or not working	33%

G. Household Income Levels

The survey included a question about household income levels, including social security benefits of the households. 89% of the survey responses included an answer to this inquiry.

Survey question:
What was the total income of your household in 2007 before taxes? (please include income from all sources including social security, pension, interest, dividends, and any public assistance)

One third of all households reported that their income was under $20,000. In 28% of the households, the income level was between $20,000 and $29,999.

Mobilehome Owners Household Income Levels

Income Category	All Households
under $15,000	23%
$15,000-$19,999	10%
$20,000 - $29,999	28%
$30,000 - $39,999	18%
$40,000 +	21%

In comparison, in 2008, the income ceilings for classified as "very low" income under federal HUD standards (50% of Area Median income or under) are $22,700 for one person households and $25,900 for two person households. The income ceilings for households classified as "extremely low" income (30% of Area Median Income or under) are $13,600 for one person households and $15,500 for two person households.[8]

In half of the households where all the members were at least 70 years old (38 households) the household income was under $20,000.

Mobilehome owners who purchased their homes after 2000 (half of the respondents) have higher incomes than the mobilehome owners who purchased their homes before 2000.

8 See HUD "FY 2008 Income Limits" published on HUD's web page

Household Income Pre and Post 2000 Purchasers

Household Income Category	Purchased MH before 2000	Purchased MH in 2000 or after
under $20,000	43%	24%
$20,000-$39,999	45%	45%
over $40,000	12%	31%

H. Characteristics of Mobilehomes

1. Size

About half of the mobilehomes have one section (singlewide) and the other half have two sections (doublewide).

Forty percent of the mobilehomes are over 900 square feet, the size of a two bedroom house.

Square Footage of Mobilehomes[9]

Size of Mobilehome (sq. feet)	Pct. of Mobilehomes
under 600	18%
600-899	41%
900-1,199	18%
1,200-1,600	23%

2. Age of Mobilehomes

As is typical in mobilehome parks most of the mobilehomes were manufactured about the time that the park opened and have been sold in place. Approximately half of the mobilehomes were manufactured before 1980, in the 1960s and 1970s. Less than a quarter were manufactured in the 1980s and 1990s. About one quarter were manufactured since 2000. Usually, these homes replaced other mobilehomes on the same spaces.

9 Square footage calculations were made by multiplying the information on the dimensions of mobilehomes that was provided by residents in their responses to the survey questionnaire.

Age of Mobilehomes

Year Mfd.	Pct. of Mobilehomes
before 1970	22%
1970-1979	29%
1980-1989	9%
1990-1999	13%
2000 and after	27%

V. Mobilehome Purchases Prices and Terms

As indicated, data on mobilehome purchases prices was obtained from the resident survey and from Santiago financial.

Typically long term owners paid from $20,000 to $40,000 for their mobilehomes, while recent purchasers have typically paid $80,000 or more for their homes. About half the respondents purchased their mobilehomes before 2000, and the other half purchased their mobilehomes in 2000 or after. The mobilehomes purchased before 2000 cost $28,514 in average while the mobilehomes purchased in 2000 or after cost $95,063 in average.

A. Data Obtained from Resident Survey

All of the respondents, except one, indicated that they own their mobilehomes. 23% invested more than $100,000. The investments of mobilehome owners varied substantially depending on the park where the mobilehome was located, when the home was purchased, when the mobilehome was manufactured, and the size of the mobilehome.

Mobilehome Purchase Prices (Resident Survey)

Price*	Pct. of Total
under $20,000	21%
$20,000-$39,999	25%
$40,000-$59,999	17%
$60,000-$99,999	14%
$100,000-$230,000	23%

*Two respondents indicated that they had obtained their mobilehome for free.

Mobilehome Purchase Prices by Mobilehome Type (Resident Survey)

Type	Pct. of Mobilehomes	Average Purchase Price
Single-wide	50%	$34,213
Double-wide	50%	$87,343

Mobilehome Purchase Prices by Year of Manufacture (Resident Survey)

Year of Manufacture	Pct. of Mobilehomes	Average Purchase Price
before 1970	22%	$27,553
1970-1979	29%	$29,326
1980-1989	9%	$51,700
1990-1999	13%	$62,966
2000-present	27%	$125,936

Mobilehome Purchase Prices by Year of Purchase Resident Survey

Year of Purchase	Pct. of Respondents	Average Purchase Price
before 1990	23%	$26,114
1990-1999	28%	$30,322
2000-2004	25%	$86,639
2005-present	24%	$102,795

Mobilehome Purchase Prices by Park
Resident Survey

Park	Average Purchase Price
Cypress Square	$90,673
El Camino	$77,541
El Rancho	$38,618
Lazy Wheel	$61,713
Marina del Mar	$37,166

Purchase Prices for Mobilehomes Manufactured before 1990
(Resident Survey)*

Move-in Year / Type	all	before 1990	1990-1999	2000-2004	2005-present
Single-wide	$25,027	$21,124 [29]	$16,215 [28]	$27,875 [11]	$46,249 [14]
Double-wide	$43,305	$30,375 [19]	$38,707 [23]	$62,313 [8]	$67,000 [6]

* The number of responses is indicated in parenthesis.
** No responses were received for triple-wide mobilehomes.

Purchase Prices for Mobilehomes Manufactured after 2000
(Resident Survey*

Move-in Year / Type**	all	2000-2004	2005-present
Single-wide	$58,453 [31]***	$63,538 [9]	$75,760 [8]
Double-wide	$129,687 [59]	$126,935 [25]	$147,776 [28]

* The number of responses is indicated in parenthesis.
** Only one response was received for triple-wide mobilehomes, reporting a purchase price of $225,000.
*** Some residents reported the purchase price but not the move-in date.

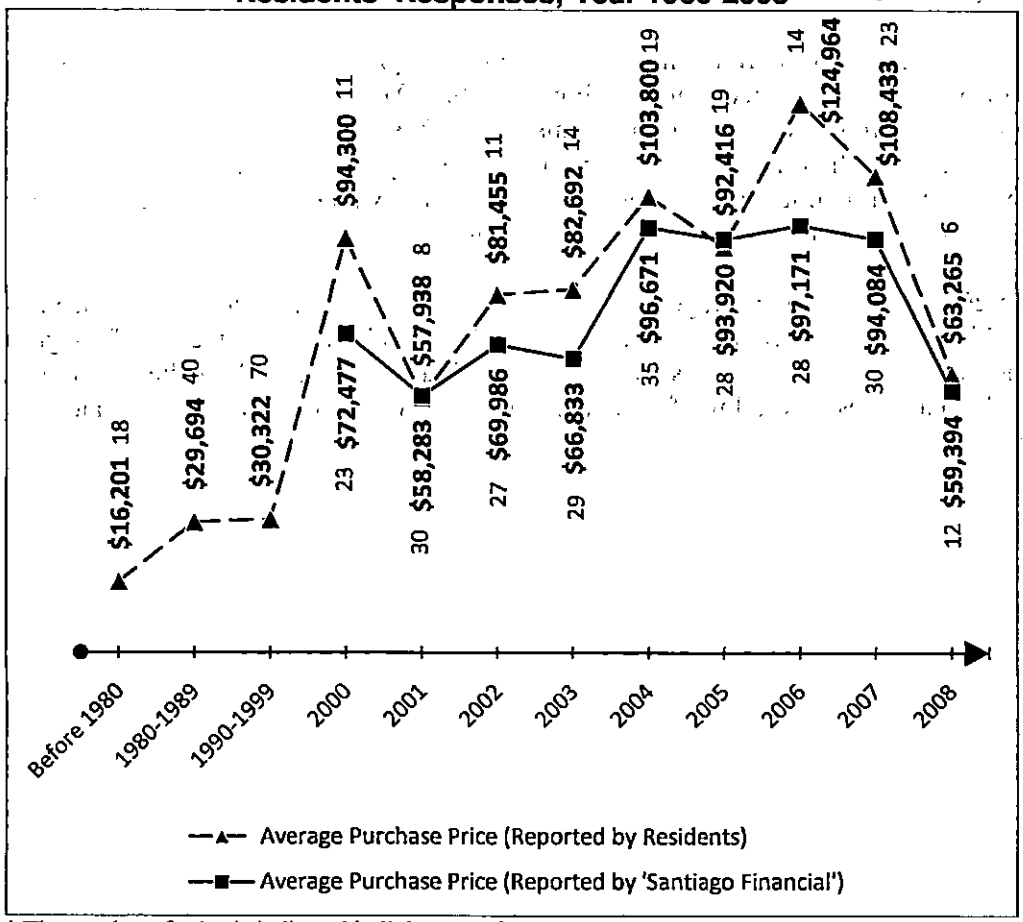
More than half of the respondents reported that they had paid all cash for their mobilehomes. 40% of the mobilehome owners have mortgages at this time, including two owners who had paid all cash initially. The median monthly mortgage payments are $756/month, ranging from $228 to $1,728. Out of the 135 respondents who purchased their homes after 2000, 70% have mortgages at this time; their median monthly mortgage payments are about $792/month, in a similar range to the overall responses.

B. Mobilehome Purchase Prices/Sales Data Reported by Manufactured Housing Sales Reporting Service

Data on original and current mobilehome purchase prices from 1997 to the present was obtained from a private service (Santiago Financial Inc., Tustin, CA) that provides mobilehome sales price data (primarily to appraisers). This data is based on information contained in sales registration reports which must be filed with the State Department of Housing and Community Development when mobilehomes are purchased. (Cases in which the sale price was reported as $0 were removed from the calculation of price averages.)

From 2000 to 2007, the average price of mobilehomes in Marina increased from $72,477 to $97,171. Since 2007, the average price and the number of sales have decreased. Through August 2008, the average sale price for a smaller number of sales was $59,394. (The small number of sales each year does not allow for tabulations by park or for analysis of sales of older mobilehomes.)

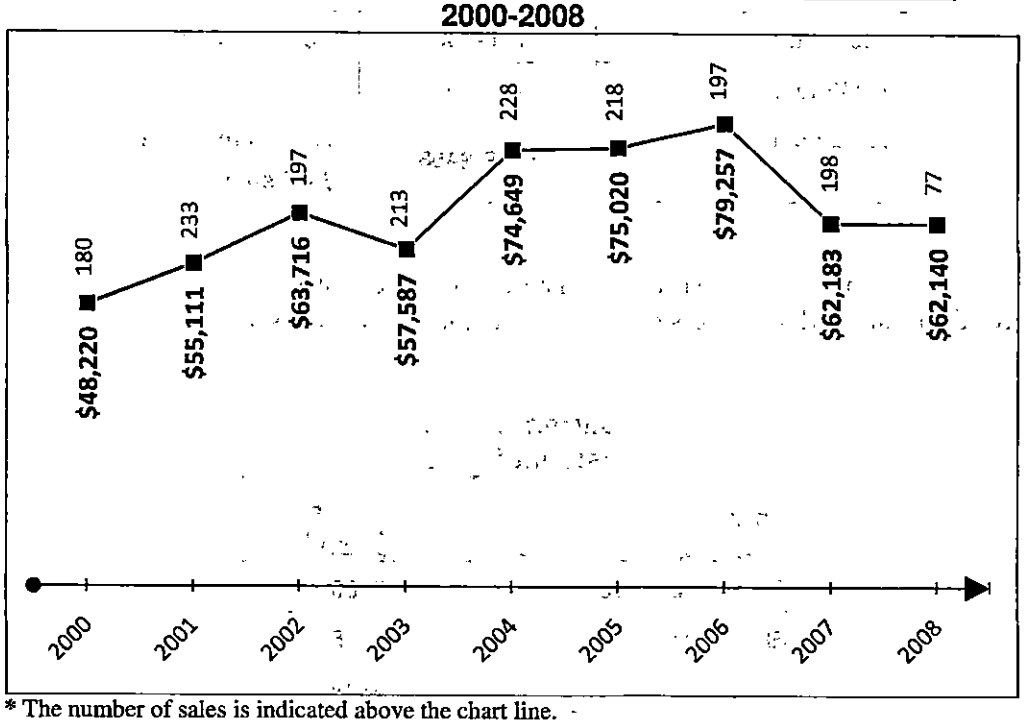
Average Purchase Prices for Mobilehomes in Marina*
Santiago Financial, Inc., Year 2000-2008
Residents' Responses, Year 1960-2008



* The number of sales is indicated in lighter typeface next to the average purchase price.

Similarly, in Monterey County, the average price of mobilehomes increased from $48,220 in 2000 to $79,257 in 2006. This trend is in accord with the surge in house prices and rents from 2000 to 2006. Subsequently, mobilehome prices began to fall, reflecting general real estate trends. From 2007 through August 2008, the average price of mobilehomes was $62,140.

Average Purchase Prices for Mobilehomes in Monterey County*
2000-2008



* The number of sales is indicated above the chart line.

Since 2000, Marina has averaged higher prices for doublewide mobilehome sales than the Countywide averages.

VI. Current Rent Levels, Increases in Rents, Vacancy Rates, and Terms of Rental Agreements

A. Current Rent Levels

The City sent a questionnaire to park managers about average rents, the range of rents, the portion of residents who have entered into lease agreements, and rental practices. The managers of five parks responded to this questionnaire.

Each park manager provided information on the range of rents in the park, but did not indicate the average rent.

Current Rents
Survey of Park Managers

Park	Range Current Rents	Initial Rent New Tenants
Cypress Square	$440-$500	$475
El Camino	$407-$500	$475
El Rancho	$310-$405	$380 to $420
Lazy Wheel	$450-$675	$650
Marina del Mar	$299-$468	$486 doublewide $436 singlewide

Tenant survey responses were used to calculate the average rent in each park. The information that the residents and park managers provided on rent levels was consistent.

Current Rents
Resident Survey

Park	Current Rents Average
Cypress Square	$463
El Camino	$445
El Rancho	$349
Lazy Wheel	$608
Marina del Mar	$353

B. Average Current Rents and Household Income

Average Current Rents by Income Category

Household Income Category	Average Current Rent
under $20,000	$418
$20,000-$39,999	$437
over $40,000	$466

C. Rent Trends

In each decade space rents have increased by about $100 on average.

Rent Trends – All Parks (Resident Survey)

Year Moved into MH Park	Average Move-in Rent	Average Current Rent	Pct. Increase
before 1990	$178	$419	135%
1990-1999	$277	$400	44%
2000-2004	$371	$460	24%
2005-present	$438	$473	8%

From 2002 to 2008, increases in space rents exceeded 40% in four of the five parks in the City in contrast to a 16% increase in the CPI-all items during this period and to 10% increase in the Consumer Price Index rent index. The following table compares park rent levels in each park in 2002 and 2008.

Comparison of Rent Levels in 2002 and 2008

Park	October 2002	August 2008	Pct Increase in Rent Oct 2002-August 2008 (Increase in CPI 16%**)
Cypress Square	340-400*	463	25.1%
El Camino	295	445	50.8%
El Rancho	247	349	41.3%
Lazy Wheel	370	608	64.3%
Marina del Mar	247	353	42.9%

Sources: 2002 survey – City of Marina Task Force; Responses from 2008 survey of park residents
* $370 used as average
** CPI-All Urban Consumers All-Items (San Francisco-Oakland-San Jose)

D. Mobilehome Owner Expenses in Addition to Space Rent

In addition to space rent, residents have other costs associated with the ownership of their mobilehome.

1. Utilities (Gas, Electricity, Water, Sewer, Refuse Collection)

In all of the parks residents pay for their gas and electricity expenses. In addition, residents pay for water and refuse expenses. In four of the five parks residents also pay for their sewer expenses. The expenses of individual mobilehome owners vary depending on their usage levels.

The standard fee for refuse collection for one 35 gallon can is $13.00 per month. Residents reported that monthly sewer charges in their parks were fixed in the range of $16.00. Water usage is generally metered by parks, with monthly costs typically in the range of $20 to $25.

The County Housing Authority authorizes a $93 utility allowance for Section 8 tenants.

2. Insurance

84% of the residents have some form of insurance for their property. City-wide the average annual cost for mobilehome owners is $446.

Insurance costs rise in direct proportion to:

- The purchase price of the mobilehome, ranging from an average of $313/year for mobilehomes purchased for less than $20,000 to $675/year for mobilehomes purchased for more than $100,000;

- The mobilehome owner's income level, ranging from an average of $378/year for households with an income under $15,000/year to $559/year for households with an income of $50,000/year or more (four households that earned incomes over $75,000 paid in average more than $1,000/year in insurance); and

- The year of purchase, ranging from $348/year for owners who purchased their mobilehome before 1990 to $553/year for owners who purchased their mobilehome since 2005.

3. Taxes

Almost all the respondents reported that they pay taxes on their property, averaging from $320/year to $375/year. Taxes are almost twice as high for owners who bought in the last 2-3 years (about one fourth of the sample); averaging $471/year, compared to residents that have lived in the parks for 20 years or more (another fourth of the sample), averaging $257/year.

E. Rental Terms and Exempt Leases

In four out of the five parks in the City none of the space rentals are covered by leases of more than one year. In Marina del Mar most of the space rentals are subject to leases of one to five years.

Under state law, mobilehome park spaces which are subject to leases that meet specified terms are exempt from rent regulation as long as the lease is in effect.[10] When the lease terminates, the space may be subject to rent regulation. A substantial portion of mobilehome park space rent control ordinances prohibit a park owner from requiring that incoming tenants execute leases that would be exempt from the rent regulation.

10. Civil Code Section 798.17.

VII. The Investments in Constructing Mobilehome Parks and Trends in the Value of Mobilehome Parks

While extensive information has been compiled on trends in mobilehome values, information on trends in mobilehome park values has not been systematically collected and reported. However, there is information available which provides evidence of the scale of appreciation in mobilehome parks.

When mobilehome parks were constructed, there was an ample supply of vacant land which could be purchased at a low cost. Reports and surveys indicate that the average costs for the land acquisition and construction costs of mobilehome parks were about $6,000 per space in the 1970s.

A 1974 report by the Western Mobilehome Association projected that the total cost of onsite improvements averages $2,600 to $4,000 per lot, exclusive of land. "This includes installation of all underground utilities, utility services, sewers and sewer connections, landscaping, paving of parking areas and streets, and construction of services, swimming pools, and recreation buildings."[11] The report projected land costs in the range of $5,000 to $25,000 per acre, with permitted densities of 8½ spaces per acre. This translates into land costs of $600 to $3,000 per space. The Small Business Reporter of the Bank of America estimated development costs of mobilehome parks averaged about $2,625 per space in 1970 and estimated that development costs ranged from $3,500 to $6,500 per space in 1976.[12]

In Marina, two parks, Cypress Square and El Rancho have been in the same ownership since the 1960's. Three of the parks were purchased since 2002; El Camino – 2002, Marina de Mar – 2005, and Lazy Wheel – 2007.

Appraisals would be required to make precise estimates of the current value of the mobilehome parks in Marina. However, some estimate of the range of park values may be made. In the current market, capitalization rates for mobilehome park purchases are in the 6 to 7% range. (In other words, the value of each $1,000 in annual net operating income is in the range of $14,285 or $16,666 ($1,000/.07 or $1,000/.06))

If it assumed that park operating expenses ratios are 40% of gross income and that net operating income is 60% of gross income, a typical annual net operating income per mobilehome space of a park with rents at $450 per month ($5,400 per year) would be approximately $270/month (60% of $450) or $3,200/year. Under these circumstances the current values of mobilehome parks would be in the range of $53,333 per space ($3,200/.06).

Changes in capitalization rates, which largely reflect changes in mortgage interest rates have had a dramatic impact on the values of rental property. In the past five years park values have increased substantially as a consequence of declines in capitalization rates, from a typical rate of

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11 Western Mobilehome Association, Mobilehome Park Development, p.4 (1973-74 edition).

12 Bank of America, "Mobile Home Parks", Vol. 9, No. 7, p.7; Bank of America, "Mobile Home Parks", Small Business Reporter, Vol. 13, No. 6, p.10.

8% to 9% to 5 to 7%. If the capitalization rate had remained at the former levels of 8% or 9%, a park with an annual net operating income per space of $3,200 would have a value $35,555 ($3,200/.09) per space or $40,000 ($3,200/.08) per space. Instead, the value of the same income level is substantially higher.

Limited data on sales and financing of mobilehome park purchases was obtained from one real estate service. It indicates that Lazy Wheel was purchased for $5.7 million in 2007 ($72,463 per space), with financing of $4 million.

Marina del Mar was assessed at $3.5 million in 2008 ($42,168 per space) following a sale in 2006. This would indicate that the sale price in 2006 would have been for approximately this amount (since assessment increases are limited to 2% per year). In 1986, the park was purchased for $1 million.

El Camino was purchased for $2,500,000 in 2002 ($40,983 per space.)

As indicated, Cypress Square and El Rancho have been held by the same owners for over four decades.

VIII. The Affordability of Mobilehome Park Space Rents in Marina

As indicated, one third of the households surveyed indicated that their annual household income was under $20,000 and another 28% indicated that their household income was between $20,000 and $29,999.

If housing expenditures for households with an annual income of $20,000 were limited to 30% of income (the federal standard for housing affordability), the monthly housing expenditure would be $500/month ($6,000/year). In order to place the foregoing $500/month amount in perspective it is critical to remember that this is the affordability level for households at the top point of this income group.

In the following table, for the purpose of estimating overall mobilehome owners housing costs (excluding mortgage payments), it assumed that utility costs average $93/month and that maintenance, insurance, and tax costs average $100/month. The table sets forth the "gaps" between housing costs for mobilehome owner households based on alternate assumptions about:

1) rent levels which reflect the three common rent levels in the parks ($350, $450, and $600);

2) household income ($15,000, $20,000, and $30,000/year), and

3) alternate affordability standards (30% and 40% of income).

The data indicates that households with an income of $15,000 face an affordability gap at all three common rent levels - $350, $450, and $600. Households with an income of $20,000 face an

affordability gap at all levels if a 30% of income standard is used. If a 40% standard is used, they still face a $126 affordability gap at the $600 rent level.

The data is subject to the major qualification that it does not take into account the costs of acquiring a mobilehome.

Housing Affordability for Mobilehome Owner Households

Annual Income Level (a)	Affordable Costs: 30% of Monthly Income (b) [0.30a/12]	Affordable Costs: 40% of Monthly Income (c) [0.40a/12]	Housing Costs: Space Rent (d)	Housing Costs: Utility Cost (e)	Housing Costs: Cost of Insurance Prop. Taxes & Maint. (f)	Housing Costs: Overall Housing Cost (excluding mortgage) (g) [d+e+f]	Affordability Gap 30% Standard [g-b]	Affordability Gap 40% Standard [g-c]
$15,000	$375	$500	$350	$93	$100	$543	$168	$43
			$450	$93	$100	$643	$268	$143
			$600	$93	$100	$793	$418	$293
$20,000	$500	$667	$350	$93	$100	$543	$43	None
			$450	$93	$100	$643	$143	None
			$600	$93	$100	$793	$293	$126
$30,000	$750	$1,000	$350	$93	$100	$543	None	None
			$450	$93	$100	$643	None	None
			$600	$93	$100	$793	$43	None

If the households with an income of $20,000/year ($1,667/month) spend $350/month for space rents, $93/month in utility costs, and $100/month for maintenance and insurance, the total of $543/month in housing cost would amount to 32% of their income. This total does not include any allowance for costs associated with purchasing the mobilehome. A monthly expenditure of $500 for housing costs would leave approximately $1,167/month for other living costs.

If the households with an income of $20,000/year ($1,667/month) spend $543/month for space rents, $50/month in utility costs, and $100/month for maintenance and insurance, the total of $667/month in housing cost would amount to 40% of their income. This would leave approximately $1,000/month for other living costs.

IX. Affordability of Housing Alternatives

Apartment rents substantially exceed mobilehome space rental costs (taking into account maintenance, fire insurance, water, and trash collection costs which are not usually incurred by apartment tenants). The August 2008 Housing Element indicates that average rents for studios, one bedroom, and two bedroom (one bath units) were in the range of $830 to $942.

Monthly condominium ownership costs (including mortgage costs) would exceed $1,800 for very low cost condominiums (e.g. $150,000) would far exceed park space rental costs.

X. Rationale For and Against the Regulation of Mobilehome Park Space Rents

A. Rationale for Regulation

1. The Need to Regulate a Monopoly Type of Relationship and Prevent Excessive Rent Increases

The rationale for the regulation of Mobilehome park space rents primarily rests on the special nature of the landlord-tenant relationship in such transactions.

In a market economy supply and demand mechanisms are relied on in order to reach results that are in the public interest. When prices increase incentives are created for additional production and consumers have the option of reducing their consumption. At the same time, in monopoly situations (such as in the provision of utilities) price regulations are standardly implemented.

In the case of apartment rentals, tenants have the option of moving to other apartments. The costs associated with such moves are likely to be in the range of one or two month's rent, taking into account moving costs and the possibility of additional rent during a moving period.

In contrast, a household with a mobilehome has an immovable investment which can only be sold in place. While mobilehome park owner's do not have monopoly rights as a matter of law, as a practical matter they have monopoly-like control over space rents. Mobilehomes are rarely moved after their original installation on a mobilehome park space.[13] In urban areas, vacancy rates in mobilehome parks are exceptionally low. Furthermore, standard park owner practices (as

13 A 1988 study concluded that only about one percent of all mobilehomes are ever moved during the lifetime of the mobilehome. Werner Z. Hirsch & Joel G. Hirsch, "Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrols", 35 UCLA Law. Review 399, 405 (1988)

well as land use restrictions) assure the immobility of mobilehomes. Most mobilehome parks will not accept mobilehomes that are more than a few years old thereby precluding any movement of mobilehomes between parks within urban areas.[14] Furthermore, as noted, the combination of land use regulations and changed economic conditions preclude the construction of new parks in urban areas. As a result, the relationship between park owners and their tenants is virtually a monopoly relationship in the sense that a mobilehome can only be used on the space on which it is currently located. In other words, the supply of available mobilehome spaces for a mobilehome that has been installed on a mobilehome park space becomes only one, the space where the mobilehome was initially placed. Under these circumstances, the rationale for mobilehome space rent regulations is particularly compelling.

This special situation and the captive nature of mobilehome park tenancies has been repeatedly recognized in state and local legislation and by the courts. The California legislature has declared that it is necessary to provide mobilehome owners with "unique protection" from evictions.

> **The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.**[15]

Local mobilehome park space rent stabilization ordinances commonly note the "captive" nature of mobilehome park tenancies.

As early as 1966, an "Appraisal Guide for Mobilehome Parks" published by the Finance Division of the Mobile Homes Manufacturers Association described how land use restrictions provide park owners with "monopolistic" value. The guide stated:

14 This conclusion is confirmed by surveys conducted for this author over the past five years. Park managers often viewed the question as largely hypothetical because mobilehomes had only rarely or never had been moved from another park into their park.

15 Civil Code Sec.798.55a

Monopolistic Value

> **Generally, the cost approach of a proposed park represents the upper limit of value. This is not always true, for this approach frequently cannot include the monopolistic value of a limited or restricted area use. Nor is it true in the case of older parks in areas which no longer permit the construction of parks and which frequently have this monopolistic value. Under these circumstances, when competition is strictly curtailed, the value of this interest, plus the value of improvements, and the normal value of the land, may exceed the accepted application of the cost approach. ... the land with this legal use should be credited with the premium value of the monopoly interest.**[16]

In 1988, a nationally prominent real estate newsletter explained that:

> **With today's parks having virtually no vacancies and tenants with limited options you get a base cash flow that is as predictable as the first of the month.**[17]

Monopoly Rents

The immobility of a mobile home creates a situation in which a park owner can actually charge an even higher rent than "market" rent (the amount of rent that could be obtained for a vacant mobilehome space), because the park owner can charge an additional amount that a mobilehome owner will pay just to keep from losing an investment in a mobilehome. In one widely cited publication on mobilehome issues, the authors, who are economists, commented: "The fact that *it is quite costly* for a tenant to move after having located in the park gives the landlords the opportunity to seek larger rent increases than they otherwise would be able to obtain."[18] The authors describe this charge as "quasi-rent."[19] A more realistic characterization is that it is impossible for a tenant to move with his/her mobilehome within an urban area, rather than only being "quite costly."

Under these circumstances, the rent setting process of mobilehome park spaces largely reflects the will of a park owner rather than any type of market mechanism. Rent levels and rent increase patterns within "market" areas vary from cases in which rents have barely been increased, to adjustments which track increases in the CPI, to adjustments which substantially exceed increases in the CPI but are comparable of those of other park owners in the area, to increases which far exceed the rent increases in other mobilehome parks in the area.

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16 Randall, Appraisal Guide for Mobilehome Parks 31 (1966, Mobilehome Manufacturer's Ass'n).

17 "Mobile Home Parks: A Profitable Niche for Partnerships", 11 Real Estate Outlook (No. 3) (1988, Warren, Gorham, and Lamont).

18 Id. at 420 (emphasis added).

19 See Hirsch and Hirsch, "Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol", 35 UCLA Law Review 399, 419-423.

2. Preservation of the Viability of Mobilehome Ownership and the Investments of Mobilehome Owners

A related rationale for controls of space rents is the preservation of mobilehome values and consequently the investments of mobilehome owners.

Traditionally, economists and appraisers projected that each $100 increase in space rents would lead to a $10,000 reduction in the value of a mobilehome. These projections were based on a capitalization analysis, in which a $100 increase in rents would be offset by $100 in the monthly purchase costs of a mobilehome (an amount that would cover a $10,000 purchase loan.)

Empirical studies have not confirmed the validity of such projections. However, it is clear that steep increases in rents have led to situations in which mobilehomes are sold at nominal prices or become unmarketable.

3. Preservation of Affordable Housing

Presently, longer term mobilehome owners have a form of housing which is more affordable than other forms of housing because they own their dwellings free and clear and have remaining housing costs that are a few hundred dollars per month below apartment rents. At the same time, they have some equity in their mobilehomes that can be realized if they elect to or have to move at some point. In the case of the low income mobilehome owners an increase in housing costs of a hundred dollars or a few hundred dollars can be unbearable.

While recent purchasers have made substantial investments in mobilehomes (especially doublewide mobilehomes), these investments are well below the investments that would have been required to obtain single family dwellings and moderate size condominiums. It is safe to assume that these purchasers chose mobilehome ownership because other ownership alternatives were unaffordable.

B. Rationale against Mobilehome Park Space Rent Regulation

The principle arguments against regulation of mobilehome park space rents have been that they do not make mobilehome ownership more affordable for future owners and that they lead to an unjust transfer of land values from park owners to park residents.

1. Impact of Rent Regulations on the Affordability of Mobilehome Ownership

Some economists have concluded that mobilehome park space rent controls do not advance housing affordability because prospective in a jurisdiction with rent regulations mobilehome owners are forced to pay a higher price for mobilehomes which incorporates the benefit of the rent regulation.

However, a principal facet of affordability is the security of an investment. Commonly, mobilehome owners are retirees who must rely on their assets, as well as their income for security. If there is no limit on how much the rent may be increased upon a change in mobilehome ownership, the mobilehome owner faces the possibility that his/her investment may

be substantially or nearly totally extinguished. As previously indicated this has occurred when park owners have imposed exceptional rent increases.

2. Equity Arguments - Claims of Unjust Transfer of Land Values

Much of the criticism of mobilehome park space rent controls has been based on the view that such regulations result in an unjust transfer of the land value from park owners to mobilehome owners. This criticism has been set forth in court opinions. While the Supreme Court has rejected the view that this outcome renders such legislation unconstitutional, the criticism still plays a role in debates about the equities and inequities of mobilehome park space rent controls.

In Hall v. Santa Barbara, a U.S. Court of Appeal concluded that the combination of the mobilehome space rent control and the state-created right to sell a mobilehome in place created a transferable possessory interest which had a "market value". This distinguished it from conventional apartment rent controls, which had been consistently upheld by the courts. The apartment rent controls did not grant occupancy rights which were transferable. In contrast, under the mobilehome regulations "tenants were reaping a monetary windfall." The Court concluded that the tenants' ability to realize a "windfall" premium "shades" into "permanent occupation of the property".

> In none of the cited cases has the landlord claimed that the tenant's right to possess the property at reduced rental rates was transferable to others, that it had a market value, that it was in fact traded on the open market and that tenants were reaping a monetary windfall by selling this right to others. This is not a minor difference; it is crucial...
> That tenants normally cannot sell their rights in rent controlled property provides important safeguards for landlords...[Under conventional rent controls] [w]hen the premises become vacant, the landlord is able to reassert a measure of control over the property...
> [A]s the Santa Barbara ordinance is alleged to operate, landlords are left with the right to collect reduced rents while tenants have practically all other rights in the property they occupy. As we read the Supreme Court's pronouncements, this oversteps the boundaries of mere regulation and shades into permanent occupation of the property for which compensation is due.[20]

Another federal trial court opinion sets forth a counter to this windfall theory. The court stated that it was clear that investments by mobilehome owners which would substantially exceed the investments of the park owners would be an essential ingredient for the success of the park enterprises and that park owners fully understood and encouraged mobilehome owners to make substantial investments in their mobilehomes:

20 833 F.2nd. 1270, 1278-80 (9th cir. 1986)

It is clear that most, or even all, of the tenants have invested more than the value of the coach itself to move into the park. New tenants have paid for placement value held by previous tenants. Therefore, tenants have an expectation that they will be able to substantially recoup that investment upon sale of the coach. While that expectation many not be altogether wise, it is not unreasonable. The park owners are business people who understand that the operation of a mobilehome park involves an economic relationship in which both park owner and the tenant must make a substantial investment. Indeed, they have encouraged the tenants to make the investment and to expect a return on it.[21]

XI. Rent Regulations in Neighboring Jurisdictions and MOUs (Memorandums of Understanding) as an Alternative Rent Stabilization

As indicated, approximately one hundred jurisdictions (cities and counties) in California have adopted mobilehome park space rent regulations.

In Monterey County, Santa Cruz County, and Santa Clara County mobilehome park space rent regulations are in effect in Capitola, Gilroy, Milpitas, Morgan Hill, Salinas, Santa Cruz County, and Watsonville. These ordinances have been in effect since the 1980's. The following chart summarizes the provisions of these ordinances.

Mobile Home Park Space Rent Ordinances in Monterey, Santa Clara, and Santa Cruz Counties

Jurisdiction	# of Spaces	Annual Increases			Pass-Throughs	Increases on In-Place Mobilehome Sales	Prospective Purchaser Can Refuse Exempt Lease
		Amount	Floor	Ceiling			
Capitola	677	60% of CPI		5%		none	
Gilroy	349	80% of CPI		5%		unlimited	
Milpitas	566	50% of CPI		5%		none	
Morgan Hill	816	75% of CPI					
Salinas	1,467	75% of CPI		8%		unlimited	
San Jose	10,756	75% of CPI	3%	7%		8%	
Santa Cruz County Unincorporated	5,797	50% of CPI			prop. tax inc, 1/2 cap. replacement cost	none	X
Scotts Valley	529	100% of CPI	3.5%	7%	prop tax inc, 1/2 cap. rep	the greater of 10% or $30, one time in 36 months	
Watsonville	1,254	70% of CPI		5%	gov't mandated fees		X

21 Adamson Companies v. City of Malibu, 854 F.Supp. 1476, 1489 (1994, U.S.Dist.Ct., Central Dist. California)

An MOU (Memorandum of Understanding) as an Alternative Rent Stabilization

In a few jurisdictions, park owners and residents have entered into an MOU approved by the locality (city or county) and the locality has refrained from adopting rent regulations as a result. In a few other cases, park owners have had the alternative of entering into an MOU or being subject to the rent control ordinance.

The MOU's are rental agreements which generally provide for more liberal rent increase terms than an ordinance but still contain ceilings on rent increases. (E.g. the MOU's provide for greater annual rent increases or permit limited rent increases upon vacancies which are not usually permitted under rent controls.) This alternative has been attractive to park owners when it is clear that a rent stabilization ordinance will be adopted if they do not enter an MOU or alternatively they will be subject to the ordinance which has been adopted, if they do not enter into the MOU.

The advantage of the MOU for a locality is that it cannot be challenged because it is "voluntarily" entered into. Also, if the MOU is well drafted the administrative participation of the City can be minimized (e.g. If the MOU does not provide for capital improvement pass-throughs which have to be reviewed by the City.)

If a rent stabilization ordinance includes an MOU alternative, then the rent stabilization protections are in place in the event that some owners choose not to enter into the MOU or do not comply with the MOU.

XII. Comments on Cost-Benefit Analysis

In considering cost and benefits of municipal policies in regards to mobilehome parks and mobilehome park residents, an infinite number of scenarios are possible, which consider varying factors. Such factors may include the benefits to the community of preserving affordable housing, the cost of creating replacement housing of equal affordability, and/or potential increases in revenue associated with higher value forms of development. Caution is in order in undertaking such analysis because their outcomes are largely determined by the values that are used or omitted in undertaking such an analysis.

A. Creating Affordable Units

Over the past decades, "affordable" housing is a diminishing commodity in the coastal regions of California.

The cost of creating housing units that are affordable to low income households is very substantial. Cities commonly have to provide subsidies of $25,000 to $50,000 in order to assist the development of affordable units in non-profit housing.

The cost of not adopting some type of rent regulation may be the loss of affordable units in future years and the loss by low and moderate income households of their investments in their homes. This cost is not a certainty, because rent increases may or may not be "reasonable" in future years.

B. Legal Challenges to Mobilehome Park Space Rent Regulations

The principal cost argument that has been used against the adoption of mobilehome park space rent regulations has been that their adoption may lead to substantial legal expenses. When the introduction of such regulations is discussed, cities are told that their adoption may result in as much as millions of dollars in legal expenses.

In fact, for two lengthy periods during the past twenty years, after federal courts struck down ordinances which controlled land-lease or mobilehome park space rents, clouds of legal uncertainty about their constitutionality remained in effect for years until these precedents were reversed by the U.S. Supreme Court. During this period, mobilehome space rent controls were faced with numerous facial challenges, constants threats of further litigation, and continual uncertainties.

C. Facial Challenges

At this point none of California's one hundred mobilehome space rent control ordinances have been struck down as facially invalid, although a few sections of some ordinances may have been invalidated. (In a recent decision, which does not have precedential weight, a federal trial court struck down the San Rafael ordinance; however, that decision is on appeal.)

The general judicial doctrine in regard to price controls and apartment rent controls has been that such regulations are constitutional as long as they permit a fair return. However, on two occasions, in 1986 and 1996, the federal Ninth Circuit Court of Appeals concluded that mobilehome park space or land lease rent regulations constitute a taking of a landowner's property because the regulations provide tenants with "premiums" in the value of their homes. The bases for these conclusions departed from traditional takings analysis because they were dependent on conclusions about the benefits of the space rent regulation for the tenants (mobilehome owners or owners of homes on leased land), rather than on an analysis of the burdens that the regulations placed on the land owners.

In 1992, the U.S. Supreme Court rejected the theory that provided the basis for the 1986 decision of the Ninth Circuit and in 2005, the Court rejected the theory that provided the basis for the 1997 decision of the Ninth Circuit.

The Ninth Circuit rulings were based on its views about the constitutional significance of the economic principle that the combination of local space rent controls and the state-created right to sell mobilehomes in place create "premiums" in the value of mobilehomes. The "premium" theory rests on the economic principle that mobilehome owners are willing to pay more for a mobilehome if the associated land rent cost is regulated. Traditionally such issues would be of concern to legislative bodies, but would not be legal issues. However, in the course of judicial consideration of the constitutionality of mobilehome space rent regulations, these issues became central legal issues.

In 1986, in Hall v. City of Santa Barbara, the Ninth Circuit held that vacancy controls constituted a "physical" taking of a park owners property, because such controls allowed mobilehome owners to capture a part of the value of the park owner's land when selling their homes.[22] In 1992, in Yee v. City of Escondido, the U.S. Supreme Court rejected the view that

22 833 F.2d. 1270 (9th cir., 1986)

vacancy controls constituted a "physical" taking of a park owners' property.[23] The Court rejected the concept that any transfer of wealth arising out of a rent regulation constitutes a "physical" taking and noted that transfers of wealth commonly occur as a result of rent and land use regulations.

> Petitioners emphasize that the ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. Ordinary rent control often transfers wealth from landlords to tenants by reducing the landlords' income and the tenants' monthly payments, although it does not cause a one-time transfer of value, as occurs with mobile homes. Traditional zoning regulations can transfer wealth from those whose activities are prohibited to their neighbors; when a property owner is barred from mining coal on his land, for example, the value of his property may decline, but the value of his neighbor's property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more visible than in the ordinary case, ... but the existence of the transfer in itself does not convert regulation into physical invasion.[24]

In 1997, in Richardson v. City of Honolulu, the Ninth Circuit held that rent controls on land leases were an unconstitutional taking because they did not "substantially advance a legitimate state interest."[25] The Court concluded that the Honolulu law did not advance a legitimate state interest because homeowners could obtain capitalize the value of the rent regulations into the value of their mobilehomes; therefore, the housing would not be more affordable as a result of the rent regulations. In 2004, on the basis of the Richardson opinion, in Cashman v. Cotati, the Ninth Circuit ruled that Cotati's mobilehome space rent control ordinance was unconstitutional because it created a "premium" in mobilehome values.

In May 2005, in Lingle v. Chevron, the U.S. Supreme Court ruled that the "substantially advances" formula is not an appropriate test for determining whether a regulation constitutes a taking. In a opinion roundly criticizing the reasoning of the U.S. Court of Appeal, the Supreme Court explained that there was no connection between the test and the questions that determine whether a regulation constitutes a taking, which involve the character of the burden that is imposed on private property rights.

> ... the "substantially advances" inquiry reveals nothing about the magnitude or character of the burden a particular regulation imposes on private property rights. Nor does it provide any information about how any regulated burden is distributed among property owners. In consequence, this test does not help to identify those regulations whose effects are functionally comparable to government appropriation or invasion of private property; it is tethered neither to the text of the Takings Clause nor to the basic justification for allowing regulatory actions to be challenged under the Clause.[26]

23 503 U.S. 519 (1992)

24 503 U.S. 519, 529-530

25 124 F.3d. 1150 (9th cir. 1997)

26 Lingle v. Chevron 544 U.S. 528 (2005)

Furthermore, the Court stated that: "The notion that ... a regulation ... 'takes' private property for public use by virtue of its ineffectiveness or foolishness is untenable." In addition, the Court noted that the application of the "substantially advances" test would present "serious practical difficulties..." and "... would require courts to scrutinize the efficacy of a vast array of state and federal regulations - a task for which courts are not well suited."

In turn, the Ninth Circuit withdrew its opinion and affirmed the District Court's opinion upholding the Cotati ordinance.[27]

D. As Applied Challenges

On the other hand, there have been successful challenges to administrative decisions in the review of fair return petitions. Commonly, these challenges have emerged in situations in which an ordinance has not provided for annual increases and cities have only permitted small rent increases for park owners who have not obtained any rent increases for years.

E. Potential Challenges

There is no bar to bringing a legal challenge against any ordinance that Marina may adopt. However, at this time there is no precedent to support a holding that a typical ordinance would be invalid.

If a fair return petition is filed, a challenge to the administrative decision could be filed. However, Marina does not face the types of situations which are inductive to difficulties with fair return issues, such as cases in which park owners have not raised rents for years prior to the adoption of an ordinance (historically low rents) or a recent park purchaser is locked into rents set prior to the purchase of the park.

Nevertheless, any discussion of legal issues related to mobilehome space rent controls must be subject to the caveat that judicial outcomes in this area has brought surprises and numerous instances in trial court and appellate courts have differed in their conclusions about the law. Furthermore, challenges are repeatedly brought even though the success rate for such challenges has been very low.

XIII. Recommendations Regarding Rent Regulation In the Event that the City Elects to Adopt Rent Regulations – Drafting Guidelines

A. The Need for Objective Standards

Mobilehome space rent control ordinances and/or implementing regulations should, to the degree feasible, contain objective standards, as opposed to subjective and/or open ended standards. Discretion provides fuel for complicated, costly, and lengthy disputes. The differences between ordinances in terms of objectivity are drastic. A substantial portion of ordinances do not state how fair return shall be determined or use standards that are unworkable and/or circular in the context of a price regulation; thereby virtually assuring that fair return

27 Cushman v. Cotati 415 F.3d. 1027 (2005)

hearings will turn into lengthy debates about what standard should be used and commonly leading to litigation. A less complex example is the difference between an ordinance (and/or implementing regulations) governing the treatment of capital improvements which sets forth the allowable interest rate and the amortization periods for various types of improvements and an ordinance which simply states that cost allowances or rent increases are authorized for capital improvements.

B. Copy Machines Are Poor Tools for Drafting Legislation

Cities should not simply copy ordinances of other jurisdictions. Often provisions from other ordinances are copied verbatim without any understanding of their meaning or implications or how they operate in practice.

C. Automatic Annual Rent Adjustments

Ordinances should provide for automatic annual increases tied to the Consumer Price Index (CPI). The purpose of mobilehome space rent regulations is to prevent excessive rent increases, rather than to stop all rent increases. In the absence of annual rent increase provisions a petition is required for each rent increase. Due to the burdens associated with filing an individual rent adjustment petition the time periods between rent increase petitions, are usually substantial. As a result, large rent increases are commonly required to cover cost increases and provide growth in net operating income since the last rent increase. At the same time, such increases commonly are shocking to lower income households that have difficulty making ends meet, especially if their incomes are shrinking in real terms. Sometimes rent commissions find that no rent increase or only a small increase is warranted until a park owner moves for judicial intervention and a court finally finds that a large rent increase is required in order to permit a fair return.

There is no single correct answer as to what "automatic" annual increase is the best or fairest policy. There are rationales for no annual general adjustment and for increases ranging up to 100% of the rate of increase in the CPI. To the extent that annual across-the-board increases are below the increases authorized under the fair return standard, the system may become increasingly dependent on rent adjustments through fair return individual hearings.

A significant portion of California's mobilehome space rent ordinances do not include any provisions for annual across-the-board rent increases. In Carson Mobilehome Park Owners Ass'n v. City of Carson, the State Supreme Court ruled that annual across-the-board increases are not constitutionally required. The Court set forth possible rationale for a system of rent increases solely through individual park hearings that allows a rent board to tailor rent increases to the actual operating cost circumstances of a park.[28]

At the same time, there is strong rationale for annual "automatic" increases tied to the CPI

28 35 Cal.3d. at 195 (1983).

which are adequate to allow most owners to realize growth in net operating income without having to make individual rent adjustment applications. Although the CPI might not be a precise measure of operating cost increases, it is seen as an impartial measure which reflects average cost increases and inflation in the overall economy that is not subject to manipulation. Therefore, its results are generally accepted as reasonable. Also, in times of moderate inflation annual increases tied to the CPI are consistent with the objective of preventing excessive increases. In contrast, public commissions commonly face strong pressures to not grant annual increases.

Under ordinances that tie allowable annual increases to increases in the CPI, ceilings and/or floors for those increases are common. Typically the ceiling is 6%.[29] Floors are typically set at 2% or 3%.[30]

D. Vacancy Decontrols, Vacancy Controls and Limited Increases upon Vacancies

Most mobilehome rent ordinances contain vacancy control provisions. Some ordinances allow unlimited rent increases when a mobilehome is sold in-place. After the new mobilehome owner assumes ownership future rent increases are subject to regulation; however, the initial rent is set by the park owner. Under vacancy decontrols, current owners are protected; however, they may lose their equity in their mobilehomes if excessive rent increases are imposed at the time of a sale.

Some ordinances authorize limited increases upon vacancies - typically about 10%. Often the provisions authorizing limited increases upon vacancy, place a limit on the frequency of vacancy increases (e.g. not more than one vacancy increase in a 36 month period); others place a dollar ceiling and/or provide a floor on the amount of the vacancy increases.

29 E.g. Fairfield Municipal Code, Sec. 29.4(d)(v); Petaluma Municipal Code, Sec. 6.50.040.A.2; Sonoma County Code, Sec. 2-193(a)ii.

30 E.g. Contra Costa County has a floor of 2%. (Contra Costa County Code Sec. 540-2.404(a)(1).

Examples of Limited Vacancy Increase Provisions
(Applicable to In Place Sales of Mobilehomes)

City or County	Type of Vacancy Increase Provision
American Canyon	$25 if rent below median, limit to one increase per five year period
Moorpark	the lesser of 5% or CPI increase
Oxnard	the lesser of 15% or $80
Santa Clarita & Vacaville	10%
Sonoma	$50 if rent < $350, 10% if rent > $350
LaVerne & Upland	the greater of $34 or 7%
Ventura County	lesser of 7% or $50

Appendix A

Curriculum Vitae

Kenneth Kalvin Baar, Urban Planner & Attorney
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Education

Ph.D.	1989	Urban Planning, University of California at Los Angeles (Dissertation topic: "Explaining Crises in Rental Housing Construction: Myth and Schizophrenia in Policy Analysis")
M.A.	1982	Urban Planning, University of California at Los Angeles
J.D.	1973	Hastings College of Law, Univ. of California, San Francisco, CA.
B.A.	1969	Wesleyan University, Middletown, CONN. Major: Government

Foreign Languages: French and Italian

Teaching

Visiting Professor, Fulbright Scholar, Polytechnic University, Tirana, Albania (Introduction to urban planning) (2002 and 2003)

Visiting Assistant Professor, Urban Planning Department, School of Architecture, Planning, and Preservation, Columbia University, New York (1994-1995) (courses: planning law, introduction to housing, comparative housing)

Visiting Professor, Fulbright Scholar, Budapest University of Economic Sciences (Sept. 1991- June 1993)

Instructor, San Francisco State University, Urban Studies Program (1983-1984)

Short courses, Series of lectures

Technical University of Budapest, Planning Department Series of lectures Professional Extension Courses and Undergraduate Courses (1991-1992)

Kiev University Law School, real estate law (1992, one week course)

Warsaw Technical University, Planning Department, urban planning (1992)

Netherlands Ministry of Housing (1997)

Projects: 1980-2008

Consultant to California cities (Azusa, Capitola, Carpenteria, Carson, Ceres, Citrus Heights, Clovis, Cotati, Escondido, Fremont, Fresno, Healdsburg, Milpitas, Modesto, Montclair, Oceanside, Palmdale, Palm Desert, Riverbank, Rohnert Park, Salinas, San Marcos, Santa Rosa, Santa Cruz County, Santee, Simi Valley, Sonoma, Vallejo, Ventura, Watsonville, Yucaipa) on mobilehome park policies. (1980-present)

Co-author and Co-editor of Book "Urban Planning in a Market Economy" for Publication in Albania (2003-4)

Institute of Transportation and Development Policy (New York City), Preparation of study on European policies governing location of shopping malls (2002)

Open Society Budapest (Soros Foundation), Preparation of study on contracting out of public services and freedom of information in Czech Republic, Romania, and Slovakia (2000-2001)

Consultant to World Bank (Budapest office), Preparation of studies on municipal contracting out of public services in Hungary and on policies for the provision for the provision of district heating (1998-2000)

Urban Institute, U.S. Aid for International Development (A.I.D.) funded technical assistance, Hungarian Subnational Development Project (1998 & 1999)

Consultant, Institute for Transportation and Development Policy, to East European Organizations on Transportation Policies (1997-98)

Studies for the Golden State Mobilehome Owners League on Issues Related to Mobilehome Ownership and Statewide Referendum on Mobilehome Owners Rights (1995-96)

U.S.A.I.D. funded technical assistance to Albanian Ministry of Construction (Sept. 1993-March 1994)

Consultant, East European Real Property Foundation, (U.S. A.I.D. funded), development of education and training in Hungary (July 1993)

Study of Hungarian Land Use Regulations (1992, publication and technical assistance sponsored by Urban Institute, Wash. D.C.)

Report for Hungarian Ministry of Justice, Comparison of Landlord-Tenant Law in France, United States, and Hungary (1992, funded by Urban Institute, Wash. D.C.)

Consultant, City of Santa Monica, Cal., Incentive Housing Program
Consultant, State of New Jersey Attorney General and Public Advocate, on fair return standards under state statute regulating evictions of senior citizens from condominiums

Studies of Impacts of Local Regulations on Housing Supply, Cities of Santa Monica and Fremont, Cal.

Preparation of a Guide for New Jersey Rent Control Boards on Fair Return Standards and Landlord Hardship Applications (National Housing Law Project)

Research and Writing Articles on Inequalities in Property Tax Assessments (Legal Services Corporation, Washington, D.C.)

Consultant, Peter L. Bass & Associates, Development of Contracts with Developers under the California Coastal Conservancy Lot Consolidation Program

Expert Witness, City of San Francisco, on the impacts of city policies on apartment construction in litigation involving applicability of antitrust regulations

Project Director, survey of merchants and commercial property owners for City of Berkeley, Cal., Planning Dept.

Preparation of apartment operating cost studies for the cities of Berkeley, Santa Monica, and Cotati, California)

Consultant, Real Property Division, First Nationwide Bank on disposition of assets in operations inventory

Assistant (on contract) to Deputy City Attorney of San Jose, California on drafting of environmental and subdivision regulations

Publications

Articles

Baar, "Fair Return Standards Under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches", Real Property Law Reporter, Vol. 29, No. 5, pp. 333-342 (2006)

Baar, "Legislative Tools for Preserving Town Centres and Halting the Spread of Hypermarkets and Malls Outside of Cities" published in Etudes Foncieres (Land Studies) No. 102, pp. 28-34 (March-April 2003, Paris, translated into French); and Falu, Varos, es Regio (Village,Town, and Region), 2003, issue no. 2, pp. 11-22 (Budapest, translated into Hungarian)

Baar, "Contracting Out Local Public Services in a Transition Economy", Review of Central and Eastern European Law, Vol. 25, No. 4, 493-512, September 2000, (Leiden, Netherlands)

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Baar, "The Anti-Apartment Movement in the U.S. and the Role of Land Use Regulations in Creating Housing Segregation", Netherlands Journal of Housing and the Built Environment, Vol. 11, no.4, 359-380 (1996)

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and

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Baar, "The Right to Sell the 'Im'mobile Manufactured Home in Its Rent Controlled Space in the 'Im'mobile Home Park: Valid Regulation or Unconstitutional Taking?", Urban Lawyer Vol. 24, 107-171 (Winter 1992, American Bar Ass'n)

Baar, "The National Movement to Halt the Spread of Multi-family Housing (1890-1926)", Journal of the American Planning Association, Vol. 58, no. 1, 39-48 (Dec. 1991)

Baar, "El Control de Alquileres en Estados Unidos" Estudios Territoriales , Vol. 35, 183-199 (1991, Madrid) ["Rent Control in the United States"]

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Appendix B

Resident Survey Form

Do NOT put your name or address on this survey form

(if a question is not applicable - write "N/A")

SURVEY OF MARINA MOBILEHOME PARK RESIDENTS

1. In what year was your mobilehome manufactured? ____

2. What type of mobilehome do you live in? (check one)
   Singlewide ____
   Doublewide ____
   Triplewide ____

3. What are the dimensions of your mobilehome? Length_____ Width_____

4. In what year did your household move into the mobilehome? ____

5. Before you moved into the mobilehome park where did you live? _____
   City State

6. Before you moved into the mobilehome park where did you reside? (check one)
   apartment rental unit ___
   house you rented ___
   house you owned ___
   condominium you owned ___
   another mobilehome park___
   other (please describe) ___
   _____

7. What was the monthly space rent when your household moved into this mobilehome? $_____

8. What is your current monthly space rent? $_____

9. In addition to the monthly space rent, what other monthly payments do you make to the PARK OWNER? (check those that apply)
   Gas___ Electricity ___ Water ___ Sewer___ Garbage___ Other (list) _____

10. What utilities do you pay for directly to the UTILITY COMPANY? (check those that apply)
    Gas___ Electricity ___ Water ___ Sewer___ Garbage___ Other (list) _____

11. Do you have insurance on your mobilehome Yes ___ No ___

12. If you have insurance, what is the cost per year for the INSURANCE? $_____

13. How much do you pay per year in PROPERTY-TAXES? $_____

14. Does your household own or rent the mobilehome? Own _____
(the home, not the space) Rent _____

15. What was the purchase price of your mobilehome? $_____

16. Did you pay in full (all cash) for your mobilehome? Yes ___ No ___

17. If you did not pay all cash, how much was your downpayment? $_____

18. What is the total mortgage due NOW on your mobilehome, if any? $_____

19. What are your monthly mortgage payments NOW, if any? $_____

20. Including yourself, how many persons live in your mobilehome? _____

21. Please fill in the following information about the adults (persons 18 or older) in your household:

	Age	Employed Full-time	Employed Part-time	Not working	Retired
Household Member #1	__	☐	☐	☐	☐
Household Member #2	__	☐	☐	☐	☐
Household Member #3	__	☐	☐	☐	☐
Household Member #4	__	☐	☐	☐	☐

22. What are the ages of any children in your household?

Child #1_____ Child #2_____ Child #3_____ Child #4_____

23. What was the total income of your household in 2007 before taxes? (please include income from all sources including social security, pension, interest, dividends, and any public assistance)

under $15,000 ____
$15,000 - $19,999 ____
$20,000 - $29,999 ____
$30,000 - $39,999 ____
$40,000 - $49,999 ____
$50,000 - $74,999 ____
$75,000 or more ____

Appendix C

Park Owner/Manager Survey Form

MOBILE HOME PARK SURVEY

1. Park Name _____

2. Name of Contact _____

3. Phone Number _____

4. In what year was the park built? _____

5. How many mobilehome spaces are in the park? _____

6. How many spaces are occupied by:

Singlewide mobilehomes _____

Doublewide mobilehomes _____

Triplewide mobilehomes _____

7. What is the average rent for occupied spaces ? _____

and/or describe the ranges of rents

_____

_____

_____

8. What is the rent for incoming purchasers of mobilehomes? _____

9. Does the park offer lower rents for low income tenants? _____
If yes, please describe the park policy

_____

_____

_____

0. How many residents have entered into leases of one year or more? _____

1. Are incoming residents required to enter into a lease? _____

   a. If yes, what is the length of that lease? _____

2. What are the requirements for mobilehomes that are moved into the park - size, age,condition etc.

_____

_____

3. Does the park own any mobilehomes? _____

   a. If yes, how many? _____

   b. Is the park selling or renting those homes _____

   c. If the spaces are rented, what is the rent
      Including the space and mobilehome rent? _____

4. When did the current owner purchase the park? _____

5. How many spaces are covered by leases of more than one year. _____

f the park has a standard lease please provide a copy

MARINA MOBILEHOME REPORT

Michael St. John, Ph.D.

December 2008

A Report Commissioned by the City of Marina

[The information and opinions presented are the views of the author, not the City of Marina, informants, or any of the stakeholders.]

EXECUTIVE SUMMARY

This report describes economist Michael St. John's findings about mobilehomes, mobilehome park residents, space rents, and mobilehome values in Marina, California. The findings are based on survey responses by residents and park owners, interviews with stakeholders and others involved in the mobilehome market, and mobilehome sales data.

The report is responsive to the Marina City Council's search for information and perspective on mobilehome space rents. It addresses the insecurity some mobilehome residents feel about space rent increases – insecurity triggered by fairly major space rent increases at one Marina mobilehome park in 2007.

The report finds that space rents in Marina are moderate. Space rents in Marina are lower than space rents elsewhere in Monterey County. Space rents in four out of five parks have increased by less than the consumer price index for apartment rents (CPI-Rent) over the past twenty years. Even the relatively high space rents at the highest rent park are not higher than space rents in some parks in Salinas and elsewhere in Monterey County.

The report finds that mobilehome values, on the other hand, have increased in the past twenty years by more than the both the CPI and the CPI-Rent index, such that sales prices in some cases exceed the intrinsic value of the mobilehomes.

Mobilehome values and space rents are inversely related. Leaving market fluctuations aside, high space rents tend to decrease mobilehome values and low space rents tend to increase mobilehome values. To assure market stability, mobilehome values and space rents should be in balance. The report finds that the mobilehome / space rent market in Marina may be out of balance in the sense that increases in mobilehome values have, over the past 20 years, exceeded increases in space rents.

The report concludes with the following recommendations:

1. That the City sponsor a transparent, inclusive process involving all stakeholders in order to work out a cooperative solution to residents' insecurity regarding mobilehome space rents and mobilehome values.

2. That the City, mobilehome park residents, and mobilehome park owners explore the possibility that a renegotiated memorandum of understanding (MOU) and model lease would bring stability and balance to the mobilehome market.

3. That the City abandon the proposal to re-zone mobilehome parks and continue to seek locations for additional mobilehome park space outside the downtown revitalization project area.

4. That the City cover the administrative costs and consider making a matching contribution to a rent subsidy program funded by park owner contributions of 3% of gross space rentals, in order to address the income needs of the lowest-income mobilehome park residents.

EXECUTIVE SUMMARY

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SECTION 1 – INTRODUCTION

1.1 Background

In response to residents' concerns about major rent increases in one mobilehome park, the Marina City Council decided in the Fall of 2007 that it would look into the status of mobilehome residency in the City. Some residents felt at the time that the "Memoranda of Understanding" (MOUs) that had been in place for several years were no longer working, and that Marina should adopt rent control. It was determined that the City would conduct surveys of residents and park owners. Kenneth Baar and Michael St. John were hired as consultants to review the survey results, collect other relevant information, and write independent reports. Baar and St. John would then comment on each other's report and all of this material would be transmitted to the City Council. This is the initial St. John report.

1.2 Key Questions

It may be useful, at the outset, to articulate the questions that the City Council might want to consider in this context. I will address the following questions in the body of the report and summarize the answers in the final section.

1. Are the mobilehome space rents in Marina too high, too low, or about average?
2. Is there a problem about space rents that the City of Marina should address?
3. Are the prices at which mobilehomes are selling reasonable, considering the overall market?
4. Is there an actual or perceived problem that rent control might address?
5. Has something changed from the situation that has prevailed, without rent control, for many years?
6. Are park owners in any way exploiting the "captive" nature of the mobilehome / mobilehome park relationship?
7. Are mobilehome residents more financially challenged than homeowners or apartment dwellers in Marina?
8. Is it possible or likely that space rents in Marina would increase significantly in the foreseeable future as they have in some surrounding communities?
9. How do mobilehome parks fit into Marina's plans for future development, including plans for creating and preserving affordable housing?
10. What might be the effects of rent control on residents, park owners, taxpayers, and the City of Marina?
11. How do the costs of mobilehome residency compare to the costs of living in a single-family home or an apartment in Marina?
12. Are there alternative programs that might balance the market and address financial insecurity more effectively than rent control?
13. Are there mobilehome residents for whom paying space rent is a financial burden?

1.3 Stakeholder Concerns

The space rent topic causes stakeholders to be fearful – for reasons that are understandable.

- **Residents are fearful that space rents will increase so much that they will be forced to leave their homes. Residents are also fearful that, with higher rents, their homes will lose value or that they will be forced to abandon them or sell for salvage value. These fears are understandable, given that this has happened recently in mobilehome parks in other communities in Northern California.**

- **Park Owners are fearful that rent control may come to Marina. Park owners know that rent control routinely "goes too far" by regulating rents so strictly that rents cannot keep up with inflation and by not allowing the pass-through of property tax increases and major improvements. Park owners believe that, under rent control, the values of mobilehomes will increase and the values of parks will fall. Park owners also observe that rent control is administratively burdensome, tends to divide communities into warring factions, and is prone to costly litigation.**

- **City officials are concerned that the administration of rent control would be costly and would take City resources from other needed projects. The City is engaged in several development projects that have the potential – in the words of the City's vision statement – to allow Marina to "grow and mature from a small town bedroom community to a small city which is diversified, vibrant, and ...self-sufficient." A City divided by rent control arguments and burdened by rent control litigation doesn't fit this vision well.**

1.4 Marina, California

A study of housing in Marina should take into account Marina's history and, looking forward, its development plans. Marina was at one time a bedroom and service community linked to Fort Ord. The closure of Fort Ord in 1994 caused major economic dislocations. Marina's population declined at that time by 27%.

Now the City is redefining itself, and has major development plans underway. The City's vision and mission statements say that

> ***"Marina will grow and mature from a small bedroom community to a small city which is diversified, vibrant, and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business***

community in a natural setting."[1]

"The City Council will provide leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure."[2]

Among the ambitious projects now under consideration or in development are:

- a downtown revitalization project
- several major development projects including housing, retail space, office space, civic facilities, parks, and open space
- further expansion of CSU Monterey Bay

It is anticipated that the population of Marina (25,101 in 2000) may double in the coming 25 years.

The Housing Element of the Marina General Plan puts significant emphasis on the development and preservation of affordable housing. The City has enacted or is in the process of enacting "inclusionary zoning" – a requirement that 20% of new housing be affordable to low and moderate income residents. The City is also ensuring affordability by planning for smaller homes on smaller lots, townhouse residences, and apartments, all of which would be "affordable by design" and therefore more affordable than large single family homes on standard size lots.

Marina's Housing Element addresses mobilehomes in two sections:

- Policy 2, Program E proposes that additional land will be zoned for a new mobilehome park.

- Policy 6, Program A proposes that the land under existing mobilehome parks be re-zoned so that mobilehome park is the only allowed use.

The City hasn't taken steps to reserve vacant land for mobilehome park development, but the City seems to be moving forward on the plan to freeze existing mobilehome space in perpetuity. It would appear, however, that this intention conflicts with some of the goals of the downtown revitalization project. Two parks, El Rancho and Marina Del Mar, are within the Downtown Specific Plan area. Both are within a few hundred feet of Reservation Road and therefore might someday be better used for more intensive development. Leaving the zoning as it is wouldn't by itself cause more intensive development of this prime downtown land, but it would leave open that possibility. Nothing is forever in this world.[3]

---

[1] Vision Statement, Marina City Council Resolution 2006-112, May 2, 2006.
[2] Mission Statement, Marina City Council Resolution 2006-112, May 2, 2006.
[3] Marina's General Plan, in an earlier version, mentioned the land under the downtown mobilehome parks as appropriate for commercial development, but that section was deleted in a later version of the General Plan.

1.5 The Mobilehome Parks in Marina

There are five mobilehome parks in Marina. Three are senior parks. Two have no age restrictions. Four parks are clustered in the downtown area off Reservation Road. One is at the northwest end of town on Del Monte. All of Marina's parks were built about fifty years ago, long before Marina saw itself as a future city or engaged in meaningful city and regional planning. Three have a clubhouse but no pool. Two have a pool but no club house. One has street parking; four have off-street parking. Marina's parks are moderate in size, ranging from 61 to 96 spaces. Marina's mobilehome parks have a total of 396 spaces that house approximately 721 people. Information regarding Marina's mobilehome parks is summarized in the following table.[4]

MARINA'S MOBILEHOME PARKS												
PARK	OWNER	senior	all age	spaces	single wide	double wide	triple wide	year built	purchase date	club house	street park	pool
Cypress Square	Albert Vieira	X		87	8	76	3	1961	1993	yes	no	no
347 Carmel Ave.												
El Camino	Albert Vieira		X	61	14	47	0	1962	2002	yes	no	no
3320 Del Monte												
El Rancho	Michael Tate	X		96	78	18	0	1958	1958	yes	no	no
356 Reservation												
Lazy Wheel	Ken Waterhouse		X	69	40	29	0	1965	2007	no	yes	yes
304 Carmel Ave.												
Marina Del Mar	Bill & Sue Denhoy	X		83	58	24	1	1958	2005	no	no	yes
3128 Crescent												
	total:			396								

Source: Marina Park Owners' Survey

[4] The information comes from responses to the Park Owners' Survey, Appendix 2.

1.6 Organization of this Report

The report is organized into six sections:

1. Introduction
2. The Mobilehome / Mobilehome Park Arrangement
3. Mobilehome Rent Control
4. Alternative Solutions
5. Space Rents, Home Values, and Mobilehome Affordability in Marina
6. Conclusions and Recommendations

Section 2 explains the legal and economic arrangements governing mobilehome residency, and sets out the dynamics underlying the insecurity residents feel about space rent increases.

Section 3 discusses mobilehome rent control as a possible solution to residents' insecurity about space rents and home values.

Section 4 lists alternatives to rent control that can address space rent insecurity.

Section 5 describes findings regarding mobilehomes, mobilehome residents, space rents, and mobilehome values in Marina.

Section 6 sets out conclusions and recommendations following from the analysis.

SECTION 2 – THE MOBILEHOME / MOBILEHOME PARK ARRANGEMENT

2.1 Mobilehome Parks – Historical Overview

Some mobilehome parks in California were built intentionally as mobilehome parks, but many are parks by accident, so to speak. These parks were originally developed for mobilehomes as a transitional use, much as vacant land in cities is often used for car and truck parking while development plans are in process. It was assumed in these cases that the land would be used for mobilehome housing for a time and then further developed at some point in the future. Many parks were built under this assumption with conditional use permits. Utilities in these cases were installed by the parks themselves, not by PG&E, and not to PG&E standards. Similarly, roads within parks were often built to lower standards than other city streets. Cities for many years disfavored mobilehome parks because some parks tended to be run-down and because mobilehome parks didn't add much to the tax base.

But cities then came to understand that mobilehome parks serve usefully as affordable housing for low-income residents. For the last 20 years or so, cities have paid attention to affordability of housing, and in this context mobilehome parks have come to have a more valued place among cities' housing resources. Cities today are therefore reluctant to see mobilehome park land developed more intensively. Some cities even take the additional step of re-zoning mobilehome park land from general residential use to mobilehome park use, making intensive development more difficult or impossible.[5]

The problem is that mobilehome parks, if they are to provide permanent housing, need large investments in critical infrastructure: utilities, roads, sewer systems, and so forth. But the cost of these investments will have to be met somehow, and this requirement doesn't match the need for affordable housing. "Affordable" rents, valued for that reason, don't support the investments that will be needed to upgrade the crumbling infrastructures within many mobilehome parks. This is a problem that cities and counties need to consider thoughtfully as they craft workable affordable housing policies.

2.2 Space Rents – What's At Issue?

The economics of mobilehome residency rests critically on the interaction of rents and mobilehome values. The mobilehome park arrangement is unique among housing alternatives in that the resident owns the home but rents the land. Owners of single family homes own the land <u>and</u> the home. Apartment renters own neither. Condominium owners own their condominium and own the underlying land jointly with other condominium owners. In a mobilehome park, in contrast, the resident home owner owns the home but the park owner owns the land. The split ownership in the case of mobilehomes in mobilehome parks raises some sticky issues.

Economic theory explains that mobilehomes and the pads they sit on are "complementary goods"

[5] The City of Santa Cruz, for example, enacted restrictive mobilehome park zoning along with restrictive mobilehome rent control. The rent control program proved unworkable and was repealed. The zoning restriction has not prevented the largest park from gentrification and loss of affordability.

that have to be used together to be useful. Homes without a pad or a pad without a home are basically useless. It is the combination that is useful. The combination (a mobilehome on a pad) provides housing just as single-family homes, apartments, and condominiums provide housing. The combination is provided jointly by home owners, who pay for the homes themselves, and by the park owner, who pays for the land, streets, utility systems, and other infrastructure elements. The total combined home owner investment in the homes in a park is typically on the same order of magnitude as the investment of the park owner in the park itself.

The total housing payment that residents will be willing to make for an apartment is its rent. The amount that residents will be willing to pay for a single family residence is the sum of the mortgage, the property taxes, and other costs of homeownership. The amount that residents will be willing to pay for a condominium is the sum of the mortgage, the homeowner association dues, property taxes, and other costs of ownership.

The amount that residents will be willing to pay to live in a mobilehome park is the sum of the mortgage, the rent, and other costs of ownership. In the most basic terms, living in a mobilehome park involves payment of rent and purchase of the mobilehome. It is logical that when the rent is low, more can be paid for the mobilehome. Alternatively, as the rent increases, less can be paid for the mobilehome. A mortgage payment of $300 per month plus a rent of $400 per month, for example, sums to total monthly housing payments (ignoring insurance, property taxes, utilities, and the cost of maintenance) of $700 per month. If the home is worth more, and therefore has a higher mortgage, but the rent is lower, the combination could also be $700. Likewise, if the home is worth less, and has a lower mortgage, but the rent is higher, the combination could still be $700. A new resident wouldn't care, presumably, about the mix, only the total. This dynamic can become problematic in two ways.

1) If the park owner raises the rent, the values of mobilehomes in the park will fall.

2) If rent control lowers the rent, the values of mobilehomes in the park will rise.

The rent–value tradeoff also impacts the park owner. The values of income-producing assets (like apartment buildings and mobilehome parks) are dependent on the rents. If rents increase, the value of the park increases. If rents decrease, the value of the park decreases. Therefore,

1) If the park owner can raise the rents, the value of the park will rise.

2) If rent control lowers the rents, the value of the park will fall.

So we see that rent levels affect mobilehome owners and park owners in opposite ways. If rents rise, the value of the park rises and the values of mobilehomes fall. If rents fall (because of rent control, for example), the value of the park falls and the values of mobilehomes rise.[6]

[6] Space rents don't often actually fall. In an inflating economy, rent increases less than inflation are equivalent to rent decreases. Rent control doesn't usually lower rents. Rent control prevents rents from increasing overmuch. When rent controls are too restrictive, they force the real, inflation-adjusted value of rents to decline. It is in this sense that rents can be said to "fall" under rent control.

The relationship between rent and value is explained in economic theory by the concept of "capitalization". Rents (adjusted by expenses) are the "return" that can be achieved by a productive asset. As rents increase (or decrease), the value of the asset increases (or falls). Changes in rent are said to be "capitalized" into the value of the asset. Asset value, in other words, reflects changes in the rents (the return). The ratio between return and value is known as the "capitalization rate", often called "cap rate" for short. Cap rates vary over time. If the cap rate is 8% and the expense ratio 30%, for example, a rent increase of $100 per month would lead to an increase in value of $10,500.[7]

But rent adjustments have opposite effects on mobilehomes and mobilehome parks. Leaving other influences aside, rent increases will tend to decrease the value of mobilehomes but increase the value of parks. Conversely, rent decreases will tend to increase the value of mobilehomes but decrease the value of parks.

In recent years the capitalization rate has been unusually low, suggesting that, today, a rent increase of $100 per month would cause the value of mobilehomes to fall and the value of the park to rise by something like $20,000 per space. Conversely, rents that are below market by $100 per month would cause the value of mobilehomes to rise and the value of mobilehome parks to fall by something like $20,000 per space.[8]

This being so, it is clear why mobilehome owners and park owners feel so strongly about what space rents should be. It is also clear why mobilehome owners urge cities and counties to adopt rent control and why park owners oppose the imposition of rent control. Since rent levels affect the values of the mobilehomes and of mobilehome parks, rent levels are especially meaningful in the mobilehome context.

The rent-value dynamic doesn't exist in the case of apartments. The costs of moving from one apartment to another are relatively low. If the property owner raises the rent above the rent charged for similar apartments, tenants will move out. This imposes market discipline on property owners. An owner who increases rents too much will end up with a vacant building.

It is true that apartment rent control, by lowering the rents of apartments, can lower the value of apartment buildings, just as mobilehome rent control can lower the value of a mobilehome park, but California state law now says that, even when there is local rent control, apartment rents may rise to market on vacancy.[9] The impact of rent control on the value of apartment buildings is muted by vacancy decontrol. Rents always return to market levels eventually.

In the case of mobilehome parks, in contrast, the cost of moving is high. It has been said that the cost of moving and setting up a typical mobilehome is $10,000 or more. In addition, and more important, is the fact that there is nowhere to move a used mobilehome to in most cases. Most

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[7] Rent of $100 per month implies net income of $70 per month, which implies net income of $840 per year. $840 / .08 = $10,500.

[8] The capitalization hypothesis has been addressed in several studies. See St. John (1989), Mason and Quigley (2007), Hirsch and Hirsch (1988), and Zheng and Dale-Jorgenson (2007).

[9] The Rental Housing Act of 1995, otherwise known as "The Costa-Hawkins Act", mandates vacancy decontrol for all jurisdictions that control apartment rents. Costa-Hawkins doesn't apply, however, to mobilehome rent control.

parks are full, and when there is a vacant space, most park owners will only accept a new mobilehome. The option of moving the mobilehome when rents are raised too much is therefore not realistically available to mobilehome owners. And the option of moving out, leaving the mobilehome behind, is constrained by the fact that higher rent lowers the value of the mobilehome, so that mobilehome owners face the prospect of losing a portion of the value of their home if they move out and sell the home when the rent increases. It can be said that mobilehome owners are "captive" in this sense, or that the park owner, for these reasons, has a kind of "monopoly power".

Rent control also works differently for mobilehomes. The state law that says that the rent on rent controlled apartments may go to market on vacancy doesn't apply to mobilehomes. Therefore cities and counties that impose mobilehome rent control can, and usually do, include vacancy control. Under mobilehome rent control, residents can lobby government for lower rents and for vacancy controls. To the extent that they are successful, residents add to the value of their homes and, at the same time, limit the value of the park. This means that, in rent controlled jurisdictions, the park owners are in this sense "captive" and that the residents, with the help of the jurisdiction, have a kind of "monopoly power".

So here is the relevant question: Can we devise ways to retain the freedom and protect the investments of both parties, mobilehome owners and park owners? Can we arrange a system that prevents excessive rent increases that remove the value of mobilehomes and at the same time prevents the excesses of rent control that deprive park owners of a fair return on their investment or lower the value of parks?

2.3 Examples Of Sudden, Excessive Rent Increases.

Residents' concerns about rent increases that might make space rents unaffordable and decrease the value of their homes are not altogether irrational. There are striking examples not so far distant from Marina.

The Monte del Lago mobilehome community is about five miles north of Marina, in Castroville. The 310-space park was purchased in 1997 by Equity Life Style Properties (ELS), a company that owns many parks and retirement communities nationwide. ELS raised rents significantly soon after purchase, and has indicated that additional increases will be announced. The residents asked the county to enact rent control, but the county declined, citing likely costs of litigation. The Monterey County Housing Authority explored the idea of buying the park, but it was determined that this was not feasible. It is said that rent increases at Monte del Lago have caused many residents to leave the park. The increases are also said to have caused the values of mobilehomes at Monte del Lago to fall significantly.[10]

Mobilehomes in De Anza Mobilehome Park in Santa Cruz, another park owned by ELS, have also been subjected to large rent increases. Santa Cruz had rent control since 1992. Space rents varied from $400 to $750 – a bargain considering the location and quality of the park. ELS

[10] These effects are anecdotal. A detailed study of the effects of rent changes at Monte del Lago would add to our understandings about the relationships between rents and value.

brought a lawsuit asserting that the prices at which homes changed hands - $150,000 to $400,000 for older mobilehomes – included a huge "premium" based on rent control. Homeowners, in effect, were selling the park owner's property, according to ELS. The rent control ordinance included price controls on the sale price of mobilehomes, but residents routinely bypassed the sale price restrictions, and the City didn't enforce those restrictions effectively. When the legal costs approached $1 million, the City negotiated an arrangement with ELS whereby current residents would receive moderate (controlled) rent increases for 34 years, but there would be no control on the rents when current residents left. Rents on vacancy are said to be set now at $3,000 to $5,000 depending on location in the park. Needless to say, with rents like that, mobilehome values are probably near zero.[11]

These examples – and there are others around the state – worry mobilehome residents in Marina and elsewhere. Residents' concern is understandable. But we need to bear in mind that De Anza and Monte del Lago are superlative, luxury parks in extraordinary locations. De Anza is located on a bluff above the ocean within walking distance of downtown Santa Cruz. Some homes there have ocean views. Spaces are large. The setting is peaceful. Monte del Lago feels more like a gated community of single family homes than a mobilehome park. These two parks have more amenities and a far more exclusive ambiance than any of the mobilehome parks in Marina. Many homeowners at De Anza and Monte Del Lago live elsewhere, using their California mobilehome as a second home. It seems unlikely, for these reasons, that huge rent increases would ever be imposed at Marina's mobilehome parks. The market wouldn't support excessive space rents in Marina. The fear that what happened at De Anza and Monte del Lago will happen at Marina's parks, although understandable, is without foundation.

2.4 Examples Of Rent Control Programs That Go Too Far

One also doesn't have to look far to find rent control programs that "go too far".[12] Almost all do. A few miles north of Marina, Santa Cruz County has a particularly restrictive form of rent control. Rent increases in Santa Cruz County mobilehome parks are restricted to 50% of the CPI (Consumer Price Index). That means that the income that park owners receive can't keep up with inflation. But the costs of streets, taxes, repairs and so forth continue to grow at the full CPI. Santa Cruz County has 100% vacancy controls. No rent increase is allowed on vacancy. So park owners in Santa Cruz County watch helplessly while their net incomes decline, year by year. Space rents are in the $200 - $300 range, far below market for Santa Cruz County, and the values of mobilehome parks in the county are frozen or declining.

Meanwhile, as one would expect, mobilehome values in Santa Cruz County are high and rising. Protected by rent control, mobilehome owners enjoy major increases in the value of their homes. Many homeowners in Santa Cruz County rent their mobilehomes to others, making a profit because although there is rent control on the space they rent from the park owner, there is no rent

[11] The scope of this study didn't allow detailed investigations of communities outside of Marina. The outfall from the end of rent control at De Anza would be a fitting topic of further research.

[12] The phrase "go to far" has special meaning in discussions about economic regulation. First used in a case known as Pennsylvania Coal Co. v. Mahon in 1922, the phrase means that controls which are permissible if they are reasonably limited may, if they "go too far", violate the Takings Clause of the US constitution. See Manheim, p.5.

control on the rent they receive from their tenants.

This situation in Santa Cruz County is clearly out of balance. It is also unstable. Some park owners sue. There has been lots of litigation involving mobilehome parks in Santa Cruz County. Some park owners are said to be planning to close their park permanently. Other park owners are simply buying up the mobilehomes in their own parks, one by one, and then renting them out. Since there are no controls on the rental of mobilehomes, park owners can buy their way out of rent control in this way. Once they do that, the mobilehomes rent for market rents and mobilehome residency loses its affordability. Santa Cruz County has been buying parks itself, but it is not clear that this is a workable solution long-term, or that Monterey County or the City of Marina can afford to do that. The mobilehome situation in Santa Cruz County is fundamentally unbalanced and therefore, in the long run, unsustainable.

2.5 Balanced Space Rent Increases. If space rent increases can sometimes be too high and sometimes too low, what space rent increases would be balanced? What space rent increases would be fair to residents and park owners simultaneously?

- **Space rents must increase at the CPI (the consumer price index) or a bit more than the CPI to cover extraordinary cost increases. Space rent increases below the CPI are really space rent decreases. Space rent decreases lower the value of parks, which is (or should be) impermissible.**

- **Space rents must also (in addition) cover increases in governmental fees and taxes, including property tax increases following the sale of a park. Traditionally, under free market conditions, space rents have been increased to cover these sorts of cost increases.**

- **Space rents must also (in addition) cover major capital improvements. There is no basis for believing that major infrastructure improvements can be handled within the existing rent structure. Traditionally, under free market conditions, space rents have been increased to cover major capital costs.**

2.6 Balanced Mobilehome Values.

The true values of mobilehomes are hard to identify and often disputed. Park owners in rent-controlled jurisdictions often claim that home values are inflated – that homeowners capture and sell part of the value of the park when mobilehome values are high. This is possible, park owners say, because buyers are willing to pay more for a home with low, controlled rents. The prices at which mobilehomes sell in some communities far exceed the intrinsic value of the physical mobilehome. The extra value – value above the intrinsic value of the home alone plus the value of placement on the lot - is called "the rent control premium" or simply "the premium" in these discussions.

Mobilehome owners whose rents are not restricted by rent control, on the other hand, often claim

because rents are stabilized during their occupancy. Mobilehome owners in a vacancy decontrol program would enjoy the stability of rent control for the duration of their tenancy. But homeowners under a decontrol program would not be able to sell their home for more than its intrinsic value when they leave. When residents leave, the home would sell for its actual, un-inflated value or, if it is old and in poor condition, for its salvage value. The second-generation mobilehome owners would therefore be able to buy the old mobilehome at an affordable price (or purchase and install a new mobilehome at its fair value) and enjoy the advantages of stabilized rent from the purchase date forward.

Mobilehome rent control with vacancy control, on the other hand, cannot be expected to serve as affordable housing. The first generation homeowner will enjoy the advantage of stabilized rent during his or her occupancy and, in addition, will be able to sell the mobilehome with the rent control premium attached when he leaves. This means that the second-generation mobilehome owner (the buyer) will pay a premium for the home, such that the home is not "affordable" in any meaningful sense to the second-generation buyers. The affordability advantage of controlled rents is offset completely by the increased cost of purchase.[18] Indeed, affordability is decreased by rent control because buyers need to come up with larger down payments for the more expensive homes. Larger down payments may make ownership difficult or impossible for low income households.

Municipalities that adopt rent control, thinking that they are preserving affordable housing, should consider that they may be protecting one generation of homeowners but burdening the next generation of homeowners. If the intent is permanently affordable housing, rent controls should not survive vacancy. Rent control with vacancy control will assist the homeowners in residence at the time the regulations are imposed, but will not assist future generations of homeowners. Indeed, rent control with vacancy control will reduce the affordability of mobilehome housing.

3.3 The Abandonment Of Rent Control

For both political and practical reasons, abandoning rent control, once it is initiated, is extremely difficult. Year by year, as space rents are constrained below market by rent control, the values of mobilehomes in the park increase. Over time, residents become used to this and consider the value to be theirs by right. Some new residents, relying on rent control to keep rents low, buy older homes at prices far above their intrinsic value. Those mobilehome owners have invested hard cash in reliance on rent control. If rent control were to be abandoned, they would lose their investments because the value of their homes would fall as the "premium" was returned to the park owner. No wonder mobilehome owners resist the abandonment of rent control. No wonder rent control becomes a part of the political culture in jurisdictions that adopt it.

Nevertheless, pressures rise, and there are communities that have found a way to abandon rent

[18] That the rent discount is completely capitalized into increased mobilehome value has been established by several economic studies. See Hirsch & Hirsch (1988), St. John (1989), Mason & Quigley (2007), and Zheng and Dale-Jorgenson (2007) in the bibliography. For example, "The effect of lower mandated rents to consumers is offset by the higher purchase prices of mobilehomes". Mason & Quigley, page 205.

control. Most often, abandonment is gradual, allowing space rents to go to market upon turnover, but allowing current residents to remain in their homes paying controlled space rents for their lifetime. This is what happened in Santa Cruz when the costs of litigation became too much for the City. A deal was struck with the owner of De Anza Mobilehome Park whereby rent control was phased out. Current residents could stay for up to 34 years with controlled rents. But upon their departure, the rents could go to market. This is called "sunset" or "phase-out".

Alternatively, communities sometimes replace rent control with a model lease backed by a memorandum of understanding. Such arrangements ensure that rents won't increase dramatically, but that park owners will be able to increase rents to cover cost increases over time. This happened in Hollister and Ontario, for example.

California communities that have repealed rent control include the following:

- Napa (1985)
- Westminster (1985)
- Los Angeles County (1994)
- Delano (1994)
- Cotati (as to apartments, 1996)
- Hayward (as to apartments, 1990)
- Hollister (1994)
- Arroyo Grande (1998)
- Ontario (1999)
- Santa Cruz City (2003)

It is likely that the list will grow as communities come to understand that rent control is not as simple as it seems, that it is an inherently imbalanced arrangement, and that it causes problems that grow over time, threatening the stability of the mobilehome / mobilehome park arrangement.

that a part of the value of their home is confiscated when rents are increased. It is true that mobilehome values will tend to fall when rents are increased significantly. There are examples (Santa Cruz, Castroville) where this has happened dramatically.

The controversy about values is made more complex because mobilehome values respond to the market as well as to intrinsic value, condition of the home, and rent levels. In-place mobilehome values increased between 1998 and 2006 partly because the housing market generally was experiencing high inflation at that time. Similarly, in-place mobilehome values are decreasing today along with the entire housing market. The values of single-family homes in Marina have fallen by 30 or 40% in the past two years. It is possible that mobilehome values are not as volatile as the values of single family homes, but the current downturn seems to have affected the values of mobilehomes as well.

Over long periods, the value of mobilehomes should increase by no more than the inflation rate. If space rents increase and home values both increase at the inflation rate, the balance between the investments of residents and park owners is maintained. If space rents increase by less than inflation, it is likely that home values will increase by more than inflation and that the value of the park will increase by less than inflation. Conversely, if space rents increase by significantly more than inflation, it is likely that home values will decrease or will increase by less than inflation, while the park value will increase by more than inflation. Either outcome is unbalanced and in the long run unstable.[13]

Since the sum of homeowners' investments in their homes is in many parks roughly equal to the investment of the park owner in the park itself, it makes sense that homeowners and the park owner should share in any appreciation that the housing market allows. Over time, on average, with fluctuations, the housing market has appreciated over recent decades at slightly more than the inflation rate. Balance will be preserved if space rents increase at slightly above the inflation rate. Space rents increasing in this way will probably allow both mobilehomes and mobilehome parks, assuming that they are well-maintained, to appreciate slightly above the inflation rate.[14]

[13] Some believe that mobilehomes invariably depreciate and that all increases in value should accrue to the land. But it is apparent in rent controlled and non-rent controlled situations that mobilehomes that are well-maintained commonly do appreciate. Historically categorized as vehicles, mobilehomes today are more like real estate. It seems appropriate, therefore, that mobilehome owners have access to inflation adjustments in the value of their homes.

[14] The prescription "slightly above the inflation rate" reflects the fact that urban and coastal land is a scarce resource that becomes more valuable over time. It also reflects the fact that space rents in many parks reflect the temporary nature of the original infrastructure installations in many mobilehome parks. Space rents may have to increase at somewhat more than the inflation rate in order to make possible important infrastructure improvements if these temporary installations are to be considered permanent.

SECTION 3 – MOBILEHOME RENT CONTROL

3.1 Mobilehome Rent Control In California

There are about 105 cities and counties that control mobilehome space rents in California. There are more than 400 cities and counties with mobilehome parks that don't control space rents. Most jurisdictions in California have no rent control. Of the 5,733 mobilehome parks in California 1,561, or 27%, are rent-controlled. The rest are free market. Of the 379,815 mobilehome park spaces in California, 149,791, or 39.4% are rent-controlled. Most mobilehome spaces in California are free market.[15]

Rent control, in most locations, is not necessary. Mobilehome residency works perfectly well in the hundreds of jurisdictions, thousands of parks, and tens of thousands of mobilehome spaces that have no rent control. There was a rush to institute rent control programs in the late 1970s through the early 1990s. Rent control – a new program that promised something for nothing - was popular at that time. Thereafter, there have been a few jurisdictions that added rent control and several that abandoned it. It is now better understood that rent control is not a balanced solution because it addresses the concerns of residents without addressing the concerns of park owners. More and more frequently, cities and counties that consider these questions are looking for solutions that meet the needs of all stakeholders. More and more often, rent control is understood to be a heavy-handed, one-sided, divisive approach that causes civic conflict, is expensive, and doesn't always keep space rents down. The space rents in rent-controlled Salinas, for example, are higher than most space rents in Marina.

A key problem with rent control is that it is subject to political pressure. In theory, it would be possible to structure rent control programs that would meet the needs of park owners and mobilehome owners simultaneously. But with remarkable consistency, rent control programs tend to "go too far". Most rent control programs are written from a pro-tenant viewpoint. Programs that are balanced on inception tend to be revised over time in an unbalanced direction. When economic rights become a political matter, it is just too easy for things to slip out of balance. There are, after all, many more mobilehome owners than there are park owners. So local political pressure tends to lean toward residents. Park owners are few in number, sometimes don't live in the same community, and therefore often have no effective voice. It is not surprising that rent control programs too often address the needs of mobilehome owners but neglect the legitimate needs of park owners, and thus, in the end, imbalance the market.

An example (among many) of the pro-tenant drift of rent control is the Santa Cruz County rent control ordinance. Passed in 1982, the ordinance was moderate, providing for 100% of CPI and allowing reasonable increases to cover unusual cost increases. The ordinance was amended 19 times over the next twenty-five years – almost always to make it more restrictive. The ordinance now allows space rent increases covering only 50% of CPI, allows almost no pass-throughs (extra increases to cover unusual cost increases), and controls rents strictly on vacancy. As a result, space rents in Santa Cruz County are in the $200-$300 range, far below market rents for

[15] These figures are based on 1990 Census data and a Housing and Community Development Department (HCD) report dated 10/26/93 and are therefore a bit out of date. The number of mobilehome parks has not changed much since the 1990s, however, so the numbers today are likely not far different from these numbers. Some communities have added rent control since 1990. Other communities have abandoned rent control since 1990. The percentages haven't changed much.

Northern California.

Another problem with mobilehome rent control that will eventually become critical is that the mobilehome park infrastructure deteriorates over time. Park owners are required to maintain services, but park owners under rent control don't have the ability or incentive to replace ageing infrastructure. Septic systems, roads, and utilities get old and are subject to failure. Park residents typically argue against the pass-through of the costs of capital improvements. Park owners therefore patch and repair instead of replacing or upgrading. Many parks, for example, were built with 30-amp electrical systems. We all use far more energy than that today. But park owners under rent control can't afford to upgrade to 100 amp service. Similarly, many parks are served by failing septic systems, but park owners can't afford to upgrade or to connect to public sewer systems.

Santa Cruz County bumped into the infrastructure problem recently. Having acquired Pleasant Acres Mobilehome Park for $7 million in 2003, the county then found that it cost an additional $4 million to make needed infrastructure repairs. What seemed like a good opportunity to secure 65 units of affordable housing at a reasonable price turned out to cost far more than the County anticipated: $108,000 per space initially and then $62,000 per space in infrastructure upgrades, bringing the cost of each space to $175,000. If this were to be realistically covered by space rent, the rent would have to be something like $1,500 per month – completely incompatible with the affordability goal. It is clear that the taxpayers will be subsidizing the rents of Pleasant Acres residents for a long, long time.

Another problem with rent control is that the rent control subsidy is not targeted. There is no "means testing". Rent control benefits all residents, whether or not they need assistance. It usually benefits even those mobilehome owners who live elsewhere and rent their mobilehome or use it as a vacation home.[16] Many residents can well afford market rents. Some other residents have limited incomes. Rent control, a blunt instrument, doesn't distinguish between these groups or target assistance to those who need it. Other assistance programs, like the Federal rent subsidy program known as Section 8, the food stamp program, and Medicaid, are much better at targeting assistance to those in need.

Rent control programs tend to dominate local politics. Cities with rent control often become polarized into divided camps. This is particularly true in cities with apartment rent control, like San Francisco, Santa Monica, West Hollywood, and Berkeley, but it is also true in some mobilehome rent control communities, like Escondido and Carson. Rent control is a pocketbook issue that arouses passionate advocacy. Many communities prefer to steer clear of rent control in order to avoid these kinds of partisan battles.

Rent control programs are also expensive. Leaving aside the costs of litigation, a rent control program in Marina would cost something like $250,000 in administrative costs each year. It could cost much more than that. This would put pressure on a City budget that is already tight, if

[16] Some mobilehome owners in Marina use their mobilehome as a second home. Unfortunately, the survey didn't ask this question, so we don't know how many. It is probably not a high proportion, but some think it might be as high as 10%. Most parks prohibit rental of mobilehomes by mobilehome owners, but rentals occur sometimes nevertheless.

the City covered the cost. The costs might be charged to park owners through registration and petition fees. If so, it would be normal to allow the fee or a part of the fee to be passed through to residents in the form of rent increases or a rent surcharge. Fair return principles command that, under rent control, rent control fees that park owners pay are costs that deserve compensation. One way or another, the residents are likely to end up paying at least part of the fee. This would add to the cost of mobilehome residency, undermining the affordability goal.

And then there are the costs of litigation. Rent control has caused an enormous amount of litigation in the past three decades. The legal principles underlying rent control are complex and unsettled, so the same issues are litigated again and again in different forums.[17] The cost of litigation has caused several cities to give up on rent control. The most recent example of this is the City of Santa Cruz, which abandoned its rent control program in 2003 because the costs of litigation became unsupportable. Another example is Hollister, where protracted litigation caused the City, its residents, and the park owners to agree on a model lease program that replaced rent control in 1994.

The most basic issue with rent control is that it burdens a few individuals (park owners) with subsidies that should be paid for by the entire community. Other housing assistance programs, like Section 8, Shelter Plus Care, and first time homeowner programs, are paid for by the taxpayers. The burden is widely spread and shared by all, as public burdens should be. With rent control, the financial burden of public assistance is shifted to park owners alone. Rent control programs are therefore on weak ethical grounds. Forcing park owners to underwrite rent subsidies so that the community can address a perceived problem with affordability is fundamentally unfair and therefore inherently unstable.

This is not to say, however, that communities should not address the economic insecurity that attends mobilehome residency. It is understandable that residents would request rent control when they feel threatened by actual or potential rent increases. There is inherent tension between park owners' ability to increase rents and residents' investments in their homes. Any of us would prefer economic security to economic insecurity, especially at a time when the economy is unusually unsettled. But rent control is not the only and may not be the best solution to the bilateral insecurity that accompanies the mobilehome arrangement. It is appropriate for cities such as Marina to listen carefully to residents' and park owners' concerns and to explore ways to bring balance to the marketplace.

3.2 Mobilehome Rent Control As Affordable Housing

Mobilehome rent control is often supported by the claim that it supports the affordability of mobilehome residency. But this is not always so. Whether mobilehome rent control will provide affordable housing long term depends on whether or not rents are controlled or decontrolled on vacancy.

Mobilehome rent control with vacancy decontrol can be expected to assist current residents

[17] A comprehensive summary of the issues involved in rent control litigation is to be found in Karl Manheim's article (see Bibliography).

SECTION 4. ALTERNATIVE PROGRAMS

That rent control is expensive, untargeted, unbalanced, and polarizing does not mean that there is nothing that communities can do to alleviate space rent insecurity. Here are some of the alternatives that communities in California are exploring.

4.1 Model Leases: More and more communities are looking into a cooperative alternative – model leases negotiated among residents, park owners, and local government. These leases provide protections similar to protections provided by rent control without succumbing to rent control's tendency to be one-sided, to "go too far", or to become gradually more restrictive. Model leases, unlike rent control, are not subject to political influence. Model leases have all the stakeholders at the table when the key decisions are made and therefore have the potential to be fair, stable, and long lasting.

An example of a model lease program is the "Memoranda of Understanding" (MOUs) that were the outcome of a task force effort in Marina in 2003.[19] Concern at that time about rent increases in one of the parks led to calls, then as now, for rent control. A task force composed of residents, park owners, and City officials was convened. It was agreed at that time that rent control could be avoided if owners and residents could agree to moderate limits on rent increases. Agreement was reached. MOUs were established. The MOUs provided for CPI increases, pass-through of tax increases, utilities, and capital improvements, and increases to the County median rent on turnover. A mediation process was set up to handle disputes. Peace reigned for several years.

Then, in 2007, Lazy Wheel changed hands and the new owner raised rents significantly, causing the current concern. But the other park owners all abided by their MOUs. There have been no extraordinary rent increases under the MOU system in Marina, except for Lazy Wheel. The MOU system worked in Marina, but broke down upon sale of a park. The new owner was not bound by a MOU and no doubt had costs (like increased property taxes and a larger mortgage) that were higher than the costs faced by the prior owner. It is possible that the new owner would agree, in a negotiated context, to sign a new MOU. It is possible that a new MOU could be a recorded document that would survive sale of the property and be binding on new park owners.

The City of Ontario enacted rent control in 1990. In 1999, stakeholders negotiated an Accord that seemed fair to park owners and residents alike. Rent control was repealed. In 2003, when the initial Accord would have expired, the Accord was extended for another four years without modification. In 2007 the Accord was amended and extended yet again. The amendments included the recognition that 100% CPI rent increases were in some cases not adequate to cover cost increases faced by park owners. The new standard is 120% of CPI with a cap of 10% and a floor of 4%. Property tax, utility, and capital improvements costs can be passed through to residents, but are subject to review by the City.

Another recent example comes from Modesto. One park in Modesto was raising rents significantly. There were calls for rent control. The city council, city staff, park owners, and residents considered the options. In the end, after a year of study and discussion, it was decided

[19] There was a previous MOU that covered Cypress Grove in the years following 1993. That MOU was too restrictive, however, and eventually failed or was replaced by a more balanced MOU.

that a rent control ordinance would be enacted but that any park abiding by a city-negotiated MOU would be exempt from the ordinance. Cooperating parks would use a model lease worked out in negotiations among residents, park owners, and the city. Park owners would contribute to a fund to be used to for rent subsidies for low income residents. The City agreed to match park owner contributions. Lease terms include: 100% CPI with a cap of 7% and floor of 3%, pass-through of property taxes, capital improvements, and insurance, and 15% rent increase on vacancy.

4.2 Draft Memorandum of Understanding (MOU). A balanced MOU might look something like this:

1. All residents will be offered a long-term lease containing the provisions outlined below.

2. Space rent increases during an ongoing tenancy shall be limited by the following principles:

- ***No space rent increase during tenancy will exceed 10% in any one year.***
- ***Rent increases will cover:***
  - ***CPI increases since 2000***
  - ***Amortized capital improvements***
    - ***New facilities when approved by 51% of residents***
    - ***When ordered by government agencies***
    - ***For major replacements exceeding $100 per space***
  - ***Property tax and other governmental fee increases***
- ***Space rent increases on sale will not exceed 3% for each year of the ending tenancy.***

4. Park owners will contribute X% of gross revenue to a Park Resident Assistance Fund to subsidize the space rent of very low-income residents. The Fund will be administered by the City of Marina. The City will match park owner contributions.

5. Disputes arising under leases pursuant to this MOU will be submitted to mediation and, if necessary, to binding arbitration. The costs of mediation and arbitration will be shared equally by the participants (50 % by residents, 50% by park owner).

6. This MOU shall be reviewed in three years by a committee composed of representatives of the park owners, residents, and the City of Marina to evaluate its effectiveness and to make adjustments if appropriate.

4.3 Provisions That Might Be Included in a Model Lease:

The model lease concept involves a lease negotiated by park owners, park residents, and City officials. The operating principle should be fairness to all participants – to the tax payers, to residents, and to park owners. The lease should be simple to understand and straightforward to administer. Adjudication of disputes under leases should be by mediation, then arbitration. The City might want to participate in arbitrations in order to maintain the original fairness principle and because the City has the responsibility to represent the welfare of all citizens – residents, park owners, and tax payers. The City would promise not to impose rent control on any park owner using the model lease. The City would be at liberty to impose rent control on any park owner not using the model lease.

Typical provisions, and their rationale, follow:

1) **Annual Rent Increase: automatic 100% CPI plus pass-throughs**

[Comment: Some jurisdictions use partial indexing, e.g. 65% CPI. This is not wise, however, since partial indexing inevitably reduces the real value of the park and is therefore confiscatory. Some jurisdictions use 120% CPI and are more restrictive about pass-throughs.]

2) **Floor and Ceiling: 2% and 8%**

[Comment: A ceiling comforts residents. A floor comforts park owners. The average annual CPI increase in Northern California has been 3.2% over the past two decades. The average annual CPI-Rent increase in Northern California has been 3.8% over the past two decades. The ceiling should be higher if rents are low or in the case of pass-throughs. A global ceiling of 10% might therefore make sense in some jurisdictions.]

3) **Phase-In: automatic CPI increases are further restricted to 100% CPI from some earlier base date.**

[Comment: This provision would provide a level playing field among park owners, since owners who raised rents overmuch in recent years would not be rewarded with further increases and owners who exercised restraint in recent years would not be punished for their restraint. The effect would be that park owners who had imposed above-CPI rent increases in the years since the base date would have below-CPI rent increases for several years and park owners who imposed below-CPI increases since the base date would have the opportunity to catch up with inflation.]

4) **Pass-throughs:**

[Comment: It is wise to provide for certain pass-throughs so that park owners are not forced to bear the burden of additional costs not in the budget at the time the lease is signed. Pass-throughs

would be in addition to the allowed CPI increases.]

- **Capital Improvements (amortized over appropriate time period):**
  - New Facilities – only when approved by 51% of residents
  - Improvements required by government
  - Major Replacements (those costing more than $100 per space)
- **Tax Increases** (e.g., property taxes on sale, or if government imposes a new tax or fee)

5) Vacancy Increases:

- When resident sells to new owner - up to 3% per year since last vacancy increase
- When unit is vacant with no new owner, or following eviction or abandonment - increase to market
- When resident replaces mobilehome - no increase

[Comment: this "partial vacancy decontrol" provision would mean that all mobilehomes would eventually receive the same vacancy increases. A mobile home selling every five years would be allowed a 15% increase each time. In ten years, there would be a total of 30% rent increases, just as there would be for a mobilehome that sold once in 10 years. Partial vacancy decontrol would allow adjustments to market on vacancy but would protect against the possibility that space rent might be increased so much that the value of the mobilehome would be significantly reduced.]

4.4 Resident Assistance (Subsidy) Programs: Other jurisdictions, believing that low incomes, not high rents, are the problem, have instituted programs similar to the Section 8 program that assist low income residents with their space rent. A significant advantage to subsidy programs is that assistance is targeted to those who need assistance. Under rent control, in contrast, there is no targeting, so that much of the rent control subsidy is wasted on people who don't need it.

Section 8 funds, in theory, are available to supplement space rent for low-income residents, but in practice Section 8 is not a reliable source for mobilehome owners because HUD funding has been significantly reduced by the Bush administration in Washington and because some administering agencies apparently won't use Section 8 funds for space rents. Section 8 is therefore not able to assist all mobilehome residents whose space rent is unaffordable.

The City of Turlock in 2007, acknowledging that income, not rents, were the problem for low-income mobilehome residents in Turlock and that Section 8 couldn't be relied on at this time, rejected rent control in favor of a City-funded subsidy program. The program involved an agreement by participating park owners to accept as space rent for any qualifying resident an amount equal to the median space rent in Turlock. The City would then fund the difference between the median rent and the rent the resident could afford (30% of verified income). In Turlock it turned out that this program cost roughly $20,000 per year.

Some park owners fund subsidy programs on their own. There are park owners who have made an explicit commitment to reserve a percentage of space rent income for assistance to low income residents.

Another model would be a program jointly funded by the park owner and the city. Such a program might be administered by the city in question. The advantage of a jointly funded program is that it would require wider participation by citizens and stakeholders to address a community problem cooperatively.

Taking Marina as an example, if the park owners agreed to donate 3% of gross rents to a subsidy fund, and if the City agreed to match these contributions, there would be a fund of roughly $12,000 per month that could provide rent subsidies averaging $120 per month for 100 households, roughly a quarter of all mobilehome households in Marina. The program might be phased in, with fee payments tied to space rent increases so that park owners' net income would not decline. Such a program would alleviate the affordability problems of the lowest income households in Marina's mobilehome parks without disrupting the market otherwise.

4.5 Resident Purchase: There are cases in which residents have purchased their own park, increasing their economic security significantly. An example is El Rio Mobile Home Park in Santa Cruz. With government assistance, the residents were able in 1988 to buy their park from the park owner for $2,000,000. The park became a cooperative. Residents pay $250 per month in homeowner fees. Most homes in the park were manufactured in the 1950s and 1960s, and many are fading, but homes in El Rio still sell for $50,000 to $200,000. El Rio still provides affordable housing within a high priced community, and there is no space rent insecurity.

Acknowledging the inherent problem caused by split ownership of home and land, the State of California enacted in 1984 the Mobilehome Park Resident Ownership Program. Administered by the Department of Housing and Community Development (HCD), the program offers low-interest loans to homeowner organizations and low-income park residents to help finance conversion of mobilehome parks to resident ownership. By the end of 2006 the program had helped fund the conversion to resident ownership in 74 parks in California.

4.6 Purchase By A Non-Profit Housing Developer: There are cases in which parks are purchased by non-profit housing development corporations. An example is Leisure Mobile Estates in Santa Rosa. The owner of Leisure was considering condominium conversion. He also had a rent increase application in process before the local rent control commission. The residents opposed the rent increase and opposed the conversion. But the residents supported purchase of the park by Millennium Housing, a non-profit housing development corporation. Residents agreed to a substantial space rent increase in order to make the non-profit purchase pencil-out. Residents were confident that their long run interests were best served by the Millennium purchase.

4.7 Condominium Conversion (Subdivision): A recent, controversial development is the conversion of mobilehome parks into condominium subdivisions. The Subdivision Map Act allows property owners to subdivide a park into condominium spaces and then market the spaces to residents and others. This has become controversial because, under current law, subdivision in rent controlled jurisdictions would cause rent protections to lapse. The California legislature has considered the issue and will probably consider it further. There has been and no doubt will be extensive litigation as the rights and responsibilities of residents and park owners are sorted out in the conversion context. Condominium conversion would presumably be less controversial in jurisdictions without rent control. Condominium conversion, in theory, would bring a measure of security to mobilehome residency. Conversion would not cure the affordability problem, however, because conversion would require a substantial additional investment in order for residents to own the land as well as their homes.

4.8 Case Study: Stanislaus County

Stanislaus County and several cities in that county have recently considered solutions to the space rent dilemma. The processes followed and the outcomes chosen are instructive.[20]

The owner of several parks in the county, Equity LifeStyle Properties (ELS), was raising rents significantly in parks it owned in Ceres, Modesto, and Riverbank, causing considerable public concern. A county-wide Ad Hoc Committee was formed to investigate the situation and come up with a county-wide solution. Attorney/Planner Kenneth Baar did a series of studies. The Ad Hoc Committee met with ELS to attempt a negotiated solution. Ultimately the Committee approved a form of mobilehome park rent control ordinance for consideration by the County and the various cities, but no county-wide solution was agreed upon.[21]

Stanislaus County has taken no steps toward the establishment of rent control or any other solution to the space rent dilemma.

Modesto adopted a rent control ordinance with the unusual provision that parks that executed a Memorandum of Understanding (MOU) would be exempt from the ordinance. The MOU specifies that all residents will be offered long term leases including moderate rent increase limits. Space rents may rise at the CPI plus the pass-through of property taxes and capital improvements, and by 15% on vacancy. All parks in Modesto except the ELS park have accepted the MOU and are exempt from the ordinance. The ELS park is subject to the ordinance. Litigation is expected.[22]

Turlock has taken a completely different approach. Using redevelopment funds, the City of Turlock adopted a subsidy program whereby space rents exceeding the residents' affordability limit are paid by the City. The subsidy program applies to 60 households and costs roughly

[20] The information in this section is drawn largely from the July 28, 2008 memorandum "Recommendation Regarding Mobile Home Park Space Rents" by the Ceres Mobile Home Park Ad-Hoc Committee.
[21] The draft ordinance was based on a draft by Kenneth Baar for the City of Citrus Heights in Sacramento County.
[22] The law provides that a challenge to an ordinance must be brought within a year of its initiation.

$20,000 per year.

Riverside is considering the adoption of an ordinance modeled on the Modesto ordinance. Unfortunately, the draft ordinance under consideration is unbalanced. It allows 100% CPI adjustments, but allows no pass-throughs and includes rigid vacancy controls.

Ceres hired Kenneth Baar to conduct a survey and write a report on the mobilehome space rent situation in Ceres. The Ceres Mobile Home Park Ad-Hoc Committee came to these findings in its final report:

1. That a rent subsidy program like the program instituted in Turlock would be far more expensive in Ceres.
2. That although redevelopment funds could be used for rent subsidies, this use of redevelopment funds would limit or eliminate funds that could be used for the creation of permanently affordable housing.
3. That competing priorities mean that general fund monies cannot reasonably be used for rent subsidies.
4. That initiating rent control would likely commit the city to costs of litigation that it cannot well afford.[23]
5. That initiating rent control would stabilize rents in the future but would not roll back rents so that they would become affordable to residents.

The Ad Hoc Committee's final recommendation:

> ***"Since there is no feasible ordinance or policy solution to the existing circumstances affecting certain mobile home park residents in Ceres that the City is legally or financially in the position of implementing, the City of Ceres Mobile Home Park Ad Hoc Committee recommends that its activities be concluded and that the City Council take no further action regarding mobile home park space rents for the foreseeable future."***[24]

The Ceres City Council followed this recommendation, taking no steps to assist residents with space rent issues. Understandably, some residents were disappointed. No doubt the park owners were relieved. Ceres' Mayor Canella was quoted as saying of the Baar report "It really showed that [only] one park was out of line as far as the rents go. As much as I would like to help these residents, I'm not in favor of rent control that would punish the other mobile home parks for keeping their rents down."[25]

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[23] The report commented that larger cities or counties can better afford rent control litigation than small cities. It is for this reason, among others, that some stakeholders were hoping for a county-wide solution including litigation cost-sharing.

[24] Ad Hoc Committee Report, page 5.

[25] The Modesto Bee, August 27, 2008.

SECTION 5. SPACE RENTS, HOME VALUES, AND MOBILEHOME AFFORDABILITY IN MARINA

As a first step in the investigation of mobilehome space rents in Marina, the City of Marina sent out survey forms to mobilehome park residents and different survey forms to mobilehome park owners, collected and collated the responses, and provided this information to consultants Kenneth Baar and Michael St. John.[26] 279 out of 396 mobilehome households responded to the residents' survey – a fairly good response rate for surveys of this type.[27] All of the park owners provided responses to the park owners' survey. Consultants Baar and St. John also purchased sales data for Monterey and Santa Cruz Counties collected by the Department of Housing and Community Development (HCD).[28] The survey responses and the sales data provided important information, otherwise unavailable, about mobilehome rents, residents, and home values.

As to the residents' survey, the following chart shows survey responses by park.

SURVEY RESPONSES - MARINA MOBILEHOME STUDY					
	senior	all age	spaces	SURVEYS RECEIVED	RESPONSE RATE
Cypress Square	X		87	68	78%
El Camino		X	61	39	64%
El Rancho	X		96	61	64%
Lazy Wheel		X	69	47	68%
Marina Del Mar	X		83	64	77%
TOTAL			396	279	70%

Source: Marina Mobilehome Residents' Survey

A note about the survey response rate: The overall response rate was 70%. In the calculations that follow, we use percentages that are computed from the survey responses on the assumption that those who responded are representative of all mobilehome residents, but this may not be true in all cases. There may be bias in the results due to a higher or lower response rate among different categories of households. Readers should bear this in mind before drawing conclusions from the survey results.

[26] The survey forms are attached to this report as Appendix 1 (Residents) and Appendix 2 (Park Owners).
[27] The first mailing resulted in 173 responses. Hoping for a better response rate, the City sent out a second mailing explaining the survey purposes more thoroughly. The second mailing brought in 106 additional responses for a total of 279. Of these, 271 were sufficiently complete to use in the study.
[28] The HCD data was purchased from Santiago Financial.

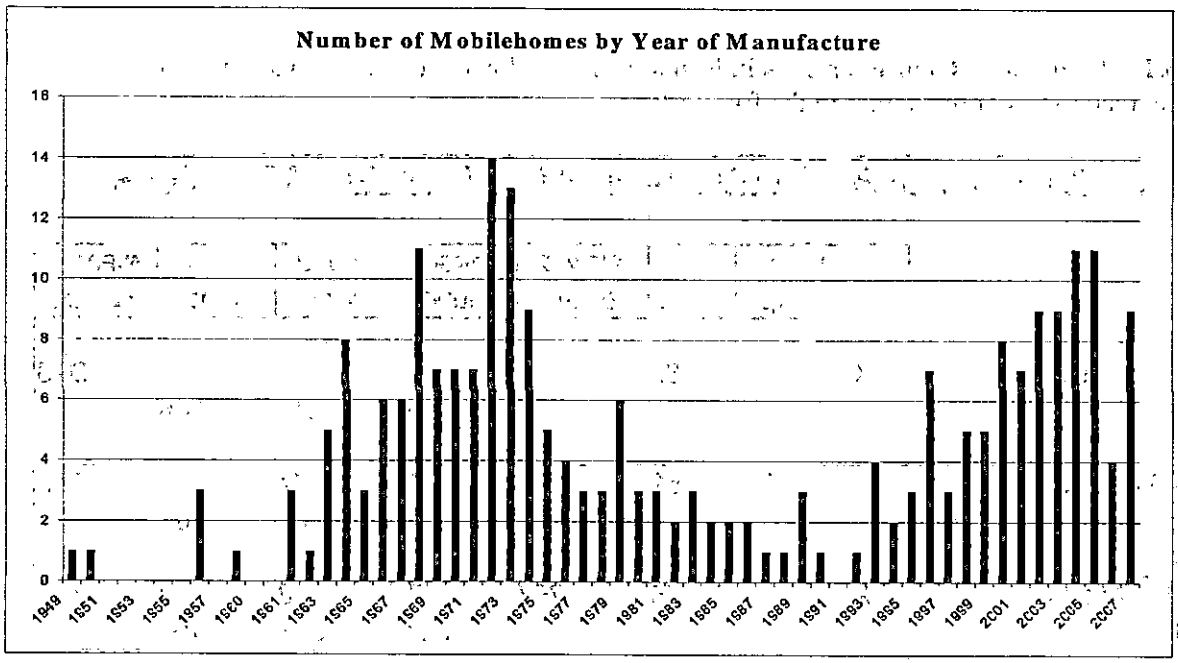
5.1 Mobilehome Characteristics in Marina. The following chart sets out physical characteristics of the homes in the five parks.

MOBILEHOME INFORMATION - MARINA MOBILEHOME PARKS								
		all		AVERAGE	SINGLE	DOUBLE	TRIPLE	AVERAGE
	senior	age	spaces	SQ. FT.	WIDE	WIDE	WIDE	MH AGE
Cypress Square	X		87	1138	8	76	3	20.3
					9.2%	87.4%	3.4%	
El Camino		X	61	1091	14	47	0	17.5
					23.0%	77.0%	0.0%	
El Rancho	X		96	762	78	18	0	32.9
					81.3%	18.8%	0.0%	
Lazy Wheel		X	69	926	40	29	0	25.6
					58.0%	42.0%	0.0%	
Marina Del Mar	X		83	833	58	24	1	25.8
					69.9%	28.9%	1.2%	
TOTAL			396		198	194	4	
					50.0%	49.0%	1.0%	
AVERAGE				950				24.4

Source: Marina Park Owners' Survey

Cypress Square and El Camino have the highest proportion of doublewide mobilehomes. Accordingly, homes in these two parks have the highest average square foot area. The average age of mobilehomes is just under 25 years, with the highest average age at El Rancho and the lowest at El Camino.

The following chart shows the year of manufacture of mobilehomes in place in Marina's mobilehome parks. The chart has two peaks – older mobilehomes that have been there since the park was opened, and newer, replacement mobilehomes installed in the past decade.



Source: Marina Mobilehome Residents' Survey

5.2 Mobilehome Space Rents In Marina. The survey data indicate that the average space rent in Marina is $434 per month. Broken down by park, average space rents are shown in the following chart:

CURRENT SPACE RENTS - MARINA MOBILEHOME PARKS									
		spaces	single wide	double wide	triple wide	rent low	rent high	survey rents	rent rolls	avg. incr.
Senior Parks:										
	Cypress Square	87	8	76	3	440	500	463	471	3.4%
	El Rancho	96	78	18	0	310	406	350	355	2.7%
	Marina Del Mar	83	58	24	1	299	468	351	344	2.0%
	average:					349.7	458	388	390	2.7%
All-Age Parks:										
	El Camino	61	14	47	0	407	500	445	439	3.6%
	Lazy Wheel	69	40	29	0	450	675	608	609	5.8%
	average:					428.5	588	527	524	4.7%
	total	396	198	194	4					3.4%
	weighted average							435	435	

Sources: Residents' and Park Owners' Surveys

The range of rents ("rent low" to "rent high") was reported by park owners in responses to the park owner survey. The actual rents were reported by residents in responses to the resident survey ("survey rents"). Actual rents (100% sample) were also taken from rent rolls provided by park owners ("rent rolls"). Average annual rent increases ("avg. incr.") were computed from survey data. That the rent roll information closely matches survey information confirms that owners and residents reported space rents correctly and that survey information is, as to space rents, representative of the entire population.

There are two ways that we can evaluate the current space rents:

- We can ask how space rents have changed over time
- We can ask how space rents in Marina compare to space rents in other communities in Monterey County

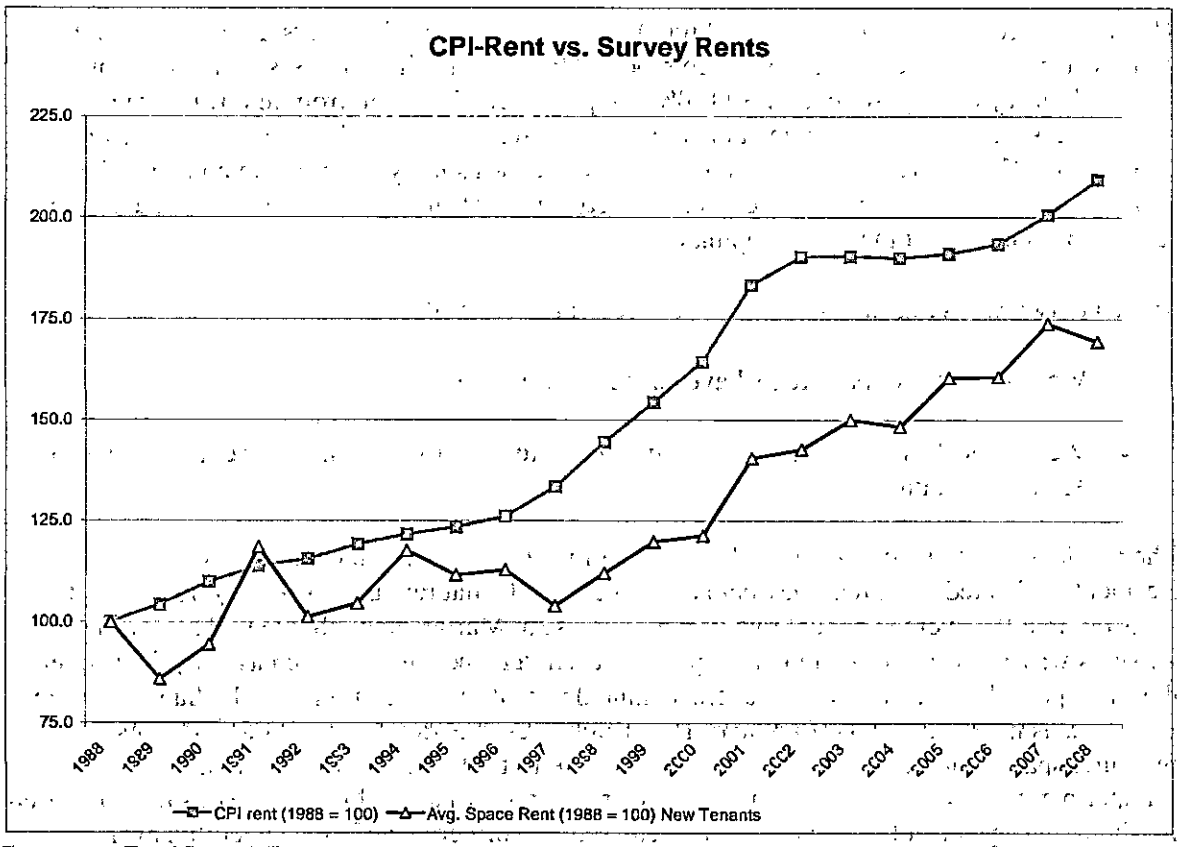
The resident survey responses provided information about space rent changes over time. Residents indicated what rent they paid on move-in and what rent they were paying today. It turns out that the average annual rate of rent increase at Marina mobilehome parks over the past 20 years was 3.4% for sitting tenants. Space rents charged new tenants increased by 3.1% over the same period.[29] Meanwhile, the average annual rate of increase of rents in the San Francisco Bay Area as measured by the Bureau of Labor Statistics (CPI-Rent) was 3.8%.[30] By this measure, space rent increases in Marina have for the last 20 years been lower than rent increases for apartments in Northern California. If space rents in Marina's mobilehome parks had increased for the past 20 years at the rate that rents increased in Northern California generally, average space rents today would be about 9% per month higher than they are at this time. Park owners' forbearance and/or the local space rent market has worked to mobilehome residents' significant advantage for this time period.

Viewing parks individually, average annual space rent increases for individual homeowners have been as set out in the final column ("rent incr.") of the chart above – 3.4% for Cypress Square, 3.6% for El Camino, 2.7% for El Rancho, 5.8% for Lazy Wheel, and 2.0% for Marina Del Mar. All except for Lazy Wheel are under the CPI-Rent rate. The higher value for Lazy Wheel no doubt results from the large space rent increases recently imposed. Up to 2007, space rent increases at Lazy Wheel were no higher than at the other parks.

The following graph shows the relationship just described between average space rents charged new tenants and the CPI-Rent index.

[29] That the rate of increase for new tenants is lower than the rate of increase for sitting tenants probably indicates that park owners sometimes lower rents on vacancy.

[30] The index is known as "CPI-Rent, Residential" or "Rent of Primary Residence". It is not clear from BLS descriptive materials if mobilehome space rents are included in the index. Mainly, the index covers the rents of apartments.



Sources: Residents' Survey and Bureau of Labor Statistics

As indicated, average space rents for new tenancies have increased by less over the past 20 years than the increase in the CPI-Rent index for the San Francisco Bay Area. Space rents and the CPI were both indexed to 100 in 1988 for purposes of this chart.

Reliable data on space rents is hard to come by, but Joan and Marshall Reeves, the managers of El Rancho Mobilehome Park, conducted a space rent phone survey in 2004. They updated their survey in 2008. The results are shown in the table titled "2008 Space Rent Survey – Monterey County" included here as Appendix 3.

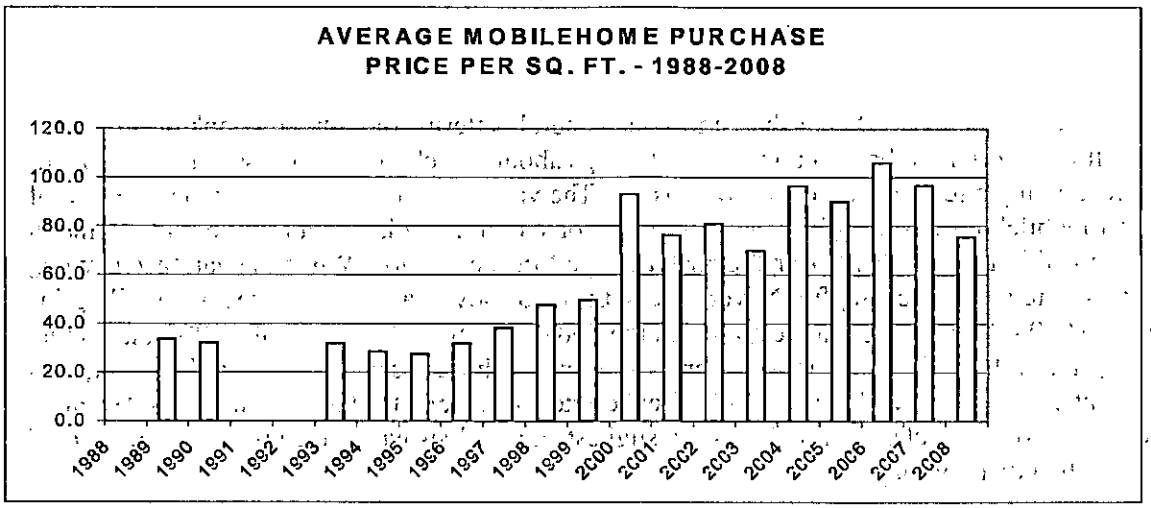
The Monterey County space rent survey indicates that average space rents in Marina range from about $400 to about $500 a month, while average space rents in the county range from almost $500 to over $600 per month. Space rents in Marina's lowest rent parks are in the $300 - $400 range. There may be park, mobilehome, or location differences that account for some part of the gap between Marina space rents and space rents in other jurisdictions, but this information indicates that most Marina space rents are on the low side, not the high side, of county averages. The rents at Lazy Wheel are now near the high end of the range in the county, but there are higher rents at some parks in Salinas, rent control in Salinas notwithstanding.

How can we understand these findings about space rents in Marina's mobilehome parks? It appears to be the case that space rent increases in Marina, except for increases at Lazy Wheel in

2007 and 2008, have been moderate over the past 20 years. It is also possible that the Memorandum of Understanding (MOU) agreed upon in 2003 was overly restrictive, causing space rents in the other parks to lag behind rent increases in Northern California generally.

5.3 Mobilehome Values in Marina. It is important that we also pay attention to changes over time in mobilehome values. If mobilehome values decline, space rent increases may be too high or rising too fast. If mobilehome values increase significantly, space rent increases may be too low. (This principle is explained in Section 2.2 above.) Caution should attend the interpretation of changes in mobilehome values because mobilehome values also fluctuate along with the entire housing market, an effect that has been particularly evident recently. But over long periods and averaged over many home sales, the rent-value relationship has been demonstrated in several studies. (This too is explained in Section 2.2 above.)

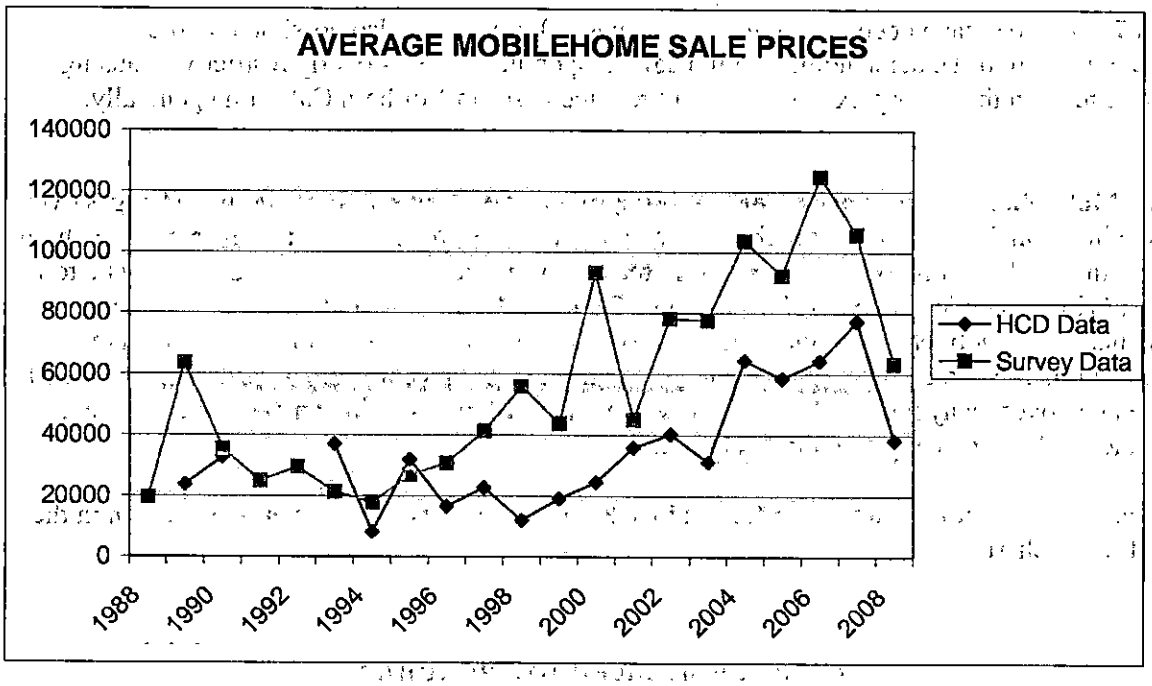
Average mobilehome values as reflected in sales prices over the past 20 years are shown in the following chart:



Source: HCD sales data, provided by Santiago Financial

Expressing prices on a square foot basis controls for mobilehome size. No Marina mobilehome sales were recorded in the HDC data set for 1988, 1991, or 1992. Mobilehome values in Marina were about $30 per square foot in 1990. The per square foot value, reflected in sales prices, rose to average more than $80 per square foot in the years 2000-2008, a two to three-fold increase over this time period. The average sales price fell in 2007 and 2008 to about $75 per square foot.

The Survey and HCD data also allow us to record average sales prices for mobilehomes.

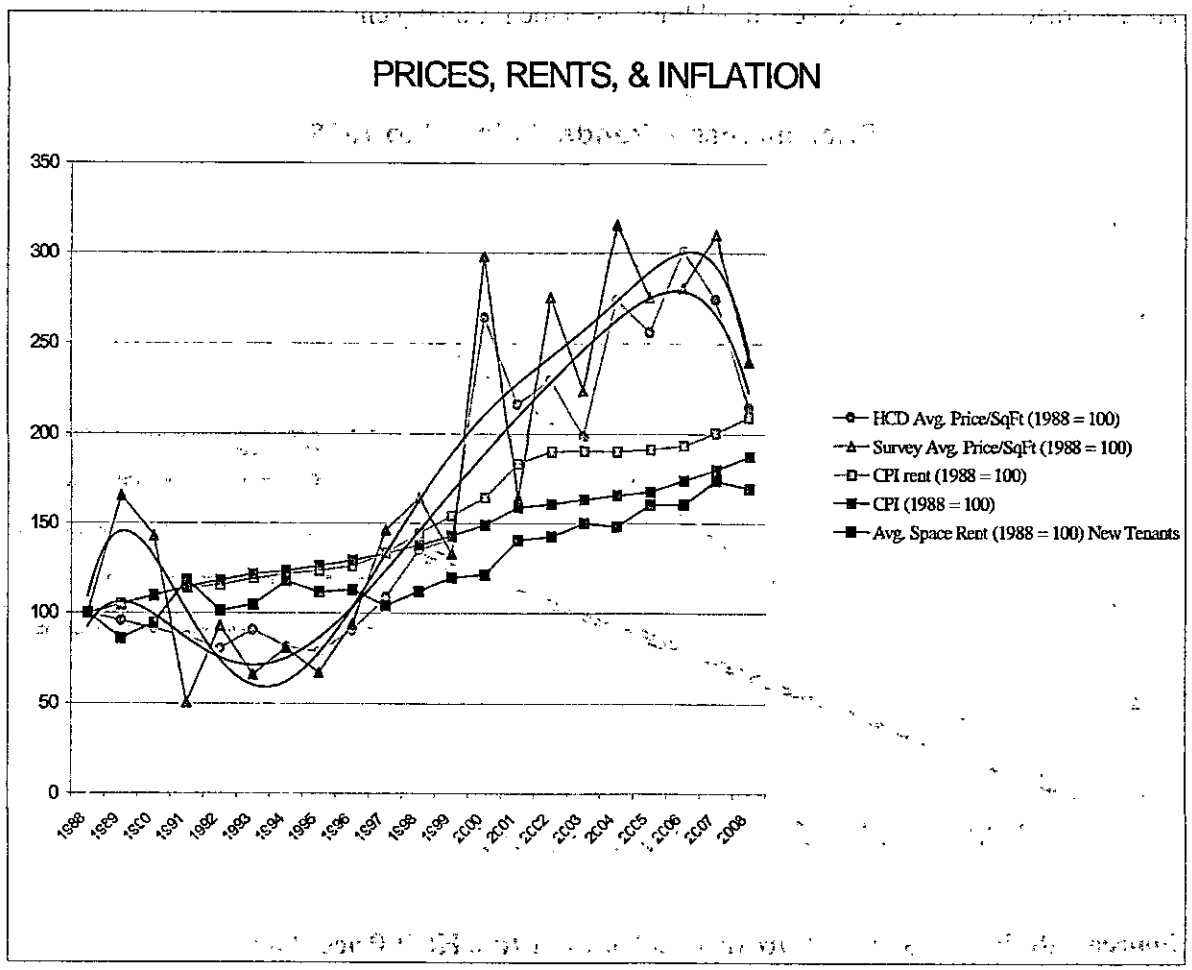


The survey data and HCD data show the same general pattern although they don't match very well. It is important to bear in mind several things about this chart: The datasets are imperfect. There are only a few data points in some years. The variance is large because some sales are of newer mobilehomes, some older mobilehomes, some double-wide, others single-wide, some in good condition, others in poor or even salvage (pull-out) condition. When the variance is wide, averages are not so meaningful. Nevertheless, the data show that mobilehomes were selling in the $20,000 - 30,000 range in the 1990s, in the $60,000 - $90,000 range in the 2000s, and that sales prices fell in 2007 and 2008. No one knows when the real estate market will recover, or for that matter whether it will recover fully. Real estate values tend to fluctuate in cycles. We are clearly in a down cycle. Economic history suggests that values will cycle up again, but we don't know when that will happen.

The HCD data were also evaluated for increase in sales price over time. For each sale, the original sales price is also recorded. The variance is large. Some mobilehomes increased a lot in value. Others maintained their value. A few lost value. On average, the HCD data indicate that the values of mobilehomes in parks in Marina have increased by 6.1% per year.

During the same time period, rents in Northern California increased by 3.8% per year and the CPI increased by 3.2% per year. Meanwhile, space rents in Marina for new tenants increased by 3.1% per year and rents facing sitting tenants increased by 3.4% per year. That mobilehome prices increased by more than the CPI, more than the CPI-Rent index, and more than mobilehome rents indicates that the mobilehome market has been out of balance during this time period. Rent increases have not matched home value increases. This indicates that mobilehomes in Marina were overvalued in the mid-2000s and may still be overvalued today.

These relationships can be seen in the following graph.

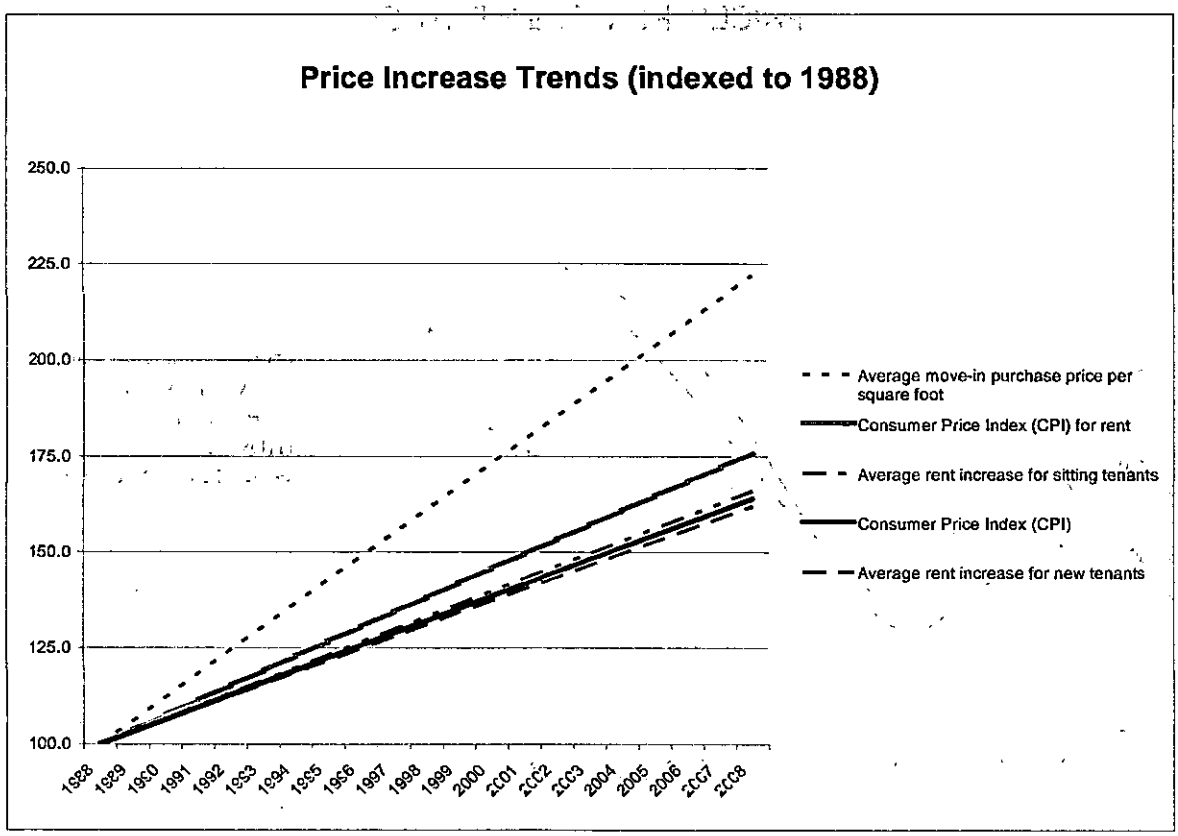


Sources: Residents' Survey, Bureau of Labor Statistics, HCD Price Data

This graph shows average space rents for new tenants in Marina over the past 20 years, 1988 to 2008, as reported by residents in the residents' survey (the curve with square markers). The next higher curve (with x-markers) is the CPI, a measure of inflation, and the one above that (star-markers) is the CPI-Rent index, a measure of inflation in apartment rents. Mobilehome values are shown in the two jagged curves (one from the survey – triangle markers, the other from HCD sales data – circle markers) and two curved, unmarked trend lines. All values are indexed to 100 in 1988. That the two price curves and the two smooth-curved trend lines match closely indicates that the survey prices were accurately reported. Home values have fallen in the current downturn and we don't know when the current downturn will end, but these data indicate that mobilehome values in Marina have increased during the past twenty years by significantly more than the CPI, the CPI-rent index, or space rents.[31]

[31] There is no curve for sitting tenants' rents because we don't have that information. We have the move-in rent, the move-in date, and the current rents for each respondent, but we don't have the pattern of space rents during the tenancies. See Price Increase Trend chart.

The key relationships can be seen more clearly if mobilehome prices, space rents, and inflation are all turned into straight 20-year trend lines, as in the following chart.



Sources: Residents' Survey, Bureau of Labor Statistics, HCD Price Data

This is a simplified picture. One might say over-simplified. The year by year variability in rates of increase has been removed. The lines are straight, as if the average annual increases applied every year, which of course they didn't. But this chart is useful because it shows that the average rent increases paid by new tenants in Marina mobilehome parks (3.1% per year) is marginally less than the inflation rate (3.2%), significantly less than the CPI-Rent index (3.8%), and far less than (almost exactly half of) the rate of increase in mobilehome values over the past 20 years (6.1%). Rent increases experienced by sitting tenants (3.4%) are marginally higher than increases in the CPI (3.2%), but less than increases in the CPI-Rent index (3.8%) and far less than the increase in mobilehome values (6.1%).[32] These rates of increase are summarized in the following chart:

[32] We can include a line for sitting tenants' rents in this chart because while we don't have year by year rents, we do know the beginning and current rents for each tenancy, and can therefore compute average annual increase from that information. The sitting tenant line represents the average annual rate of space rent increase for sitting tenants.

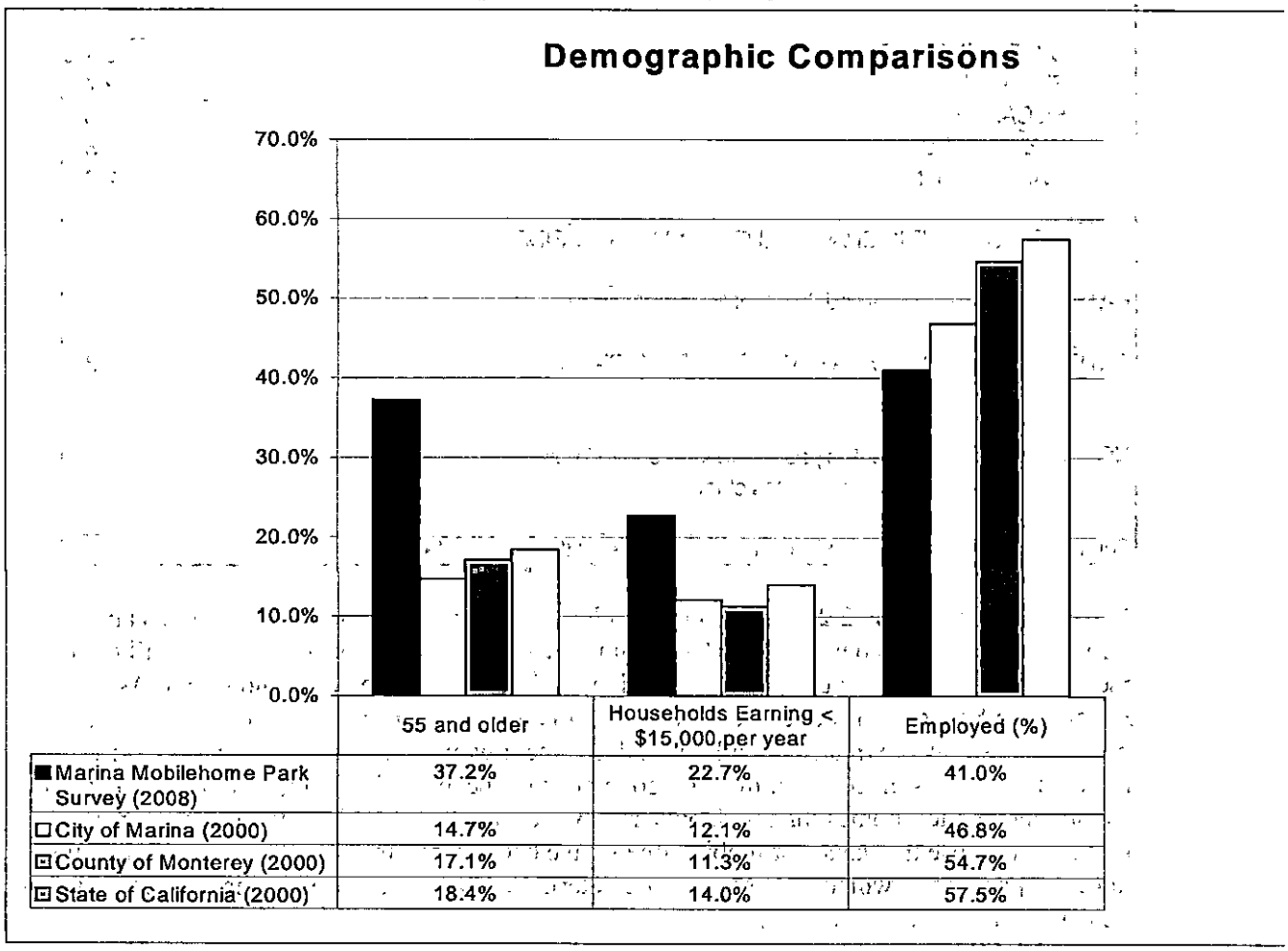
KEY RATES OF INCREASE AFFECTING MOBILEHOME RESIDENCY IN MARINA		
RATE OF INCREASE IN THE VALUE OF MOBILEHOMES		6.1%
RATE OF INCREASE IN SPACE RENTS FOR CURRENT OCCUPANTS		3.4%
	CYPRESS SQUARE	3.4%
	EL RANCHO	2.7%
	EL CAMINO	3.6%
	LAZY WHEEL	5.8%
	MARINA DEL MAR	2.0%
RATE OF INCREASE IN SPACE RENTS FOR NEW RESIDENTS		3.1%
RATE OF INCREASES IN PRICES GENERALLY (THE CPI)		3.2%
RATE OF INCREASE IN APARTMENT RENTS (CPI-RENT)		3.8%
NOTES: All rates are over the past 20 years, 1988 to 2008		
	Rates are average annual rates of increase	
Sources: Bureau of Labor Statistics, Resident Survey, HCD sales data		

As explained in Section 2.2 above, there is a close (inverse) connection between rents and mobilehome values. When rents are less than market-clearing, mobilehome values will tend to rise. When rents are more than market-clearing, mobilehome values will tend to fall. As explained in Section 2.6 above, it can be argued that park owners' and mobilehome owners' investments should be treated equally. Equal treatment would mean equal increases over time. The analysis shows, in contrast, that homeowners have been receiving a greater return on their investments in their homes than park owners have received on their investments in the parks. This is so because the values of mobilehomes have been increasing at 6.1% per year while the value of space rents, which in large measure determines the values of parks, have increased, from the park owners' viewpoint, at 3.1%.

Taking the past 20 years, it would appear that space rent increases overall have been too small, allowing mobilehome values to grow more than they would in a balanced market. If space rents were to increase at a slightly faster rate, the rate of increase in mobilehome values would presumably fall, and the balance between home owners and park owners would be restored.

5.4 Mobilehome Residents in Marina

The residents' survey asked a number of questions about mobilehome residents. Some of this information, together with information from the U.S. Census, is portrayed in the following chart:



	55 and older	Households Earning < $15,000 per year	Employed (%)
Marina Mobilehome Park Survey (2008)	37.2%	22.7%	41.0%
City of Marina (2000)	14.7%	12.1%	46.8%
County of Monterey (2000)	17.1%	11.3%	54.7%
State of California (2000)	18.4%	14.0%	57.5%

Sources: Residents' Survey, 2000 Census Data

Survey and Census data indicate that a higher percentage of Marina mobilehome park residents are elderly than residents of Marina, Monterey County, or California.[33] This is to be expected, since three of the parks are senior parks reserved for older residents.

Survey and Census data indicate that a higher percentage of Marina mobilehome park residents have very low incomes (under $15,000 per year) than households in Marina, Monterey County, or California.

[33] The Census data here and elsewhere in this section comes from Tables DP2 (Selected Social Characteristics), DP3 (Selected Economic Characteristics), and DP4 (Selected Housing Characteristics), available on-line from Census.Gov.

Assuming that those reporting are representative of all residents, 41% of Marina's mobilehome residents appear to be employed – a percentage not far below the percentage for Marina, Monterey County, and California.

Employment data is presented in greater detail in the following chart:

	EMPLOYMENT STATUS OF MARINA MOBILEHOME RESIDENTS								
		senior	all age	spaces	RESPONDENTS	FULL TIME	PART TIME	RETIRED	NOT WORKING
Senior Parks:									
	Cypress Square	X		87	91	10	6	67	8
	PERCENT					11.0%	6.6%	73.6%	8.8%
	El Rancho	X		96	67	7	6	51	3
	PERCENT					10.4%	9.0%	76.1%	4.5%
	Marina Del Mar	X		83	78	16	14	45	3
	PERCENT					20.5%	17.9%	57.7%	3.8%
All-Age Parks:									
	El Camino		X	61	76	36	15	8	17
	PERCENT					47.4%	19.7%	10.5%	22.4%
	Lazy Wheel		X	69	94	38	14	17	25
	PERCENT					40.4%	14.9%	18.1%	26.6%
All Parks:				396	406	107	55	188	56
	PERCENT					26.4%	13.5%	46.3%	13.8%

Source: Residents' Survey

As indicated in the employment status chart, employment status varies significantly by park, with high rates of retirement in the senior parks and high rates of full time employment in the all-age parks.[34]

Incomes of mobilehome residents are shown in the following chart:

[34] The numbers of respondents exceeds the number of spaces in some parks because some households have more than one working adult.

Income Categories of Resident Households (number of households)

Park	Under $15,000	$15,000 - $19,999	$20,000 - $29,999	$30,000 - $39,999	$40,000 - $49,999	$50,000 - $74,999	$75,000 or more	Total
Cypress Square	18	4	19	11	4	7	2	65
El Camino	5	1	4	8	10	9	0	37
El Rancho	10	11	16	6	2	3	1	49
Lazy Wheel	8	3	11	12	4	5	0	43
Marina del Mar	16	7	21	8	3	1	1	57
Totals	57	26	71	45	23	25	4	251

Income Categories of Resident Households (percentages)

Park	Under $15,000	$15,000 - $19,999	$20,000 - $29,999	$30,000 - $39,999	$40,000 - $49,999	$50,000 - $74,999	$75,000 or more	Total
Cypress Square	28%	6%	29%	17%	6%	11%	3%	100%
El Camino	14%	3%	11%	22%	27%	24%	0%	100%
El Rancho	20%	22%	33%	12%	4%	6%	2%	100%
Lazy Wheel	19%	7%	26%	28%	9%	12%	0%	100%
Marina del Mar	28%	12%	37%	14%	5%	2%	2%	100%
Totals	23%	10%	28%	18%	9%	10%	2%	100%

Source: Residents' Survey

Assuming that the survey responses portray the mobilehome park population accurately, many resident households of Marina's mobilehome parks have low and very low incomes. Only 12% report household income above $50,000. Fully 23% of responding residents report household income under $15,000. 61% of all mobilehome park residents have incomes under $30,000 per year. By any measure, these residents are income-challenged. It is fully understandable that residents would be concerned about increases in the cost of food, medical care, space rents, and other necessities. Even a modest space rent increase, medical event, or other unexpected expense would make a major dent in the budget of a household earning less than $30,000 per year.

The survey included other information about mobilehome residents summarized in the following chart:

RESIDENT INFORMATION - MARINA MOBILEHOME PARKS							
	SPACES	HOUSEHOLDS REPORTING	RESIDENTS REPORTED	AVERAGE HH SIZE	AVERAGE AGE	% WITH CHILDREN	AVERAGE TENURE
Senior Parks:							
Cypress Square	87	67	96	1.4	70	1%	11.2
El Rancho	96	55	75	1.4	71	0%	11.2
Marina Del Mar	83	64	86	1.3	68	0%	13.6
All-Age Parks:							
El Camino	61	38	101	2.7	50	28%	10.0
Lazy Wheel	69	47	132	2.8	49	38%	13.6
All Parks (Total):	396	271	490	1.9	61.6		11.9

Source: Residents' Survey

The average household size among households responding to the survey is just under two persons. This varies by park, with the senior parks having more residents living alone and the family parks having more household members. About a third of the households in the two all-age parks have children present. The average length of time that residents have occupied their mobilehome is about 12 years.

The resident survey also asked for information about mortgages.

MORTGAGE STATUS OF MOBILEHOME OWNERS						
Park Name	Park Type	Total Units in Sample	All Cash On Purchase	Mortgage Paid Off Later	Homes Owned Free & Clear	% Homes Owned Free & Clear
Senior Parks:						
Cypress Square	SENIOR	66	49	5	54	81.8%
El Rancho	SENIOR	53	42	1	43	81.1%
Marina del Mar	SENIOR	59	28	14	42	71.2%
All-Age Parks:						
El Camino	FAMILY	37	9	2	11	29.7%
Lazy Wheel	FAMILY	46	22	6	28	60.9%
All Parks (total):		261	150	28	178	68.2%

Source: Residents' Survey

The mortgage status of mobilehome residents differs significantly by park. More than three-quarters of residents in the senior parks own their homes free and clear, whereas the free and clear rate is lower for the family parks.

5.5 The Affordability of Space Rents in Marina's Mobilehome Parks

The federal government says that apartment rents exceeding 30% of household income are "unaffordable". The figure 40% is sometimes used by others. The 2008 draft Housing Needs Assessment for the City of Marina indicates that 23% of owner-occupant households and 33% of renter-occupant households in Marina pay more than 35% of available income for their housing.[35] Since we need to identify an upper limit, not a standard, I will use the 40% affordability limit in this analysis.

The presence or absence of mortgage obligations affects the affordability of mobilehome residency significantly. Mobilehome residents are therefore broken into two groups in the following chart – those with no mortgage and those with a mortgage.

[35] "Housing Needs Assessment", chapter 2 of draft Housing Element, December 2008, Table 2-25, page 2-17.

Park Name	Mobilehome Owned Free and Clear				
	No. of MHs	Percent MHs With Mortgage Paid Off	Avg. rent	Avg. income	Avg. Gross Rent as % of HH income
Cypress Square	45	86.5%	$475	$27,544	34.4%
El Camino	13	43.3%	$433	$32,731	24.1%
El Rancho	21	84.0%	$347	$24,810	25.3%
Lazy Wheel	16	61.5%	$606	$29,812	39.5%
Marina del Mar	30	83.3%	$342	$23,283	29.2%
Total / Avg.	**125**	**74.0%**	**$429**	**$26,892**	**31.2%**

Park Name	Mobilehomes With Mortgages				
	No. of MHs	Percent MHs With Mortgages	Avg. rent	Avg. income	Avg. Housing Cost as % of HH income
Cypress Square	7	13.5%	$460	$53,214	37.4%
El Camino	17	56.7%	$452	$47,500	40.4%
El Rancho	4	16.0%	$359	$40,000	32.7%
Lazy Wheel	10	38.5%	$653	$42,500	49.3%
Marina del Mar	6	16.7%	$405	$29,833	41.5%
Total / Avg.	**44**	**26.0%**	**$486**	**$44,182**	**41.4%**

Source: Residents' Survey

These summaries indicate that mobilehome residents with no mortgage are, on average, able to afford their housing payments. Mobilehome owners with mortgages have more income, on average, than mobilehome owner with no mortgage. Nevertheless, mobilehome residents paying a mortgage are paying relatively high percentages of their incomes for housing costs. Using the 40% affordability standard, housing costs are unaffordable for roughly half of all mobilehome owners with a mortgage. For the other half of the with-mortgage group, and for roughly three-quarters of the no-mortgage group, housing costs are affordable, by the 40% affordability standard.

If housing costs are unaffordable for 50% of those with a mortgage and 25% of those with no mortgage and considering that 68% have no mortgage and 32% have a mortgage, housing costs are unaffordable for roughly 33% of mobilehome resident households in Marina, or about 131 households.[36]

What would it take to address this problem? Following the 40% affordability principle, it would appear that the entire problem could be handled by roughly $15,000 per month, an amount that would allow subsidies averaging $115 per month for those meeting the affordability limit.

[36] (.32*.5+.68*.25) = .33. These calculations are based on survey data, and on averages, and are therefore only rough estimates. The results are indicative of what may be true for mobilehome households, but there would have to be confidential, case by case investigations to determine more precisely the affordability issues among residents of Marina's mobilehome parks.

5.6 The Availability of Affordable Housing in Marina

Unlike some jurisdictions in California, Marina has a varied supply of relatively affordable housing. Mobilehomes themselves are relatively affordable in Marina. Both mobilehome prices and space rents are moderate as compared with mobilehome prices and space rents in other communities in Northern California. A two-bedroom mobilehome can be purchased in Marina for $40,000 to $80,000 with a monthly rent of about $550. Imputing the annual cost of the home at 8%, and adding estimates of taxes and insurance, a home in a Marina mobilehome park might cost between $1,200 and $1,500 per month. If the home is paid in full, as many are, the monthly cost of mobilehome park residency might be between $600 and $800 per month. These ranges are relatively affordable, considering the cost of housing in Northern California.

But mobilehomes are not the only affordable housing option. Apartments are also relatively affordable in Marina. One-bedroom apartments rent in Marina for $850-$1,000 per month. Two-bedroom apartments in Marina rent for $1,100 to $1,400 per month.[37] Signs for vacant apartments abound, indicating an active market. Single-family homes were relatively expensive until the mortgage crisis, but homes are said to have dropped in value by something like 40%. Some are now available as rentals. There are therefore several different relatively affordable home choices in Marina – single-family homes, apartments, and mobilehomes.

The phrase "relatively affordable" means "affordable as compared to housing alternatives elsewhere in Northern California". Whether a particular home, apartment, or mobilehome is affordable to a particular household depends on household income. An affordability problem stemming from low income is an income problem, not a housing problem. Housing, however affordable, cannot be expected to compensate for low or very low incomes. Communities have to decide what they can and should do to alleviate the affordability problems of very low income residents. In making these choices, communities should be clear about the source of the problem.

The Proforma Tenure Cost Comparison chart on the following page gives a rough idea of the costs of typical mobilehome, apartment, and single-family home residency in Marina. The costs of mobilehome residency were taken from survey responses. The costs of single-family home and apartment residency are estimates based on interviews and the draft Housing Element.

[37] City of Marina, "Housing Needs Assessment", Table 2-19.

PROFORMA TENURE COST COMPARISONS			
	Mobilehome	Single Family Home	Apartment
HOME VALUE	80,000	350,000	
MORTGAGE	533	1,896	0
PROPERTY TAXES	67	292	0
INSURANCE	22	97	0
RENT	550	0	1,100
TOTAL COST			
With Mortgage:	1,172	2,285	
No Mortgage:	639	389	1,100
REQUIRED INCOME			
With Mortgage:	35,167	68,542	
No Mortgage:	19,167	11,667	33,000
ASSUMPTION: 2-BEDROOM IN EACH CASE			
AFFORDABILITY LIMIT: RENT = 40% INCOME			

Source: Residents' Survey, Interviews

The affordability estimates are based on housing costs being up to 40% of available income. This is higher than the HUD standard – 30% - but matches reality on the ground. The fact is that many California households do spend 40% or even 50% of their available income on housing. In the case of mobilehomes, the monthly cost may be little more than the rent because the home may be paid in full. In the case of single-family homes, the monthly cost may be lower still if the home is owned free and clear, since there is no rent.

These calculations indicate that 2-bedroom apartments in Marina are affordable to a household having a combined family income of $33,000 (or more); that a modest 2-bedroom single family home in Marina would be affordable to a household having a combined family income of $69,000 if they are paying a mortgage, or $12,000 if the home is owned free and clear; and that a typical 2-bedroom mobilehome in Marina would be affordable to a household earning $35,000 if there is a mortgage, or $19,000 if the home is paid for.

These calculations indicate that mobilehome residency is affordable to some households, especially when the home is paid for. The calculations also indicate that other tenure choices may be affordable as well. In particular, the most affordable housing arrangement is a single family home owned free and clear. The calculations also indicate that even when mobilehomes are owned free and clear, there is an affordability problem for residents having very low incomes.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Answers to Questions Posed at the Beginning of this Report

1. Are mobilehome space rents in Marina too high, too low, or about average?

Except for the rents at Lazy Wheel, the space rents in Marina are moderate. They are lower than average space rents in Monterey County, have increased at close to the inflation rate, and have increased by less than apartment rents in Northern California over the past 20 years. The rents at Lazy Wheel did increase sharply in 2007 because of the sale/purchase of the property. It would therefore be appropriate for rents at Lazy Wheel to remain close to their current levels for several years. Other than Lazy Wheel, the park owners have been unnecessarily restrained in the rent increases they have imposed in the past several years. It would therefore be appropriate if rents at other parks in Marina were to increase gradually to close the gap with market rents elsewhere in the county.

2. Is there a problem about space rents that the City of Marina should address?

No. There is an income problem for some mobilehome residents, but there is no problem with space rents per se. Space rents in Marina are lower than they might be in the case of El Rancho, El Camino, Cypress Square, and Marina Del Mar. Space rents at Lazy Wheel are at the top of the local market and should therefore remain fixed or increase only moderately for several years. There is, however, insecurity about space rents and mobilehome values that might be addressed through a renewed MOU or model lease program.

No one likes rent or price increases, but inflation is a reality we cannot change. The cost of housing, like the cost of gas, food, and most other necessities, does increase over time. As much as we might want to, there is nothing the City of Marina or any of us can do to stop or slow inflation. Attempts to ignore, contradict, or legislate against inflation are doomed to failure.

3. Are the prices at which mobilehomes are selling in Marina reasonable, considering the overall market?

Mobilehome values, overall, have increased by more than the CPI and by more than space rents over the past 20 years. Mobilehome prices are influenced by the overall real estate market as well as by space rents. In the late 1990s and into the 2000s there was a bubble in housing prices generally that contributed to increases in the prices at which mobilehomes in Marina sold. The bubble burst in 2007-2008 and prices of mobilehomes declined, just as prices of single family homes and condominiums declined. Nevertheless, there is an active market in mobilehomes at prices significantly greater than purchase prices in the 1990s and before.

4. Is there an actual or perceived problem that rent control might address?

There certainly is a perceived problem, but it is unclear that there is an actual problem. Rent control would be a mistake, for reasons outline in Section 3.1. There are other solutions that would be far less divisive and far more cost-effective, as outlined in Section 4.

5. Has something changed from the situation that has prevailed in Marina and surrounding communities, without rent control, for many years?

No. Nothing fundamental has changed. The mobilehome market in Marina works today much as it has worked for a half century. What has changed in some communities is that land values continue to increase by more than inflation and that the real estate and financial markets are currently in turmoil. As land value increases, the pressure on scarce urban and coastal land increases, driving the costs of housing higher. At present, the market is in a downturn and financing is harder to secure. Nevertheless, nothing fundamental has changed. Mobilehome sales are active, the real estate turmoil notwithstanding. Mobilehomes continue to provide relatively affordable housing for Marina mobilehome residents as they have for 50 years.

6. Are park owners in any way exploiting the captive nature of the mobilehome / mobilehome park relationship?

There is no evidence that park owners are exploiting the captive nature of the mobilehome / mobilehome park relationship. To the contrary, park owners (other than the owner of Lazy Wheel) have increased space rents less than they might have, considering inflation and the market generally. At Lazy Wheel the average annual rate of rent increase over the last 20 years (5.8%) matches closely the average annual rate of increase in mobilehome values over this time period (6.1%). In the other parks, over this 20 year period, increases in mobilehome values have exceeded increases in space rents and increases in goods and services generally, as measured by the CPI and CPI-Rent.

7. Are mobilehome residents more financially challenged than homeowners or apartment dwellers in Marina?

Some mobilehome residents have low and very low incomes, but many of Marina's low and very low income residents live in apartments, not mobilehomes. Some low and very low income residents live in single family homes. Space rent control would obviously not help low or very low income residents who live in apartments or single family homes.

Mobilehome rent control would subsidize mobilehome residents irrespective of income level and without consideration of need. A subsidy program, on the other hand, would target subsidies to those most in need of assistance. Section 8 subsidies are available to some very low income apartment residents.

8. Is it possible or likely that space rents in Marina would increase significantly in the foreseeable future as they have in some surrounding communities?

It is both possible and likely that space rents in Marina will continue to increase at or near the inflation rate for the foreseeable future. Considering the need for infrastructure improvements in the parks and considering the fact that space rents have not kept up with inflation at some parks, space rents will have to increase during some periods by more than the inflation rate whether or not there is rent control. It is not likely, however, that space rents in Marina will be increased to the levels prevailing in the luxury parks in Castroville and Santa Cruz.

9. How do mobilehome parks fit into Marina's plans for future development, including plans for creating and preserving affordable housing?

Contrary to a stated intention in the 2004 Housing Element, Marina seems poised to approve thousands of new housing units in several major new developments in the city without allocating any land for new mobilehome park development. In accordance with another section in the Housing Element, Marina seems poised to re-zone existing mobilehome parks so as to lock in the present mobilehome use for Marina's five mobilehome parks. It is not clear, however, that mobilehome use matches the City's vision for the downtown redevelopment area. It is possible that locking in the mobilehome zoning would be counter-productive in long run planning terms.

10. What might be the effects of rent control on residents, park owners, taxpayers, and the City of Marina?

Rent control has side effects that are not obvious before these programs are initiated. Parks under rent control tend to become run down. Public discourse in cities with rent control tends to be dominated by pro-rent-control and anti-rent-control factions. Rent control routinely causes protracted litigation. Rent control is also expensive in other ways, diverting civic energy from projects and programs that can truly help residents and advance a city's goals to a program that does no more than shift income and assets from one group (park owners) to another (park residents) without helping those most in need of assistance (very low income residents).

11. How do the costs of mobilehome residency compare to the costs of living in a single family home or an apartment in Marina?

Mobilehome residency is one among several affordable housing options in Marina. Depending on whether there is a mortgage or the home is owned free and clear, mobilehome, single family home, or apartment living may be the least-cost housing arrangement.

12. Are there alternative programs that might balance the market and address financial insecurity more effectively than rent control?

Yes. A program involving a memorandum of understanding, a model lease, and rent subsidies for low income residents would be a better alternative than rent control.

13. Are there mobilehome residents for whom paying space rent is a financial burden?

Yes. There are some mobilehome residents whose incomes are very low. For these residents, space rent increases would be burdensome. Indeed, for these residents, even current rents are burdensome. It is noteworthy that, for these residents, a subsidy program would be far more useful than rent control. Rent control might decrease the rate of future space rent increases, but rent control would do nothing to assist low income homeowners with space rent burdens right now.

6.2 RECOMMENDATIONS

- **That the City sponsor a transparent, inclusive process involving all stakeholders in order to work out a cooperative solution to residents' insecurity regarding mobilehome space rents and mobilehome values.**
- **That the City, mobilehome park owners, and mobilehome park residents explore the possibility that a renegotiated memorandum of understanding (MOU) and model lease program would bring lasting stability and genuine balance to the Marina mobilehome market.**
- **That the City abandon the proposal to re-zone mobilehome parks and continue to seek locations for additional mobilehome park space outside the downtown revitalization project area.**
- **That the City cover the administrative costs and consider making a matching contribution to a rent subsidy program otherwise funded by park owner contributions of 3% of gross space rentals, in order to address the income needs of the lowest-income mobilehome park residents.**

APPENDIX 1

SURVEY OF MARINA MOBILEHOME PARK RESIDENTS

(if a question is not applicable - write "N/A")

. **In what year was your mobilehome manufactured?** ____

. **What type of mobilehome do you live in?** (check one)
Singlewide ____
Doublewide ____
Triplewide ____

. **What are the dimensions of your mobilehome?** **Length**____ **Width**____

. **In what year did your household move into the mobilehome?** ____

. **Before you moved into the mobilehome park where did you live?**_____
city **state**

. **Before you moved into the mobilehome park where did you reside?**
apartment rental unit ___
house you rented ___
house you owned ___
condominium you owned ___
another mobilehome park ___
other (please describe) ___

_____

. **What was the monthly space rent when your household moved into the mobilehome that you now live in?** _____

. **What is your current monthly space rent?** **$** _____

. **What utilities do you pay for in addition to the space rent?** (check those that apply)
Gas____ **Electricity**____ **Water** ____ **Sewer**____ **Garbage**____
Other (list) _____

0. **Does your household own or rent the mobilehome?** **Own** ____
(the home, not the space) **Rent** ____

1. **What was the purchase price of your mobilehome?** **$**_____

12. Did you pay in full (all cash) for your mobilehome? YES_____ NO_____

13. If you did not pay all cash, how much was your downpayment? $_____

14. What is the total mortgage now due on your mobilehome, if any? $_____

15. What are your monthly mortgage payments, if any? $_____

16. Including yourself, how many persons live in your mobilehome? ____

17. Please fill in the following information about the adults (persons 18 or older) in your household

	Household Member #1	Household Member #2	Household Member #3	Household Member #4
Age				
Employed Full-time				
Employed Part-time				
Not working				
Retired				

18. What are the ages of any children in your household?

Child #1_____ Child #2_____ Child #3_____ Child #4_____

19. What was the total income of your household in 2006 before taxes?
(please include income from all sources including social security, pension, interest, dividends, and any public assistance)

under $15,000 ____
$15,000 - $19,999 ____
$20,000 - $29,999 ____
$30,000 - $39,999 ____
$40,000 - $49,000 ____
$50,000 and above ____

APPENDIX 2

MOBILEHOME PARK OWNER SURVEY

1. Park Name _____

2. Name of Contact _____

3. Phone Number _____

4. In what year was the park built? _____

5. How many mobilehome spaces are in the park? _____

6. How many spaces are occupied by:

Singlewide mobilehomes _____

Doublewide mobilehomes _____

Triplewide mobilehomes _____

7. What is the average rent for occupied spaces? _____

and/or describe the ranges of rents

_____

_____

_____

8. What is the rent for incoming purchasers of mobilehomes? _____

9. Does the park offer lower rents for low income tenants? _____
If yes, please describe the park policy

_____

_____

_____

10. How many residents have entered into leases of one year or more? _____

11. Are incoming residents required to enter into a lease? _____

a. If yes, what is the length of that lease? _____

12. What are the requirements for mobilehomes that are moved into the park - size, age,condition etc.

_____

_____

13. Does the park own any mobilehomes? _____

a. If yes, how many? _____

b. Is the park selling or renting those homes _____

c. If the spaces are rented, what is the rent
Including the space and mobilehome rent? _____

14. When did the current owner purchase the park? _____

15. How many spaces are covered by leases of more than one year. _____

If the park has a standard lease please provide a copy

APPENDIX 3

2008 SPACE RENT SURVEY - MONTEREY COUNTY

LOCATION	PARK	RENT CONTROL	NO. OF SPACES	BASE RENT LOW	BASE RENT HIGH
Castroville	Monte Del Lago	NO	310	985	1135
				985	*1135*
King City	Pine Canyon	NO	123	255	280
				255	*280*
Marina	Cypress Square	NO	92	440	500
Marina	El Camino	NO	62	407	500
Marina	El Rancho	NO	97	310	406
Marina	Lazy Wheel	NO	69	550	650
Marina	Marina del Mar	NO	83	299	468
average				*401*	*505*
Moss Landing	Trail's End	NO	40	475	495
Moss Landing	Moss Landing	NO	104	370	405
average				*423*	*450*
Prunedale	Cabana	NO	49	550	550
Prunedale	Ponderosa Oaks	NO	60	465	575
average				*508*	*563*
Salinas	Lamplighter	YES	250	600	750
Salinas	Cal-Hawaiian	YES	157	455	755
Salinas	Alisal	YES	82	383	740
Salinas	Mid-Town	YES	80	575	600
Salinas	La Canada	YES	119	424	571
Salinas	Rancho Salinas	YES	137	528	570
Salinas	Village	YES	118	350	475
Salinas	Del Monte	YES	64	350	450
average				*458*	*614*
Seaside	Seaside	NO	98	480	635
Seaside	Green Parrot	NO	47	400	400
Seaside	Trailer Terrace	NO	59	355	410
average				*412*	*482*
Soledad	Soledad	NO	30	411	461
Soledad	Nielsen's	NO	27	265	265
Soledad	Santaelena	NO	100	200	200
average				*292*	*309*
total spaces			2457		
weighted average				*496*	*611*

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KEY INFORMANTS

In order to better understand mobilehomes, Marina, and the citywide context for the mobilehome study, the author interviewed stakeholders and others. Many thanks to all who shared their time and thoughts. Unless attributed specifically, all opinions in the report are the author's.

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Ken Waterhouse, park owner
Doug Johnson, park owners' association representative
Dave Evans, park owners' association representative
Fran Hirsch, park manager
Dean Moser, park owner and manager

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Albert Vieira, park owner
Bill and Sue Denhoy, park owners
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Michael Tate, park owner
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The Right to Sell the "Im"mobile Manufactured Home in Its Rent Controlled Space in the "Im"mobile Home Park: Valid Regulation or Unconstitutional Taking?*

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I. Introduction

IN THE UNITED STATES, the ownership of mobilehomes on rented spaces within mobilehome parks is a widespread form of tenure. Presently, over two million dwelling units in the United States are in this form of tenure.[1] Most of these units are the primary residences of their owners.[2] A substantial portion of the units are concentrated in Florida and California. Florida has 418,352 mobilehome spaces in 2769 mobilehome parks.[3] California has 377,149 spaces in 5817

*In January 1992, the U.S. Supreme Court held a hearing in a case that raises the issues that are the subject of this article. This article was submitted in the fall of 1991.

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1. The 1990 census contains data on the total number of mobilehomes, but does not indicate what percentage of the homes are in mobilehome parks. Some states compile data on the number of mobilehome park spaces.

One source estimated that in 1974 there were 1.6 million mobilehomes in mobilehome parks. ARTHUR D. BERNHARDT, BUILDING TOMORROW: THE MOBILE/MANUFACTURED HOUSING INDUSTRY 217 (1980) (Project Mobile Home estimate).

Current data for California, Florida, Michigan, and Ohio indicate the number of mobilehome park spaces are about fifty percent above the 1974 estimates made by Project Mobile Home. For current data, see *infra* notes 2–5.

2. *E.g.*, in California, three percent of the mobilehome spaces in mobilehome parks are rented by persons who live elsewhere. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, MOBILEHOME PARKS IN CALIFORNIA 17 (1986).

3. STATE OF FLORIDA, FINAL REPORT OF THE MOBILE HOME STUDY COMMISSION (VOL. I), at 57, 59 (June 1990).

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parks.[4] Michigan and Ohio each have over 100,000 spaces in mobilehome parks.[5]

Mobilehomes usually range in size from 500 to 1500 square feet,[6] which is typically the size of an apartment or two bedroom house. The cost of new mobilehomes, including moving and set up costs, is in the range of $30,000 to $50,000.[7] These expenses are in addition to monthly mobilehome park space rents.

While these homes are called "mobile" in fact, they are a form of immobile prefabricated housing that has been constructed in a factory and transported to its site.[8] The cost of moving these structures and setting them up in their spaces is substantial.[9] (Costs for set up and associated improvements for such items as the cement foundation, carports, steps, porches, and landscaping are typically in the range of $5000 to $15,000.) Furthermore, in metropolitan areas with tight housing markets a virtual absence of vacant spaces in mobilehome parks makes it impossible to move them even if moving costs were not a consideration. When mobilehome owners move they sell their mobilehomes "in place."

4. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, DIVISION OF CODES AND STANDARDS SUMMARY OF MOBILEHOME PARK STATISTICS, Aug. 28, 1990. The data segregates the count of mobilehome lots and recreational vehicle lots; however, it does not indicate what portion of the parks have only recreational vehicles. *Id.*

Most of the mobilehome spaces are in southern California. The major counties have the following number of spaces: Los Angeles—52,142; San Diego—42,351; Riverside—34,659; San Bernadino—31,408; Orange—30,803. *Id.*

5. Michigan has 122,489 spaces. KATE WARNER, SOCIAL AND ECONOMIC IMPACTS OF MOBILE HOME PARKS 5 (1987). Ohio has 108,499 spaces. Telephone conference with staff, Ohio Department of Health (1991).

6. See *infra* notes 60–67 and accompanying text.

7. In 1989, the average price of single-wide mobilehomes was $19,200 and the average price of double-wides was $34,800. MANUFACTURED HOUSING INSTITUTE, QUICK FACTS 1990/91. These amounts do not include set up costs. *Id.*

8. "98 percent of these homes make only one trip—from the factory or showroom to the installation site." JONATHAN SHELDON & ANDREA SIMPSON, MANUFACTURED HOUSING PARK TENANTS: SHIFTING THE BALANCE OF POWER i (1991). Only about three percent of all mobilehomes are relocated from one park to another. Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrols*, 35 UCLA L. REV. 399 (1988).

In 1980, the Department of Housing and Urban Development proposed that "the term mobile home be changed to manufactured housing in all federal law and literature." 46 Fed. Reg. 41,708–10 (1980) (amending 24 C.F.R. pts. 3280, 3282, 3283). However, "mobilehome" is stil the standard term in state and local legislation and common usage. In 1991, a federal circuit court of appeals declared: "The mobile homes themselves really aren't [mobile]." Azul Pacifico, Inc. v. City of Los Angeles, No. 90–55853, 1991 WL 224528 (9th Cir. Nov. 1, 1991) (petition for rehearing pending).

9. *See infra* discussion accompanying notes 91–94.

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In areas with tight housing markets, mobilehomes in mobilehome park spaces are quite valuable,[10] while mobilehomes without a space are virtually worthless. As a practical matter, mobilehomes and mobilehome owners are thus completely dependent on the right to keep the mobilehome "in place" and are captive to park owners' rents and other regulations.

The principal attractions of ownership of mobilehomes in mobilehome parks are its relatively low cost compared to single-family dwellings and condominiums (while still offering the characteristics of a detached structure), and the organization of mobilehomes into small tightly knit social communities.[11]

On the other hand, mobilehome ownership in mobilehome parks presents special problems. Because mobilehome park spaces and mobilehomes constitute a package of complementary goods with interdependent values, the interests of mobilehome owners and park owners are in direct opposition. The higher the space rent the lower the mobile home value and vice versa. Mobilehome owners' desire to preserve their investments and the affordability of their homes while parkowners desire to maximize their return on the underlying land.[12]

Mobilehome space rent controls and legislation granting mobilehome owners the right to sell their mobilehomes in place became widespread in response to concerns about mobilehome owners' interests. Approximately seventy California cities have adopted mobilehome space rent controls.[13] Other states with municipal mobilehome space rent ordinances include New Jersey and Massachusetts.[14] Florida recently enacted legislation which authorizes courts to refuse to enforce "unreasonable" mobilehome space rents,[15] but it does not permit municipal rent control ordinances except upon a finding of grave emergency.[16] In

10. In California, mobilehome prices ranging from $50,000 to $100,000 are standard.

11. *See infra* discussion at notes 30-87.

12. A survey of mobilehome park owners and mobilehome owners in Los Angeles indicated that, on the average, mobilehome owners have triple the investment of park owners in their spaces. CITY OF LOS ANGELES, RENT STABILIZATION DIVISION, COMMUNITY DEVELOPMENT DEPARTMENT, RENTAL HOUSING STUDY: MOBILEHOME PARKS UNDER RENT STABILIZATION 11, 33 (1985).

13. This estimate is based on the author's interviews with mobilehome owner attorneys and public officials in 1990 and 1991.

14. Interviews with mobilehome owner representatives in New Jersey and Massachusetts (Summer 1991).

15. FLA. STAT. ch. 723.033 (West Supp. 1991).

16. FLA. STAT. ch. 125.0103 (West Supp. 1991).

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each of these states, mobilehome owners have the right to sell their mobilehomes in place.[17]

A critical element of many mobilehome space rent control ordinances has been that they do not contain "vacancy decontrol" provisions which permit unlimited rent increases upon changes in ownership of a mobilehome when it is sold in place in a mobilehome park. Instead, they contain "vacancy controls."

In the absence of restrictions on rent increases upon a sale of a mobilehome in place, a park owner may capitalize the mobilehome value into the rent. If the rent becomes exorbitant the mobilehome cannot be sold to anyone else or can only be sold at a reduced price. On the other hand, when rents are restricted upon sale, the mobilehome owner may capitalize a portion of the land value into the value of the mobilehome.

In the past four years, the constitutionality of "vacancy control" provisions in mobilehome space rent regulations has been brought into serious question. Two U.S. circuit courts of appeals have overruled dismissals of complaints which contained allegations that mobilehome rent controls with vacancy controls constitute a physical taking when combined with regulatory schemes which give the mobilehome owner the right to sell the mobilehome in place.

In the leading case, *Hall v. Santa Barbara*,[18] the U.S. Court of Appeals for the Ninth Circuit ruled that ordinances which grant mobilehome owners the right to sell their mobilehomes in their rented park space at a regulated "reduced" rent may effectuate a *permanent physical* invasion, by virtue of the fact that they transfer a *permanent* possessory interest from the park owner to the mobilehome owner.[19] Subsequently, the Supreme Court denied a petition for hearing, thus leaving the ultimate validity of *Hall*'s legal conclusions unresolved.[20]

As a result of the *Hall* decision, most of the California cities with mobilehome rent controls have adopted vacancy decontrols in order to avoid suits for damages.[21] In some parks, owners have instituted large rent increases in space rents upon changes in mobilehome ownership

17. FLA. STAT. ch. 723.058 (West 1991); N.J. STAT. ANN. § 46:8C-3 (West 1991); MASS. GEN. LAWS ANN. ch. 140, § 32M (West 1991).

18. 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940 (1988).

19. *See id.* at 1278.

20. City of Santa Barbara v. Hall, 485 U.S. 940 (1988).

21. This conclusion is based on comments by municipal attorneys and the author's review of numerous local ordinances.

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(e.g., $100 to $300 per month).[22] According to mobilehome owners and brokers, the vacancy decontrols have caused mobilehome owners to experience severe problems and/or losses of equity in selling their mobilehomes.[23] Also, the viability of investment in mobilehome ownership has been brought into question by the potential of unlimited rent increases upon sale of the investment.[24]

In 1990, a federal circuit court of appeal in New Jersey adopted the reasoning of *Hall* in *Pinewood Estates v. Barnegat Township Leveling Board*.[25] In 1991, two other circuit courts of appeals panels, which included the judge who authored the *Hall* decision, followed its reasoning.[26] However, apart from these decisions, federal and state courts have consistently rejected the view that mobilehome space rent controls constitute a physical taking. Since October 1990, five California appellate court panels have declined to follow its reasoning on the ground that it is not persuasive.[27] Furthermore, federal courts that have been bound by *Hall*, which have not included the author of the *Hall* opinion on its panel, have criticized its reasoning and/or avoided its substantive conclusions by finding that challenges to ordinances were barred by the statute of limitations or had been resolved by state court proceedings.[28]

Up to this time, chaos, uncertainty, and irresolution have been the winners in the legal debate over the constitutionality of mobilehome space rent regulations which have vacancy controls. Presently, challenges based on *Hall*'s theories are pending in California and New

22. *E.g.*, information sheet prepared by the Golden State Mobilehome Owner's League (1990 Survey, Garden Grove, California) listing parks with exceptional increases.

23. Interviews with brokers and mobilehome owner association reprsentatives, Alameda, Santa Barbara and Ventura Counties, California (1990–91).

24. The MOBILEHOME PARKS REPORT reported that:

> The number of sources for financing consumer purchases of mobilehomes in California has fallen from 18 to just three or four major sources, according to mobilehome dealers . . . . Other [lenders] have pulled out because of the impact of the *Hall* decision and the lifting of rent controls when mobilehomes are resold in parks. Lenders worry that higher rents will force a drop in the in-place resale values of mobilehomes.

MOBILEHOME PARKS REPORT 1–2 (Thomas P. Kerr, Apr. 1990). Lenders are very nervous because they've lent substantially on the "in-place value" of mobilehomes in rent controlled jurisdictions. *Id.* at 4.

25. 898 F.2d 347 (3d Cir. 1990). *See infra* text at notes 243–46.

26. *See, e.g.*, Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951 (9th Cir. 1991); Azul Pacifico, Inc. v. City of Los Angeles, No. 90-55853, 1991 WL 224528 (9th Cir. Nov. 1, 1991) (petition for rehearing pending).

27. *See infra* text at notes 172–275.

28. See *infra* text at notes 267–73.

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Jersey.[29] Until the issues raised by *Hall* are resolved, cities, mobilehome owners, and park owners can only speculate over what their respective rights and burdens may be.

The purpose of this Article is to address the constitutional issues raised by mobilehome rent control laws that do not contain vacancy decontrol provisions. Part II contains a description of the nature of mobilehome ownership. It includes discussion of the development of mobilehomes as residences and their economics, the growth of mobilehome ownership financing mechanisms, and zoning restrictions on mobilehomes and mobilehome parks.

The monopoly nature of the mobilehome park landlord-tenant relationship is described in Part III. This relationship is a primarily a product of the immobility of mobilehomes and exclusionary land-use policies which restrict the supply of mobilehome spaces.

In Part IV, the evolution of public regulation of mobilehome park landlord-tenant relationships is discussed.

Part V then examines *Hall* and other cases which have considered the constitutionality of regulatory schemes which give mobilehome owners the right to sell their mobilehomes in their park spaces at regulated rents. Finally, Part VI analyzes the constitutional theories surrounding the debate over the constitutionality of mobilehome park space rent regulations.

II. The Growth of Mobilehome Ownership and Mobilehome Parks[30]

A. *The Emergence of Trailer Courts*

"Trailers" were first introduced in the 1920s, primarily as structures for autocamping.[31] At first they consisted of wood frame structures

29. In New Jersey, cases are pending in the Jackson and Dover Townships. *See* Mobile Village Home Park v. Township of Jackson, No. L-2407-90PW (N.J. Super. Ct. Law Div.); Rivkin v. Dover Township Rent Leveling Bd., No. L-6650-90 (N.J. Super. Ct. Law Div.). A trial court invalidated the vacancy control in the Borough of Highlands ordinance on the basis that it constituted a taking. Highlander Ass'n v. Borough of Highlands, No. L-59130-90 (N.J. Super. Ct. Law Div. June 7, 1991) (Order of Judgment). The decision was not appealed.

30. For history and discussion of mobilehome ownership see EARL W. MORRIS & MARGARET E. WOODS, HOUSING CRISIS AND RESPONSE: THE PLACE OF MOBILE HOMES IN AMERICAN LIFE (1971); MARGARET J. DRURY, MOBILE HOMES (THE UNRECOGNIZED REVOLUTION IN AMERICAN HOUSING) (rev. ed. 1972); INSTITUTE FOR LOCAL SELF GOVERNMENT, WHY THE WHEELS: THE IMMOBILE HOME (1972); ARTHUR D. BERNHARDT, BUILDING TOMORROW (1980); THOMAS E. NUTT-POWELL, MANUFACTURED HOMES (MAKING SENSE OF A HOUSING OPPORTUNITY) (1982); ALLAN D. WALLIS, WHEEL ESTATE (1991). These works are the principle sources of the following discussion.

31. WALLIS, *supra* note 30, at 31-39.

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covered with canvas.[32] Most of them were homemade.[33] Typically, they were a few hundred square feet in size and could easily be hitched to vehicles, and did not have toilets or showers.[34] The emergence of a "mobile" form of housing stimulated widespread curiosity, interest, and concern during an era that revered the popularization of the automobile.

The spread of trailers led to the development of thousands of trailer camps for travelers in the 1920s.[35] In the early 1920s, the camps were constructed by municipalities for the purpose of encouraging tourism.[36] However, when long-term occupants of "tin can" trailers started to occupy the camps, the municipally operated camps were closed or lengths of stay were limited to a few weeks.[37]

In the 1930s, the use of trailers as a form of permanent housing became more widespread.[38] Trailers with solid exteriors were produced on a mass scale and "luxury" camps were opened.[39] At a time of economic depression when mortgage and tax default rates were astronomical, trailers freed families from the "oppression" of mortgages, taxation, employers, immobility, politicians, and unsightly changes in neighboring land uses.[40] They offered a cheap and mobile form of housing when mobility as well as low cost were essential: "[M]unicipal or private camps [may provide] electric light, water, and sewage disposal . . . . at [a] reasonable charge. . . . They permit families to live without heavy outlay for land ownership or rent . . . ."[41]

32. *Id.* at 35–39.
33. *Id.* at 38.
34. In 1942, the Supreme Court of Ohio noted that: "[T]he evidence discloses that the average trailer is approximately 7 feet in width and 17 feet in length. . . . No trailer is equipped with a toilet or shower." Renker v. Village of Brooklyn, 40 N.E.2d 925, 927 (Ohio 1942).
35. WALLIS, *supra* note 30, at 39.
36. *Id.*
37. *Id.* at 38–41. One commentary provides the following account:

> The evolution of the house trailer user may be traced through three stages. The first was the era of the "tin can tourist" and "auto gypsy." These earliest trailer users were transient families, for the most part indigent or otherwise socially maladjusted, who roamed about the country in dilapidated cars. Their trailers were makeshift crate-like affairs, usually contrived of materials from junkyards. . . . For nearly a decade the trailer was closely identified with this class of family transients. Naturally real estate owners, hotel and cottage camp proprietors, and others dependent on the tourist trade, as well as civic officials and social workers, looked askance upon these modern gypsies.

Carroll D. Clark & Cleo E. Wilcox, *The House Trailer Movement*, 22 SOCIOLOGY & SOC. RES. 503, 505 (1938).

38. MORRIS & WOODS, *supra* note 30, at 8.
39. WALLIS, *supra* note 30, at 42–63.
40. *Id.* at 58–59.
41. Philip H. Smith, *After Cars Come Trailers*, 156 SCI. AM. 94, 96 (Feb. 1937).

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By 1936, about 300,000 households were using trailers for year-round or vacation living.[42] There were predictions that a substantial portion of the population would be living in such homes within a few decades.[43] A commentary in *Time* magazine explained the nature of the drastic transformation that took place between the 1920s and 1930s:

> No one knows who devised the automobile trailer, but everyone who participated in the mass movement of the American people onto the highways in the early 1920's remembers the occasional ones which careened past on the road. Lopsided, homemade wooden boxes looking like outhouses on wheels, they usually provoked snarls or sneers from motorists forced to cut around them. As the automotive industry progressed, trailers remained static. As late as 1932 they were rarities. Then, suddenly public resistence broke down. All over the U.S. trailers rolled onto the highways . . . .
>
> The modern trailer is no longer an ugly wooden box. Anywhere from 14 to 30 feet long, it is a streamlined lozenge of light metal with curtained windows . . . . Inside, it is as compactly luxurious as the cabin of a small cruiser . . . .
>
> More important than their effect upon tourist cabins is the effect trailers might have upon real estate and housing. Modern trailers are cheaper, more adaptable, more comfortable than many summer cottages. As permanent homes, they at present have the advantage of avoiding property taxes. Trailermen therefore hold that it is not very far-fetched to believe that the increasing popularity of trailers may delay the much-mooted housing boom. . . . William Stout . . . designed a super-trailer called the "Stout Mobile Home." Made of metal, it is towed behind the automobile to wherever the owner wishes to live. There he unhooks it, jacks it onto cement blocks, unfolds it like an envelope into a four-room bungalow.[44]

One source explained that "[h]aving discovered the cheapest living in the U.S., many of these gasoline Bedouins settled down at congenial oases; they unhitched the tow car, hiked up the trailer on blocks and called it home."[45] These trends were viewed negatively and continually ran into stiff resistance.

In response, zoning and other types of regulatory restrictions on mobilehome living became widespread.[46]

> [A] tax war is impending. Real estate interests, small hotels, tourist camps, and other businesses have in some localities launched a movement to tax the trailer out of existence, believing that it represents a serious threat to their welfare. Their forces will be joined by many municipalities confronted by troublesome problems of regulation, and reluctant to provide essential services.[47]

42. WALLIS, *supra* note 30, at 68–70.
43. *See, e.g.*, Lawrence E. Saunders, *Roll Your Own Home*, SATURDAY EVENING POST, May 23, 1936, at 12; Smith, *supra* note 41.
44. *Nation of Nomads?*, TIME, June 15, 1936, at 53.
45. *200,000 Trailers*, FORTUNE, March 1937, at 104–14, *reprinted in* READER'S DIGEST, May 1937, at 99–101.
46. *See infra* discussion at notes 98–148.
47. Clark & Wilcox, *supra* note 37, at 513.

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World War II labor force requirements for immediate and temporary lodging led to the widespread creation of mobilehome parks in defense industry areas and reversed the movement to curb the employment of trailers as a mode of meeting year-round housing needs. During this period, "the use of manufactured trailers for year-round housing shifted from 10 percent of annual production to 90 percent."[48] However, they continued to be viewed as a form of temporary housing with continued emphasis on their mobility.[49]

Also, trailer parks did not shed their image as a form of slum housing.[50] "The public image of the mobile home resident in the 1940's and 1950's was often one of social undesirability, rootlessness, and lack of community responsibility,"[51] although sociologist's studies of mobilehome owners did not confirm these conclusions.[52]

B. *From "Trailer"hood to "Manufactured" Housing*

The period from the 1950s through 1990 has been marked by a combination of trends that has increased the demand, feasibility, and respectability of mobilehome ownership, and has transformed "mobile" home ownership into "immobile" home ownership. The average size of mobilehomes has tripled.[53] Financing terms have been steadily improved. The park owner industry has conducted campaigns to increase the quality of parks.[54] There has been increasing federal approval and advocacy of mobilehomes as an affordable housing alternative.[55] National building and safety standards have been adopted thereby enabling standardized production and addressing safety concerns.[56] The outcome of these trends has been that mobilehomes have constituted a substantial portion of low-cost housing production, notwithstanding stiff institutional resistence. This section summarizes these developments.

48. WALLIS, *supra* note 30, at 87.

49. These houses that "can be folded up and moved elsewhere" overnight are "proving particularly useful" in alleviating the housing shortage near new war plants. *Mobile Housing Popular in War Industry Sections*, SCI. NEWSLETTER, June 26, 1943, at 403.

50. "Much of the stigma that accompanied mobilehome residency was the product of the public's image of the home slum. The early unplanned parks and the 'mom and pop' parks were indeed eyesores, they often contained high densities and slumlike conditions." DRURY, *supra* note 30, at 111.

51. *Id.* at 15.

52. *Id.* at 16–17.

53. *See infra* text accompanying note 81.

54. DRURY, *supra* note 30, at 111–13.

55. *See, e.g.*, WALLIS, *supra* note 30, at 207–08.

56. *Id.* at 212–15.

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Starting in the 1950s, immobile forms of trailer homes were produced.[57] The ten-foot-wide "mobilehome," which could only be moved by trucks was introduced.[58] It quickly became the standard product, after manufacturers overcame state highway regulations that prohibited shipments of such wide units.[59] A few years later twelve-foot-wide homes were manufactured.[60] Loan terms were extended to five years and downpayment requirements were reduced to twenty-five percent.[61] FHA insurance was authorized for mobilehome park construction[62] and purchases of mobilehomes. In the 1950s and 1960s, mobilehomes cost about forty percent as much as single-family dwellings, but their lower cost was partially offset by less favorable financing terms.[63]

From 1955 to 1965, the average size of new mobilehomes doubled, and their price decreased in terms of square footage and relative to single-family dwellings.[64] In 1966, the average mobilehome size was 720 square feet and the average price was $5700 ($8.00/sq. ft.) compared to a 1955 average size of 360 square feet and average price of $4130 ($11.50 sq. ft.).[65] Also, the average loan term was extended from five years to seven to eight years.[66]

AVERAGE MOBILEHOME SIZES[67]

Year Mfd.	Sq. Ft.
1955	360
1966	720
1973	882
1980	1050

The improvement of mobilehomes was accompanied by extensive industry efforts to improve the quality of mobilehome parks. This involved a transformation from small unplanned parks with very small

57. *Id.* at 129–36.
58. DRURY, *supra* note 30, at 93.
59. WALLIS, *supra* note 30, at 129–36. For data on the distribution of new mobilehome construction by width of unit, see DRURY, *supra* note 30, at 95–97.
60. For data on sizes of new units, see DRURY, *supra* note 30, at 96.
61. DRURY, *supra* note 30, at 94.
62. In 1956, Congress authorized the FHA to insure loans to finance up to sixty percent of the value of a mobilehome park for new park construction. *Id.*
63. *Id.* at 102–03.
64. *Id.*
65. For average mobilehome price data for 1954 through 1970, see *id.* at 103, Table 24.
66. *Id.* at 115.
67. DRURY, *supra* note 30, at 102 (1955 and 1966 data); NUTT-POWELL, *supra* note 30, at 53 (1973 and 1980 data).

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spaces to large,[68] carefully planned parks with a few thousand square feet of land per mobilehome and community facilities, including such amenities as club houses, swimming pools, and other sports facilities.[69]

In response to widespread concerns that mobilehomes were unsafe structures that were subject to substantial fire, flooding, hurricane, and tornado risks, the mobilehome industry pushed for standardized safety regulations.[70] In 1963, the Mobile Home Manufacturer's Association contracted with the American National Standards Institute to develop construction standards, which became obligatory for members of the Association.[71] By 1973, these standards were in effect in forty-five states.[72]

In 1974, Congress passed the Mobile Home Construction and Safety Standards Act.[73] This Act authorized HUD to adopt standards which preempt local regulation and thereby prevent localities from having diverse standards.[74] Two years later, HUD implemented national performance standards as an alternative to the design specifications in local building codes, thereby overcoming local code obstacles to mobilehome production.[75] The new HUD code drastically reduced the incidence of fire-related deaths in mobilehomes, principally by banning the use of aluminum wiring.[76]

The 1960s and 1970s were marked by a process of increased legitimization of mobilehome ownership and increasing recognition of them as a source of affordable housing.[77] This process was accompanied by increasing levels of regulation as mobilehomes were recognized as permanent housing.[78]

While the adoption of national uniform building standards helped delegitimize local zoning and building code exclusions of mobilehomes, the legitimization process was not always an aid to mobilehome owner-

68. "[N]ew parks planned or under construction in 1977 had an average size of one hundred seventy-five spaces . . . up from an average size of all existing quality . . . parks of ninety-six in 1974, of seventy-five in 1970, and of only thirty-six in 1958." BERNHARDT, *supra* note 30, at 247.

69. DRURY, *supra* note 30, at 111–14.

70. WALLIS, *supra* note 30, at 212–15.

71. *Id.* at 213.

72. *Id.*

73. Housing and Community Development Act of 1974, Title IV, Pub. L. No. 93-383, 88 Stat. 633 (1974) (codified as amended at 42 U.S.C. §§ 5301–5320 (1988)).

74. *See* WALLIS, *supra* note 30, at 214.

75. *Id.* A specification code might, for example, require that a wall has 2x4 studs 16" on center, while a performance code will simply require that the wall meet certain strength standards.

76. For discussion, see NUTT-POWELL, *supra* note 30, at 20–25.

77. WALLIS, *supra* note 30, at 211–12.

78. *Id.* at 212–15.

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TABLE 1: Total Production of Housing Units, Including Mobile Homes in the United States, 1955-71

Year	*Total Private and Public Conventional Housing Starts Including Farm*	*Mobile Homes Produced*	*Total Housing Production in United States*	*Mobile Homes as Percentage of Total Housing Production*
1955	1,646,000	111,900	1,757,900	6.4
1956	1,349,000	124,330	1,473,330	8.4
1957	1,224,000	119,300	1,343,300	8.9
1958	1,382,000	120,000	1,484,000	6.9
1959	1,553,500	120,500	1,674,000	7.2
1960	1,296,000	103,700	1,399,700	7.4
1961	1,365,000	90,200	1,455,200	6.2
1962	1,492,400	118,000	1,610,000	7.3
1963	1,640,000	150,840	1,790,840	8.4
1964	1,590,700	191,320	1,782,020	10.7
1965	1,542,700	216,470	1,759,170	12.3
1966	1,196,200	217,300	1,413,500	15.4
1967	1,321,900	240,360	1,562,260	15.4
1968	1,545,500	317,950	1,863,450	17.1
1969	1,499,600	412,700	1,912,300	21.6
1970	1,462,700	401,200	1,863,900	21.5
1971	1,850,000	485,000	2,320,000	20.8
Seventeen-Year Total	24,957,200	3,523,070	28,465,270	12.3

Note: The 1971 figures are an estimate based on the housing starts and mobile home shipments during the first nine months of the year.
Sources: Construction Reports, Housing Starts, Series C-20, U.S. Department of Commerce, Washington, D.C. and the Mobile Homes Manufacturers Association.

ship. The prior refusal of conventional housing institutions to acknowledge mobilehomes as a form of housing led to a lack of regulation which, in turn, reduced their cost.[79]

C. *Production Levels Soar in the 1960s and 1970s*

In the early 1960s, mobilehome production levels averaged about 100,000 units per year, approximately seven percent of all housing starts.[80] In the latter part of the decade, a period in which single family sales plummeted, mobilehome production was in the range of 300,000 to 400,000 units per year, approximately twenty percent of all housing starts.[81]

There is no comprehensive data on the percentage of mobilehomes that

79. *See* DRURY, *supra* note 30, at 120–22.
80. *See id.* at 6.
81. *Id.*

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were installed in new spaces in mobilehome parks. One source estimates that production of mobilehome park spaces ranged from 100,000 to 200,000 between 1969 and 1973, but then became negligible until the late 1970s.[82] The production of new spaces did not meet the demand.[83] By 1974, out of a total of 3.9 million mobilehome units, there were 1.6 million mobilehomes in 24,500 mobilehome parks.[84] California and Florida each had a quarter of a million mobilehomes in parks.[85]

D. *Increasing Federal Approval and Advocacy of Mobilehomes as an Affordable Housing Alternative*

The foregoing developments were accompanied by federal recognition of the role of mobilehomes as a vital source of affordable housing. President Nixon's 1970 message on national housing goals declared that "for many moderate income American families, the mobile home is the only kind of housing they can reasonably afford."[86]

In 1982, the President's Commission on Housing commented that:

> Manufactured housing is a significant source of affordable housing for American families, particularly first-time home buyers, the elderly, and low- and moderate-income families. Manufactured homes accounted for almost 36 percent of all single-family homes sold in the United States in 1981, and for the vast majority of those sold for under $50,000.
>
> Manufactured housing has competed effectively in a national housing market characterized by a vast array of Federal credit programs, institutional financing facilities, and regulations that favor conventional housing competitors . . . . Many of the remaining impediments to a free choice of manufactured housing are the result of Federal policies, while others are the result of actions at the State or local levels.[87]

E. *The Inability of Mobilehome Parks to Compete in the Face of Soaring Land Values*

In the past decade, mobilehome production has been in the range of 200,000 to 300,000 units per year.[88] Overall data on the creation of new mobilehome park spaces is not available. However, in urbanized areas with tight markets, soaring land values and limitations on mobilehome space densities, as compared to density levels for single-family dwellings have made it impossible for parks to compete with alternate uses.

82. BERNHARDT, *supra* note 30, at 218.
83. DRURY, *supra* note 30, at 43.
84. Project Mobile Home Industry projections as reported in BERNHARDT, *supra* note 30, at 217 (Table 10.7).
85. *Id.*
86. WALLIS, *supra* note 30, at 207.
87. THE REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING 85–86 (1982).
88. MANUFACTURED HOUSING INSTITUTE, QUICK FACTS (1990).

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In the early 1970s, when house prices averaged in the range of $30,000, land values for single-family uses were in the range of $10,000 per unit and approximated land values for mobilehome spaces with a potential rent of $100 per month.[89] Under such circumstances, park development was feasible. Today, in areas with tight housing markets, with house values in the range of $150,000 to $300,000, land values for single-family dwellings may be in the range of $50,000 to $100,000 or more. Furthermore, allowable densities for other competing forms of moderate cost housing-condominiums and apartments—are typically double or triple the allowable densities for mobilehome spaces, thereby making mobilehome space development unattractive.

III. The Monopoly Relationship Between Mobilehome Park Owners and Mobilehome Owners

A central characteristic of mobilehome space rentals is the monopoly nature of the relationship. The Florida Supreme Court found a form of "economic servitude": "If mobile home park owners are allowed unregulated and uncontrolled power to evict mobile home tenants, a form of economic servitude ensues rendering tenants subject to oppressive treatment in their relations with park owners and the latters' overriding economic advantage over tenants."[90] This servitude is the product of the prohibitive costs of moving mobilehomes and public policies which severely restrict the supply of mobilehome spaces.

A. *"Spatial" Monopoly—The Prohibitive Cost of Moving Mobilehomes and "Quasi-Rent"*

State and local legislation governing mobilehome space rentals consistently note the high costs of moving mobilehomes.[91] Moving costs are typically in the range of several thousand dollars. In addition, there are additional costs of setting up the infrastructure associated with the

89. The discussion in this paragraph is based on the author's conclusions based on his research on California housing markets over the years.

90. Stewart v. Green, 300 So. 2d 889, 892 (Fla. 1974).

91. For example, the California code states that:

> The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes . . . be provided with the unique protection from actual or constructive eviction.

CAL. CIVIL CODE § 798.55(a) (West 1982).

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placement of a mobilehome in its new space, which are typically in the range of $10,000 for a double-wide.[92]

As a result of the impracticality of moving mobilehomes, park owners may obtain "quasi-rent" in addition to "competitive" rents. One economist's analysis of the mobilehome park landlord-tenant relationship describes this phenomenen:

> If a coach owner is confronted with a rent increase, he may decide to move his coach to a pad where the rents are lower. Assuming both pads are of equal quality, an optimizing individual chooses the least costly solution. Consequently, the coach owner will move only if the present value of the expected difference in the rent exceeds the costs of transporting the coach and preparing and landscaping the new site. . . . The fact that it is quite costly for a tenant to move after having located in the park gives landlords the opportunity to seek larger rent increases than they otherwise would be able to obtain. Thus, the park owner earns a quasi-rent.[93]

Other things being equal, a mobilehome owner is better off paying an additional $100 to $150 per month in space rent to stay in place, rather than moving.[94]

The immovability of mobilehomes and resultant total lack of mobilehome owners' bargaining power has been used as a basis for ruling that their "absence of choice" meets "the class action requirement of

92. A report by the California Department of Housing and Community Development includes the following table of representative costs for 1988 for doublewide mobilehomes:

Unit wholesale price	$26,000
Transportation to site	500
Set-up including attachments, piers, carpet laying	2,150
10′ × 40′ awning	1,150
Skirting (masonite to match painted hardboard)	1,175
Carport [one car]	1,200
Plywood Deck 8′ × 20′	1,040
Rear and front steps	400
Air conditioning	1,500
Wholesale cost to dealer	35,115
Typical dealer add-on charge (admin. profit of 35%)	12,290
Dealer's price to buyer	47,405
Price per square foot:	$32.92

CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, MANUFACTURED HOUSING FOR FAMILIES: INNOVATIVE LAND USE AND DESIGN 8 (Jan. 1990) (footnotes omitted).

93. Hirsch & Hirsch, *supra* note 8, at 120–21.

94. This calculation is based on the range of increased mortgage payments associated with $10,000 to $15,000 in moving and set-up costs.

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procedural unconscionability."[95] The Florida Supreme Court commented:

> Where a rent increase by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial rental agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving. The "absence of meaningful choice" for these residents, who find the rent increased after their mobile homes have become affixed to the land, serves to meet the class action requirement of procedural unconscionability.[96]

Subsequently, a Florida appellate court commented that "[b]ecause of the difficulties inherent in moving the home from one settled location to another, it is hard to imagine a situation where the park owner and the tenants are in an equal bargaining position on rent increases."[97]

B. *Publicly Created Monopoly on Permitted Locations of Mobilehomes*

1. PUBLICLY CREATED MONOPOLY CONDITIONS[98]

In addition to benefiting from the high costs of moving mobilehomes, park owners benefit from stringent restrictions on competition. From the time of their introduction, the use of mobilehomes and the development of mobilehome parks have been severely curtailed by local land-use controls and building codes. The following types of exclusions have been common:

(a) confinement of mobilehomes to mobilehome parks,[99]

95. Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121, 1124 (Fla.), *cert. denied*, 493 U.S. 964 (1989). However, unconscionability theories have been rarely used in cases involving apartment rentals. This conclusion is based on the author's interviews with tenant attorneys.

96. *Id.*

97. Belcher v. Kier, 558 So. 2d 1039, 1042 (Fla. Dist. Ct. App.), *review denied*, 570 So. 2d 1305 (Fla. 1990) (citation omitted).

98. For general discussion of the creation of monopoly conditions through zoning, see Bruce W. Hamilton, *Zoning and the Exercise of Monopoly Power*, 5 J. URB. ECON. 116 (1978); William A. Fischel, *Zoning and the Exercise of Monopoly Power: A Reevaluation*, 8 J. URB. ECON. 283 (1980).

For discussion of potential construction of antitrust law to forbid legal monopolies from pricing above competitive levels, see LAWRENCE A. SULLIVAN, HANDBOOK OF THE LAW OF ANTITRUST 116–18 (1977). Sullivan indicates that little in the case law or literature deals with this issue. *Id.* at 116. He concludes that such an approach would be counter to the thrust of antitrust policy which has been to forbid pricing below profitable levels in order to exclude competition. *Id.* at 118. Profit maximizing tends to encourage entry. *Id.* at 117. Also, such an approach would be practically impossible to implement. "[I]t would be difficult to determine objectively what would be a reasonable non-monopoly price for the purpose of forbidding monopoly pricing." *Id.* at 117.

99. At one time, such restrictions were even supported by the Mobile Home Manufacturer's Association. WALLIS, *supra* note 30, at 179.

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(b) exclusions of mobilehome parks from all locations within a jurisdiction or from all desirable locations,[100]
(c) exclusions from residential districts,
(d) maximum stay periods for mobilehome occupants (e.g., thirty to ninety days), and
(e) minimum size requirements for mobilehomes.

The following comment appeared in a dissenting opinion from an Iowa appellate court decision upholding a restriction of mobilehomes to mobilehome parks:[101]

> It is undoubtedly an easy matter for the nation's elite to decide for the less affluent that they simply should not live in mobile homes . . . . The elite see no appreciable difference between the trailer house of yesteryear and the prefabricated homes of today which are, of course, necessarily mobile until they arrive at their destination. Although times have changed, and "mobile homes" can no longer be equated with trailer houses, the elite do not change.[102]

For the past few decades, legislative declarations, court opinions, and public and private studies have consistently noted the widespread exclusions of mobilehomes and mobilehome parks, the lack of vacant spaces, and the existence of monopoly conditions. It is generally accepted that vacant spaces are virtually nonexistent in parks in urban areas with tight housing markets.[103]

In Massachusetts, as of 1970, twenty-eight out of 351 communities allowed parks under their zoning code, thirty-six allowed parks under special permits, and thirty-one permitted mobilehome parks by virtue of the fact that there was no zoning code.[104] Out of twenty-seven communities in the Boston area, only two allowed parks.[105]

In New Jersey, as of 1972, 0.1% of all residentially zoned land in sixteen urban counties was zoned for mobilehomes; however, seventy

100. "[D]iscriminatory zoning frequently relegates parks to nonresidential areas . . . . Haphazard placement leads to parks in poor surroundings, which reinforces anti-mobile home zoning attitudes, which in turn force new parks to be located in undesireable areas—and the circle begins anew." BERNHARDT, *supra* note 30, at 245.

101. *See* City of Lewiston v. Knieriem, No. 13792 (Idaho May 12, 1983) (Bistline, J., dissenting) (opinion after preliminary hearing).

102. Rita L. Berry, *Restrictive Zoning of Mobile Homes: The Mobile Home Is Still More "Mobile" Than "Home" Under the Law*, 21 IDAHO L. REV. 141, 157 (1985) (quoting City of Lewiston v. Knieriem, No. 13792, slip op. at 12 (Idaho May 12, 1983) (Bistline, J., dissenting) (opinion after preliminary hearing)).

103. Vacancy surveys are not performed on any kind of systematic basis.

104. Lyle F. Nyberg, *The Community and the Park Owner Versus the Mobile Home Park Resident*, 52 BOSTON U. L. REV. 810, 812 n.22 (1972) (citing BUREAU OF PLANNING PROGRAMS, MASSACHUSETTS DEPARTMENT OF COMMUNITY AFFAIRS, STATUS OF ZONING REGULATIONS RELATIVE TO MOBILE HOMES IN MASSACHUSETTS: A SUMMARY REPORT 12–26 (1970)).

105. *Id.*

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percent of that land was in one county.[106] In twelve of the counties, no land was zoned for mobile homes and, in two counties, less than fifty acres were zoned for mobile homes.[107]

A report of the Connecticut General Assembly commented:

> A basic problem with mobile home living in Connecticut involves the landlord-tenant relationship in mobile home parks. Because most communities prohibit mobile homes or restrict them to a small number of established parks, there is a scarcity of land available upon which to place a mobile home. The immediate effect of this situation is to place owners of existing mobile home parks in an economically dominant position . . . .[108]

In 1984, the Connecticut Department of Consumer Protection estimated that there were only twenty-five to fifty vacant spaces in 230 parks in the state and that most of these spaces had been reserved.[109]

The Maryland Court of Appeals described the monopoly nature of mobile home space rentals and the the resulting consequences:

> Despite the rising popularity of relatively low cost mobile homes, many communities have enacted zoning regulations which exclude them entirely or severely limit the areas where they may be placed, frequently restricting them to mobile home parks. Thus, the mobile home owner is compelled to rent space from the park owners who, because of the limited availability of space and the high cost of relocation, are able to dictate unfavorable rental terms and conditions. As a result, mobile home owners often have been forced to buy mobile homes from the park owner in order to obtain a site, to pay excessive entrance fees, to buy specified commodities from specified dealers, to pay the park owner a commission on the sale of the mobile home, or, upon sale, to remove it and pay an exit fee.[110]

One nationally prominent real estate newsletter explained that "[w]ith today's parks having virtually no vacancies and tenants with limited options you get a base cash flow that is as predictable as the first of the month."[111]

The preamble to Wisconsin legislation states that:

106. STATE OF NEW JERSEY, LEGISLATIVE STUDY COMMISSION, REPORT AND RECOMMENDATIONS OF THE MOBILE HOME STUDY COMMISSION 36 (Oct. 1980) (citing NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, LAND USE REGULATION: THE RESIDENTIAL LAND SUPPLY 10A (Table 17) (1972)).

107. *Id.*

108. OFFICE OF LEGISLATIVE RESEARCH, MOBILE HOME PARKS IN CONNECTICUT 4 (1973).

109. *Shortage of Mobile Homes Creates Crunch*, THE DAY, Dec. 31, 1984, at 6 (New London, Conn.).

110. Cider Barrel Mobile Home Court v. Eader, 414 A.2d 1246, 1248 (Md. 1980) (footnote omitted).

111. *Mobile Home Parks: A Profitable Niche for Partnerships*, 11 REAL ESTATE OUTLOOK, Fall 1988, at 1; *see also* Bailey H. Kuklin, *Housing and Technology: The Mobile Home Experience*, 44 TENN. L. REV. 765, 807 (1977) (discussing high rates of profitability in mobilehome park investments).

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> Zoning restrictions imposed by local units of government on the development and use of land for the parking of mobile homes have resulted in a severe shortage of rental sites available to the public, seriously restricting competition in the sale of mobile homes and rental of residential sites for the location of such homes.[112]

Recent California studies note the virtual absence of vacancies and/or the extensive nature of zoning restrictions.[113] A study by the City of Los Angeles notes that "no land [is] zoned for mobilehome park use."[114] A study of Ventura County revealed that there were only about twelve vacant spaces out of approximately 11,000 spaces in the county.[115] A study of mobilehome parks in Alameda County indicated that there was not one single vacant space in the parks that were surveyed.[116]

When *Hall v. City of Santa Barbara* was handed down, only a tiny fraction of the vacant land that was available for residential development was zoned for mobilehome parks.[117] On this small amount of land, park densities were limited to seven mobilehomes per acre,[118] while

112. WIS. ADMIN. CODE § Ag. 125.01 (1974).

113. However, Hirsch connects the lack of development of new parks in California to inadequate profitability. Hirsch & Hirsch, *supra* note 8, at 417. This author does not know of any published evidence to support this conclusion. As in the case of apartment rent controls, newly constructed units (mobilehome spaces) are exempt from rent regulations. CAL. CIVIL CODE § 798.45 (West Supp. 1991). Furthermore, inadequate development of parks has plagued mobile home production for decades. *See* Lawrence A. Mayer, *Mobile Homes Move Into the Breach*, FORTUNE, Mar. 1970, at 126, 145.

114. Vacant pads were found to be virtually non-existent—only two out of 1,226 appeared in the sample. . . . Mobile home dealers interviewed agree that the shortage of spaces is acute in the City of Los Angeles and in the metropolitan area. They indicate that few Southern California dealers stock new coaches because so few spaces are available. The dealers observed that some people who can afford it buy small lots of their own for their mobilehomes, but it is difficult because of the high cost of land in the Los Angeles basin.

CITY OF LOS ANGELES, COMMUNITY DEVELOPMENT DEPARTMENT, RENT STABILIZATION DIVISION, RENTAL HOUSING STUDY (MOBILEHOME PARKS UNDER RENT STABILIZATION) 57 (1985). "New mobile home parks would only be permitted under use permits obtainable after individual scrutiny by the City of the site and the potential placing of a variety of development and usage conditions on the granting of the use permit." *Id.* (Of course, such permits are discretionary.)

115. SANCHEZ-TALARICO ASSOCIATION, ALTERNATIVE LOCATION AND REPLACEMENT HOUSING OPPORTUNITIES FOR OXNARD MOBILE HOME LODGE (Sept. 1988, prepared for the Housing Department, City of Oxnard).

116. KENNETH K. BAAR, MOBILEHOME OWNERSHIP IN FREMONT 13-14. (Aug. 1991). Twenty-three out of the twenty-six parks in the county that had fifty or more spaces responded to the survey. *Id.* at 13. They contained 4786 spaces. *Id.* A survey of parks in Santa Clara County, which had 3730 spaces, yielded the same result—a total absence of vacancies. *Id.* at 14.

117. This information is based on the author's review of housing elements and interviews with planning staff and developers in Santa Barbara County in the fall of 1990.

118. *See* SANTA BARBARA, CAL., COUNTY CODE, § 35-241.5.

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apartment and condominium densities of twelve units per acre were standardly permitted on the same land.[119] Minimum parks sizes of ten acres were standard.[120] Discretionary use permit requirements subjected all park proposals to public hearings.[121] Water moratoriums prevented any development in substantial portions of the county.[122] As a practical matter, the supply of park spaces was frozen.[123]

In 1990, a federal district court in California commented that "[t]he mobile home market is an example of a monopoly, which is a market *failure*, rather than a market, and is a prime candidate for government regulation."[124] However, on appeal, the circuit court of appeals declared that the housing market was a "normal market" which could increase in response to rising prices, without any acknowledgement of public regulation of the supply through zoning and other regulations. It explained that:

> In fact, the California housing market is not an example of "market failure" at all; it reflects the operation of normal market forces. . . . If the price of housing in Los Angeles is high, this is simply the free market's mechanism for ensuring efficient allocation of existing housing resources and creating incentives for an increase in the supply of housing which, eventually, will drive down the price.[125]

2. THE CONSTITUTIONALITY OF MOBILEHOME EXCLUSIONS

The path of judicial responses to exclusions of mobilehomes and mobilehome parks has been the subject of extensive literature.[126] These exclusions have commonly been based on rationale related to health and safety, aesthetic concerns, and preservation of property values, which have been justified by negative conclusions about mobilehome life.

119. *See id.* §§ 35-222.7, 35-241.5.
120. *See supra* note 117.
121. *Id.*
122. *Id.*
123. Author's interviews with developers and planners in the County of Santa Barbara, California (Fall 1990).
124. Azul Pacifico, Inc. v. City of Los Angeles, 740 F. Supp. 772, 781 (C.D. Cal. 1990), *aff'd*, 1991 WL 224528 (9th Cir. 1991).
125. Azul Pacifico, Inc. v. City of Los Angeles, No. 90-55853, 1991 WL 224528, at *5 (9th Cir. Nov. 1, 1991) (petition for rehearing pending).
126. *See, e.g.*, BARNET HODES & G. GALE ROBERSON, THE LAW OF MOBILE HOMES (3d ed. 1974); Howard J. Barewin, *Rescuing Manufactured Housing From the Perils of Municipal Zoning Laws*, 37 J. URB. & CONT. L. 189 (1990); Richard W. Bartke & Hilda R. Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970); Kathleen M. Flynn, *Impediments to the Increased Use of Manufactured Housing*, 60 U. DET. J. URB. L., 485 (1983); Byron D. Van Iden, *Zoning Restrictions Applied to Mobile Homes*, 20 CLEVE ST. L. REV. 196 (1971); Robert L. Schwartz, Note, *'Mobile' Homes?—Public and Private Controls*, 29 WAYNE L. REV. 177 (1982).

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Also, mobilehomes have been widely opposed on the basis that they do not carry their share of the property tax burden.[127]

From the onset of mobilehome ownership and throughout the following decades, courts have commonly concluded that the foregoing types of rationale provided a constitutional basis for exclusionary ordinances. In 1939, the Michigan Supreme Court concluded that a municipal exclusion of trailer parks had a rational basis and was, therefore, constitutional.[128] The city's justification was that trailer parks led to a host of social and moral dangers.[129]

> [L]iving conditions for children in trailers are not conducive to their best interests; that they have no privacy or opportunity to visit and play in a home with other children, and to meet the needs of their leisure hours in a normal way; that, as a general rule, such children are obliged to be outside their home most of the time, and that such a life militates against parental supervision of the child; that a social problem is created by crowded quarters, when children are required to live with adults in such close proximity, and that under these circumstances they acquire a precocious knowledge of sex matters which should normally come to them later and more naturally. It is further objected that the common use of toilets and bathing facilities by members of the same sex of different ages creates undesirable situations with potential danger to the morals of the young.
>
> [I]t is contrary to the best interest of the municipality to have large groups of people continually shifting from one place . . . to another, living in homes for which they pay no real estate taxes . . . while the trailer serves a useful function for outings and vacation periods, it is not a proper permanent home . . . .[130]

In this case, the ordinance's prohibition of parking of trailers for more than a ninety-day period was applied to an existing trailer camp which was occupied by permanent residents who could not afford alternative accommodations or by persons who lived in trailers for health reasons.[131] As the court noted:

> At present, 400 people live at plaintiffs' camp in trailers, equipped with oil burning heaters, beds, tables, benches, stoves, and refrigerators. Many have become trailer dwellers because of health considerations and on the advice of physicians; others have lost their homes during the depression by mortgage foreclosure; and others do so because they can live in comfort on small and diminished incomes which would not permit them to live in equal respectability in houses or apartments. . . . Living

127. *See, e.g.*, discussion of the "The Fair Share Controversy" in BERNHARDT, *supra* note 30, at 367–70.

128. *See* Cady v. City of Detroit, 286 N.W. 805 (Mich. 1939).

129. *See id.* at 806. These rationale were reminiscent of the rationale of the first quarter of this century that were used to justify the exclusion of apartments even if they were properly constructed. *See* Kenneth K. Baar, *The National Movement to Halt the Spread of Multifamily Housing*, 58 J. AM. PLAN. ASS'N 39 (Winter 1992).

130. *Cady*, 286 N.W. at 807.

131. *Id.* at 806.

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> conditions . . . are superior to those in so-called sub-standard premises in which thousands of citizens in Detroit live . . . .[132]

In the following decades, exclusions of mobilehome parks from residentially zoned areas or all areas in a city were commonly upheld.[133] In 1962, the New Jersey Supreme Court upheld municipal bans on mobilehome parks.[134] At that time, two-thirds of all New Jersey municipalities had such ordinances.[135] Limitations restricting mobilehomes to mobilehome parks were also consistently upheld.[136]

In some cases, however, courts avoided constitutional issues by holding that mobilehomes were permanent structures and therefore did not fall within municipal bans on "mobile" homes.[137] Often the legality of mobilehomes turned on "semantic games" over whether mobilehomes are buildings or vehicles:

> The semantic game of skill, as applied to mobile homes put more or less permanently on residential lots, takes various guises. In certain cases, municipalities have argued that such mobile homes are "buildings" or "single-family dwellings" within the meaning of the ordinance, and because they do not meet all the requirements as to side yards, size, or any other feature, the mobile homes are illegal. In those cases the owners just as strenuously have claimed that their structures are not buildings but vehicles, and therefore outside the purview of the ordinance. In other cases the roles are reversed, the municipal authorities arguing that the structures are vehicles, trailers or what have you, and therefore illegal under the zoning provisions, the owners replying with equal vigor that the structures are buildings fully complying with the zoning and building codes involved.[138]

Some courts have held that ordinances which limited mobilehomes to mobilehome parks did not apply to mobilehomes once they became permanently sited or held that such limitations were unconstitutional.[139]

As state courts became more critical of exclusionary zoning policies in the 1960s and 1970s, some started to strike down mobilehome restrictions, often reasoning that they are indistinguishable from conventional homes.[140]

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132. *Id.*

133. *See* BARNET HODES, ZONING OF MOBILE HOMES AND MOBILE HOME PARKS 189–281.

134. Vickers v. Township Committee of Gloucester Township, 181 A.2d 129 (N.J. 1962).

135. Alfred A. Ring, *The Mobile Home*, 25 URB. LAND 1 (July-Aug. 1966).

136. *See* cases cited in Robert F. Stubbs, Note, *The Necessity for Specific State Legislation to Deal with the Mobile Home Park Landlord-Tenant Relationship*, 9 GA. L. REV. 212, 215 n.11 (1974).

137. Bartke & Gage, *supra* note 126, at 504–07.

138. *Id.* at 500–01.

139. *See* Schwartz, *supra* note 126, at 187.

140. *See, e.g.*, Knibbe v. City of Warren, 109 N.W.2d 766 (Mich. 1961).

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In 1981, the Michigan Supreme Court overruled prior holdings and struck down an exclusion of mobilehomes from single-family districts.[141] The court held that the public concerns about mobilehomes could be addressed in a less restrictive manner, such as by design restrictions.[142]

In 1983, the New Jersey Supreme Court overruled a twenty-one-year-old precedent that upheld mobilehome exclusions and held that cities must permit mobilehomes unless they had alternative means of providing affordable housing.[143] It found that the health, safety, and aesthetic grounds for its earlier decision were no longer applicable due to changed circumstances.[144] But in other states, the courts have continued to uphold limitations of mobilehomes to mobilehome parks.[145]

Judicial reform has been supplemented by state legislative efforts requiring that localities permit mobilehomes and mobilehome parks.[146] Some states have prohibited exclusions of mobilehomes from single-family lots.[147] However, the cost of single-family lots may be prohibitive for the class of households that would seek to benefit from the affordability of mobilehome ownership.

In any case, communities that are intent on preventing the development of mobilehome parks can use a host of indirect strategies to accomplish such a result. A report by the California Department of Housing

141. Robinson Township v. Knoll, 302 N.W.2d 146 (Mich. 1981).

142. Subsequently, one state appellate court upheld a 720 square foot minimum and a minimum width of fourteen feet for homes not located in mobilehome parks. Bunker Hill Township v. Goodnoe, 337 N.W.2d 27 (Mich. Ct. App. 1983).

In another case, a state appellate court struck down a 1000 square foot minimum and minimum width of twenty-two feet on the basis that it was a per se exclusion of single-wide mobilehomes. Tyrone Township v. Crouch, 341 N.W.2d 218 (Mich. Ct. App. 1983).

143. Southern Burlington County NAACP v. Township of Mt. Laurel, 456 A.2d 390, 450 (N.J. 1983). Similar decisions in other jurisdictions include *In re Shore*, 528 A.2d 1045 (Pa. Commw. Ct. 1987) and cases cited therein.

144. *Southern Burlington County NAACP*, 456 A.2d at 450-51.

145. *E.g.*, City of Lewiston v. Knieriem, 685 P.2d 821 (Idaho 1984) (mobilehome park subdivisions permissible in half of the areas that were zoned for single-family dwellings); City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex.), *cert denied*, 459 U.S. 1087 (1982).

146. In 1986, the Pennsylvania Supreme Court struck down an ordinance which prohibited single-wide mobilehomes. *See* Geiger v. Zoning Hearing Bd., 507 A.2d 361 (Pa. 1986).

147. *See* Berry, *supra* note 102, at 162 nn.173-76. *See, e.g.*, CAL. GOV'T CODE, § 65852.3 (1983); IND. CODE ANN. § 36-7-4-1106 (Michie 1981); MINN. STAT. ANN. § 462.357 (Supp. 1984); VT. STAT. ANN. tit. 24, § 4406(4)(A) (Supp. 1984); *see also* Gerald L. Hobrecht, Comment, *California Government Code Section 65852.3: Legislature Prohibits Exclusion of Mobile Homes on Single-Family Lots*, 16 U.C. DAVIS L. REV. 167 (1982).

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and Community Development described the panopoly of land use tools that are commonly used to exclude parks.

> As for mobilehome parks, the surveys indicate that localities have many ways to discourage park development without violating the law: set allowable densities too low (six/acre or less); set minimum acreage too high; require developer-provided sewerage to otherwise feasible sites; require conditional use permits or PUD-type amenities.[148]

IV. Monopolistic Practices and the Evolution of Public Regulation of Mobilehome Park Landlord-Tenant Relationship[149]

A. *Landlord-Tenant Regulations*

The imbalances of power in the park owner-mobilehome owner relationship have led to widespread abuses.[150] Common practices included tying arrangements and entry and exit fees, until they were declared illegal by the courts on antitrust grounds or were otherwise outlawed.[151] (Under tying arrangements park owners were compelled to purchase their mobilehomes from mobilehome owners, sometimes at even higher prices than those set by mobilehome dealers.[152]) Other practices included the imposition of arbitrary rules,[153] requirements that particular services be purchased from the park owner,[154] and the use of evictions in order to curb protests.[155]

As mobilehome park occupancy became increasingly widespread, demand for regulation of landlord-tenant relationships emerged.[156] Initial targets were tying arrangements, entrance and exit fees, and security

148. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, INCENTIVES FOR FAMILY MOBILEHOME PARKS 21 (June 1986).

149. For a summary of the provisions of each state, see SHELDON & SIMPSON, *supra* note 8. This publication includes a summary table of the types of provisions in effect in each state.

150. *See, e.g.*, *Tyranny in Mobile-Home Land*, CONSUMER REP., July 1973, at 440.

151. *See* Classen v. Weller, 145 Cal. App. 3d 27 (1983); Ware v. Trailer Mart, Inc., 623 F.2d 1150 (6th Cir. 1980); Suburban Mobile Homes, Inc. v. Amfac Communities, Inc., 97 Cal. App. 3d 932 (1979); People v. Mobile Magic Sales, Inc., 96 Cal. App. 3d 1 (1979); Sherman v. Mertz Enters., 42 Cal. App. 3d 769 (1974); Jomicra v. California Mobilehome Dealers, 12 Cal. App. 3d 204 (1970).

152. CONSTANCE B. GIBSON, POLICY ALTERNATIVES FOR MOBILE HOMES 20–21 (1972).

153. *See, e.g.*, Kuklin, *supra* note 111, at 785–88.

154. *See, e.g.*, Stubbs, *supra* note 136, at 220–21.

155. In Lavoie v. Bigwood, 457 F.2d 7 (1st Cir. 1972), the court of appeals ruled that an eviction constituted state action in the context of zoning restrictions that gave a park owner a monopoly on mobilehome spaces.

156. Stubbs, *supra* note 136, at 225–33.

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of tenure issues.[157] In 1969 and the following few years, California passed a series of measures including a requirement of "just cause" for eviction of tenants,[158] and provisions allowing a tenant to sell a mobilehome in place, with parkowner rights of disapproval limited to specified grounds.[159] Florida limited the grounds for evictions[160] and prohibited exit fees.[161]

Between 1972 and 1974, ten states adopted legislation governing mobilehome space rentals.[162] Four of those states either restricted or banned entrance fees.[163] Also, four states guaranteed mobilehome owners the right to sell their homes in place without having to pay a commission.[164]

Since the 1970s mobilehome regulations have become more widespread. As of 1990, states had the following types of regulations:

STATE REGULATION OF MOBILEHOME SPACE RENTALS[165]

Type of regulation	No. of states
Tie-ins prohibited	13
One year lease term	13
Automatic renewal	7
Entrance Fee Prohibited	17
Good cause eviction	28

B. *Rent Controls*

As previously indicated, mobilehome space rent controls have been a central issue in California and Florida. In 1977, Florida authorized tenants to petition to the state Tenant-Landlord Commission for review of any rent increase in excess of the percentage increase reflected in the Consumer Price Index.[166] That law was struck down by the state su-

157. *Id.*

158. Mobilehome Residency Law, CAL. CIVIL CODE §§ 798.55–798.86 (West 1982). Under the current code, grounds for eviction are limited to the reasons specified in CAL. CIVIL CODE § 789.56.

159. *Id.* §§ 798.70–798.81.

160. FLA. STAT. ANN. § 83.759(1) (West Supp. 1982).

161. FLA. STAT. ANN. § 723.041(e)(2) (West 1990).

162. Robert R. Stubbs, Note, *The Necessity of Specific State Legislation to Deal with the Mobile Home Park Landlord-Tenant Relationship*, 9 GA. L. REV. 212, 226 (1974).

163. *See* Robert S. Hightower, Note, *Mobile Home Park Practices: The Legal Relationship Between Mobile Home Park Owners and Tenants Who Own Mobile Homes*, 3 FLA. ST. U. L. REV. 103, 113 n.53 (1975).

164. Hightower, *supra* note 163, at 117 n.79.

165. SHELDON & SIMPSON, *supra* note 8, at 30.

166. Department of Business Regulation v. National Manufactured Hous. Fed'n, 370 So. 2d 1132 (Fla. 1979) (citing FLA. STAT. ANN. ch. 83.770–.794 (1977) (repealed)).

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preme court on the grounds that its criteria were unconstitutionally vague.[167] In 1984, Florida adopted an unconscionability standard specifically for mobilehome space rentals.[168] That standard was replaced by an "unreasonable" standard in 1990.[169]

Municipal mobilehome space rent control ordinances became widespread in California in the early 1980s, shortly after the spread of apartment rent controls.[170] Presently, approximately seventy California cities have some form of mobilehome rent controls.[171] In the initial years after their introduction, these ordinances were subject to a string of legal challenges, which ultimately turned out to be unsuccessful.[172]

Most of the ordinances permit annual across-the-board rent increases which are tied to a portion of the increase in the Consumer Price Index. Additional increases are permitted to cover capital improvements and operating expense increases which are not covered by across-the-board increases.

C. *Regulations of Park Closings*

The other major concern of mobilehome owners that has stimulated widespread response in recent years has been park closings, pursuant to conversions of land to more profitable uses. As land values have soared, economic incentives to convert to alternate uses have intensified. In response to this trend, several states and localities have adopted regulations of mobilehome park closings. Twenty states have adopted notice periods for changes in use, and nine states require relocation benefits.[173] The constitutionality of ordinances that strictly regulate park closings has been brought into question.[174] Some states have granted mobilehome park tenants first rights of refusal to purchase parks.[175]

167. *Id.* at 1133.

168. 1984 FLA. LAWS ch. 84-80.

169. *See supra* text accompanying note 15.

170. *See* Kenneth K. Baar, *Rent Control: An Issue Marked by Heated Politics, Complex Choices, and a Contradictory Legal History*, LX WESTERN CITY 3 (June 1984).

171. Interviews with mobilehome owner attorneys (Summer 1991).

172. *See, e.g.*, Gregory v. City of San Juan Capistrano, 191 Cal. Rptr. 47 (Cal. Ct. App. 1983); Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles, 190 Cal. Rptr. 866 (Cal. Ct. App. 1983).

173. *See* SHELDON & SIMPSON, *supra* note 8, at 30.

174. In 1990, a California Court of Appeal struck down a municipal conversion regulation in Rooke v. City of Scotts Valley, No. H004794 (6th Dist. C.A. 1990) (unpublished) (request to certify for publication denied, No. S016991, 1990 Cal. LEXIS 4460 (Cal. S.C. June 13, 1990)). A companion case was also brought in federal court, but that court abstained. Rooke v. City of Scotts Valley, 664 F. Supp. 1342 (N.D. Cal. 1988).

175. *E.g.*, FLA. STAT. ANN. § 723.071 (West 1990).

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D. *Overall Trends*

Overall, the mobilehome space rental industry is a heavily regulated field, more heavily regulated than apartment rentals.[176] The concerns over rent increases and park closings that have emerged in the past decade are likely to become more widespread. In many urban areas with tight housing markets, there is no land available for additional mobilehome parks and the supply of mobilehome park spaces is becoming frozen or even declining.

V. Judicial Treatment of Physical Taking Claims in Mobilehome Space Rent Control Cases

The introduction of mobilehome space rent controls triggered a new round in the legal battle over competing claims to economic and possessory interests in mobilehome park spaces. Constitutional challenges based on permanent physical occupation theories followed the failure of a host of other types of challenges.[177] A possessory taking argument was first raised in *Oceanside Mobilehome Park Owners' Association v. City of Oceanside*,[178] but was not central to the challenge in that case.

The park owners argued that "where rents are reduced more than required for the purposes of the police power, an artificially reduced rent ceiling results, which constitutes a valuable interest to the existing tenant which may be sold to the buyer of a mobilehome."[179] This result was characterized as an uncompensated taking which "transfers the monopolistic advantage over residents from the park owner to the selling tenant . . . to the detriment of the park owner, a share of whose unregulated profit is now shifted to the selling tenant."[180]

The Court of Appeals rejected the parkowners' underlying premise

176. *See* Lawrence Berger, *The New Residential Tenancy Law: Are Landlords Public Utilities?*, 60 NEB. L. REV. 707 (1981).

177. *E.g.*, Gregory v. City of San Juan Capistrano, 191 Cal. Rptr. 47 (Cal. Ct. App. 1983) (preemption theory rejected); Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles, 190 Cal. Rptr. 866 (Cal. Ct. App. 1983) (vagueness and preemption theories rejected).

178. 204 Cal. Rptr. 239 (Cal. Ct. App. 1984). In May 1984, a similar taking claim was also raised in Roman v. City of Morgan Hill, No. 54335 (Cal. Super. Ct.). *See* Casella v. City of Morgan Hill, 280 Cal. Rptr. 876, 878–79 (1991) (discussing the disposition of the *Roman* case). The trial court rejected the claim in that case in response to a motion for summary judgment. *Id.* at 877. However, the order was never put into writing and the case was abandoned. *Id.*

179. *Oceanside*, 204 Cal. Rptr. at 252.

180. *Id.*

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that an artificially reduced rent would result. Instead, it concluded that the ordinance would permit a "just and reasonable rate of return."[181]

A. Hall v. City of Santa Barbara

Two years after the decision in *Oceanside*, the possessory taking argument was raised in federal court in a challenge[182] to a Santa Barbara ordinance,[183] that was typical of California mobilehome rent ordinances. It authorized annual across-the-board increases equal to three-quarters of the increase in the Consumer Price Index.[184] Additional increases of ten percent were permitted upon changes in mobilehome ownership.[185] Also, park owners could seek increases under the ordinance's fair return standard.[186]

The ordinance included provisions restricting the grounds for terminating a rental to specified just causes, which paralleled those set forth in the state code, rather than augmenting them.[187] The one ground for eviction other than a default by the tenant was for a change in the use of the park.[188] In effect, the ordinance provided mobilehome owners with the right to sell their mobilehomes in place at a rent controlled rent.

Hall alleged that the ordinance effectuated a taking of her property "by giving tenants the right to a perpetual lease at a below-market rental rate."[189] The trial court dismissed the complaint for failure to state a cause of action.[190]

On appeal, in an opinion authored by Judge Alex Kozinski, the circuit court of appeals concluded that a per se taking claim had been pre-

181. *Id.* at 253.
182. *See* Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir. 1986).
183. SANTA BARBARA, CAL. ORDINANCE ch. 26.08 (Aug. 14, 1984).
184. *Hall*, 833 F.2d at 1273 n.3 (citing SANTA BARBARA, CAL. ORDINANCE § 26.08.040C (Aug. 14, 1984)).
185. *Id.*
186. *Id.* at 1283 (citing SANTA BARBARA, CAL. ORDINANCE § 26.08.020C, D (Aug. 14, 1984)).
187. *See id.* at 1273 n.2 (citing SANTA BARBARA, CAL. ORDINANCE § 26.08.040A (Aug. 14, 1984)). In its discussion of evictions restrictions, the court never acknowledged the existence of the state regulations or of the fact that the mobilehome owners would have been subject to the same eviction protections, even if none were included in the local ordinance. Compare the above-cited Santa Barbara Code provisions with California Civil Code § 789.55.
188. *Id.* (citing SANTA BARBARA, CAL. ORDINANCE § 26.08.040A (1984)).
189. *Id.* at 1273–74.
190. No written opinion was prepared. For discussion of the trial court's dismissal, see the Court of Appeals' decision, *id.* at 1274.

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sented.[191] This conclusion rested upon the court's finding that the existence of the combination of the rent control and the right of assignability resulted in a permanent "physical occupation."[192] In the words of the court, the permanent "physical occupation" consisted of "the right to occupy the property in perpetuity while paying only a fraction of what it is worth in rent . . . [An] interest that is transferable, has an established market and a market value."[193] The court's acceptance of the allegation that the ordinance would result in "reduced" rents (which had been rejected in *Oceanside*) was central to its analysis, because the "reduced rents" created the value that was tansferred.

The concept of a per se physical taking was contrasted with a "regulatory taking" claim in which dimunition in value must be shown.[194] In reaching its conclusion that a per se taking claim had been presented, the court largely relied on the Supreme Court's ruling in *Loretto v. Teleprompter Manhattan CATV Corp.*[195] that "a *permanent physical occupation* is a government action of such a unique character that it is a taking without regard to other factors that a court might ordinarily

191. *See id.* at 1276. The court also reversed the dismissal of the rational basis challenge to the ordinance. *See id.* at 1280–81. It concluded that if the park owner's allegations were substantiated there would be "significant doubt" as to whether the ordinance's purpose of alleviating a "critical shortage of low and moderate income housing" would be achieved. *Id.* Instead, "it would seem that the Santa Barbara ordinance would do little more than give a windfall to current mobile park tenants at the expense of current mobile park owners." *Id.* at 1281.

The court further commented that "the rationality of rent control *vel non* may have to be reassessed in light of this growing body of thought on the subject." *Id.* Specifically, it noted that there was growing consensus that rent control exacerbates the problems it is intended to ameliorate and cited a survey which found that ninety-eight percent of U.S. economists agreed that rent control reduces the quantity and quality of housing. *Id.*

In effect, the court revived the "*Lochner*" standard of review of social legislation that was designed to protect mobilehome owners by ensuring that their investments in mobilehomes were not eliminated by evictions or excessive rent increases. The opinion's trajectory was directly contrary to the Supreme Court's direction that "empirical debates . . . over the wisdom . . . of socioeconomic legislation . . . are not to be carried out in the federal courts." Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 243 (1984). The Court undertook a review of the wisdom of the legislation under the guise of reviewing its rationality.

In the subsequent challenges to mobilehome rent controls, which have primarily been *Hall*-based claims, courts have consistently dismissed claims that mobile home space rent controls, including vacancy controls, do not have a rational basis. *See, e.g.*, Azul Pacifico, Inc. v. City of Los Angeles, 740 F. Supp. 772, 780 (C.D. Cal. 1990); Casella v. City of Morgan Hill, 280 Cal. Rptr. 876, 884–85 (1991); Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951, 958 (9th Cir. 1991).

192. *Hall*, 833 F.2d at 1276.

193. *Id.*

194. *Id.* at 1275.

195. 458 U.S. 419 (1982).

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examine . . . [including] whether the action . . . has only minimal economic impact on the owner."[196]

The court further explained that the ordinance's creation of a transferable possessory interest which had a "market value" distinguished the mobilehome rent control scheme from conventional apartment rent controls, which had been consistently upheld by the courts.[197] The apartment rent controls did not grant occupancy rights which were transferable.[198] In contrast, under the mobilehome regulations "tenants were reaping a *monetary windfall*."[199]

> In none of the cited cases has the landlord claimed that the tenant's right to possess the property at reduced rental rates was transferable to others, that it had a market value, that it was in fact traded on the open market and that tenants were reaping a monetary windfall by selling this right to others. This is not a minor difference; it is crucial . . . .
>
> That tenants normally cannot sell their rights in rent controlled property provides important safeguards for landlords. . . . [Under conventional rent controls] [w]hen the premises become vacant, the landlord is able to reassert a measure of control over the property. . . .
>
> [A]s the Santa Barbara ordinance is alleged to operate, landlords are left with the right to collect reduced rents while tenants have practically all other rights in the property they occupy. As we read the Supreme Court's pronouncements, this oversteps the boundaries of mere regulation and shades into permanent occupation of the property for which compensation is due.[200]

The court went on to note that under mobilehome space rent controls a mobilehome park owner can never realize a host of rights that are available to landlords of rent controlled apartments as their units become vacant. The court stated that, under apartment rent controls, the landlord:

> may choose to occupy it himself; or to allow a friend or relative to stay there; or to keep it vacant; or make improvements in the hope of raising the rent to the extent

196. *Hall*, 833 F.2d at 1275–76 (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433–35 (1982)). In Penn Central Transp. Co. v. City of New York, 438 U.S. 103 (1978), in the course of an opinion addressing historic preservation restrictions which were not considered to be a physical taking, the Supreme Court had commented that "[a] 'taking' *may be more readily found* when the interference with property can be characterized as a physical invasion by government, . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Id.* at 124 (citations omitted) (emphasis added).

197. *See id.* at 1276.

198. *See id.* at 1278–80.

199. *Id.* at 1278 (emphasis added).

200. *Id.* at 1278–80.

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allowed by law; or to rent it to a new tenant, presumably making the selection on the basis of factors that will maximize his total return from the property.[201]

In essence, the landlord was left only with the right to collect the "reduced" rent, without any "meaningful say as to who will live on the property, now or in the future."[202]

In contrast to the holdings in earlier mobilehome cases,[203] the *Hall* court held that the park owner's right to evict for the purpose of converting the park to other uses did not obviate the taking claim.[204] This conclusion was based on the conclusion in *Loretto* that a physical taking claim could not be defeated merely by offering a landlord the option of avoiding a permanent occupation by a third party by ceasing to rent—" 'a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation.' "[205]

Hall cited a dissenting opinion from a recent Supreme Court case, *Fresh Pond Shopping Ctr., Inc. v. Callahan*,[206] to support its conclusion that a taking claim had been presented.[207] In that dissenting opinion, Justice Rehnquist concluded that a permanent physical invasion had been effectuated by a Cambridge rent control law which prohibited an apartment owner from demolishing a building and converting the property to other uses.[208] The argument that a dissent would not be guiding was countered with the reasoning that the cited case was "distin-

201. *Id.* at 1279.

202. *Id.* at 1276.

203. Cider Barrel Mobile Home Court v. Eader, 414 A.2d 1246, 1252 (Md. 1980); Commonwealth v. Gustafsson, 346 N.E.2d 706 (Mass. 1976); Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974). The Florida Supreme Court commented that without the right to go out of the mobile home park business such acts would have left the court with "serious doubts about its constitutionality [since] perpetual occupancy rights on another's property cannot . . . be granted by law . . . ." *Palm Beach*, 300 So. 2d at 887–88.

204. *See Hall*, 833 F.2d at 1278 n.18.

205. *Id.* at 1278 (quoting Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 439 n.17 (1982)). The court noted that it was skeptical that the right to go out of the mobilehome business was "realistically available" due to the obstacles posed by state and local laws, including a six-month notice provision and a requirement that the park owner obtain a permit to convert the park to another use and submit a relocation plan subject to approval by the city's Community Development Department. *Id.* at 1278 n.18.

Such provisions, which grant a great deal of discretion, are common in local ordinances. Park closings options are "realistically available" and have occurred in some cities, but not others.

206. 464 U.S. 875 (1983) (Rehnquist, J., dissenting).

207. *Hall*, 833 F.2d at 1283 (citing Fresh Pond Shopping Ctr., Inc. v. Callahan, 464 U.S. 875 (1983) (Rehnquist, J., dissenting)).

208. *Fresh Pond*, 464 U.S. at 876–77.

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guishable from this case in material ways we *presume* were the basis for the majority's decision. We do not interpret the *Fresh Pond* dismissal as repudiating everything said by Justice Rehnquist in his dissent."[209]

B. *Was Adequate Compensation Paid?*

In order to find a cause of action, the court also had to find sufficient grounds for a claim that just compensation had not been provided, since the Constitution does not prohibit all takings, but rather prohibits takings without "just compensation."[210] It found that the ordinance provision allowing a fair return on investment did not meet the just compensation requirement, noting that rents had not been considered as compensation in *Loretto*.[211]

More significantly, the court decided that the benefit to the tenant from the rent controls, rather than the loss to the park owner due to the regulation, was the measure of the taking.[212] It held that "the [trial] court must ascertain the value of the interest allegedly transferred to each tenant and the value of what the [plaintiffs received], if anything, in addition to normal rental payments."[213]

209. *Hall*, 833 F.2d at 1276 n. 14 (emphasis added). In essence, the court developed a new theoretical basis for transforming the reasoning of a dissenting opinion into authority—the theory that the decision of the majority could not be seen as repudiating all of the reasoning of the dissent.

210. "Nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

211. *Hall*, 833 F.2d at 1281.

212. *Hall*, 833 F.2d at 1281. In a subsequent federal court trial in which challenge to the Los Angeles ordinance was under consideration, the trial court explained: "The *Hall* court, breaking from the traditional 'loss' measure of damages for taking cases, requires this Court to look to the windfall gain of the tenants caused by the [Rent Stabilization Ordinance] and award that amount to compensate [the plaintiff]." Azul Pacifico, Inc. v. City of Los Angeles, 740 F. Supp. 772, 778 (C.D. Cal. 1990).

Subsequently, the circuit court of appeals expanded the scope of the trial court's conclusions regarding liability. *See* Azul Pacifico, Inc. v. City of Los Angeles, No. 90-55853, 1991 WL 224528 (9th Cir. Nov. 1, 1991) (petition for rehearing pending). The trial court had limited liability to instances involving sales which had occurred within the year prior to the institution of the action. *See Azul Pacifico*, 740 F. Supp. at 779. The court of appeals extended liability to cover the increases in value of all the mobilehomes in the park. *See Azul Pacifico*, No. 90-55853, 1991 WL 224528, at *11.

213. *Hall*, 833 F.2d at 1281. *Hall*'s taking equation has posed new practical issues for trial courts, requiring a determination of what portion of the value of mobilehomes in rent controlled parks is attributable to rent control (the value to the tenants of "the possessory interest in the land . . . transferred to each of their tenants."). *Id.*

Such analysis has been highly problematic due to a lack of comparability between rent controlled and noncontrolled parks. Often all parks within an area are subject to rent controls, forcing experts to develop nonrent controlled "comparables" from locations which are not comparable.

An econometric analysis that was published in *U.C.L.A. Law Review* estimated that the increased value due to rent control was $8800 for mobilehome sales occurring from 1984 through 1986. Hirsch & Hirsch, *supra* note 8, at 440-44.

This conclusion was based on the fact mobilehome sales prices were thirty-two

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The use of the benefit to the tenant as the measure of required compensation was critical to the outcome of the court's analysis. If the measure of required compensation was limited to the loss incurred by the park owners due to the assignability, an argument could have been made that no compensable taking of property had occurred since the rental income was the same whether or not the tenants could assign their interest and, therefore, there was no transfer of value. In *Pinewood Estates v. Barnegat Township Leveling Bd.*,[214] which adopted the reasoning of *Hall*, the court acknowledged this difference and commented that:

> We realize that it could be argued that the appellants are not prejudiced by the Barnegat Ordinance since under a straight rent control plan in which they select their own tenants and a tenant when moving must remove his mobile home, their incomes might be no more than they are now. But such an argument would miss the point as this is a physical invasion case in which the actual economic impact on appellants is accorded little weight.[215]

C. *Petitions for Rehearing En Banc and Certiorari Denied*

A petition for an en banc hearing to review the decision of the three-judge panel in *Hall* was denied.[216] The three dissenters from the denial criticized the court for resting a taking conclusion upon the notion that an "economic regulation can 'shade' into a physical invasion."[217] They noted that *Loretto* had specifically distinguished "physical invasions"

percent higher in rent controlled jurisdictions. *Id.* at 443. The analysis used median rent to consider the role of location independent of the rent controls. *Id.* at 441. However, house price differentials may have been a more reliable measure of the differences in locational value. *Id.* at 434–35 n.118.

On remand in the *Hall* case, the trial court found that the damages were $30,000 per mobilehome space. Hall v. City of Santa Barbara, No. CV-84-9506-LEW (C.D. Ca. 1989) (Findings of Fact and Conclusions of Law, at 14, July 18, 1989).

In a subsequent case involving the Los Angeles ordinance, which was before the same trial court judge, it was determined that the damages were $20,000 for each mobilehome that had been sold. Azul Pacifico v. City of Los Angeles, 740 F. Supp. 772 (C.D. Cal. 1990). The court ruled that damages were limited to one year by the state statute of limitations and, therefore, were limited to premiums from sales of mobilehomes that took place within the one year period prior to the filing of the lawsuit. *Id.* at 779.

A California Court of Appeals questioned the conceptual underpinnings of such analysis. It commented that "the increase in the sales prices of mobile homes resulting from rent control may simply reflect the artificially low price caused by excessive rents charged prior to its enactment." Casella v. City of Morgan Hill, 280 Cal. Rptr. 876, 882 (1991).

214. 898 F.2d 347 (3d Cir. 1990).

215. *Id.* at 353 n.10.

216. *Hall*, 833 F.2d at 1282.

217. *Id.* at 1283 (Schroeder, J., dissenting) (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982)).

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from regulations of landlord-tenant relationships: "This Court has consistently affirmed that States have broad power to regulate . . . the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."[218]

The dissenters criticized the panel for accepting the argument that the Supreme Court "refused to consider in *Fresh Pond*"[219] and for acting as a "'superlegislature' second-guessing the wholly economic regulations of state and local governments."[220] Finally they delivered a warning that the decision would authorize wholesale attacks upon rent control and bemoaned the money and court time that would be expended in litigation over its effects.[221]

Subsequently, a petition for certiorari to the U.S. Supreme Court was denied.[222] Appellant's request for Supreme Court review stood in a weak position in light of the fact that the case was still in the pleading stage.

D. Hall's *Irresolvable Theoretical Construct*

While the court of appeal remanded *Hall* for a determination of factual claims, in fact its conclusions of law left a theoretical construct that could not be resolved through a fact-finding process. In the *Hall* opinion, its legal analysis was conducted within the framework of plaintiff's factual allegations that mobilehome owners had been granted permanent possessory interests in "reduced" rents and had been provided with a "windfall."[223] These allegations countered the legislative justifications for mobilehome rent and evictions controls which were based on the need to

218. *Id.* at 1283–84 (Schroeder, J., dissenting) (citations omitted).
219. *Id.* at 1283 (Schroeder, J., dissenting).
220. *Id.* at 1284 (Schroeder, J., dissenting).
221. *See id.* at 1284 (Schroeder, J., dissenting).
222. City of Santa Barbara v. Hall, 485 U.S. 940 (1988).
223. Hagman's classic work, *Windfalls for Wipeouts* defines a "windfall" as "any increase in the value of real estate—other than that caused by the owner—or by general inflation." DONALD G. HAGMAN & DEAN T. MISCZYNSKI, WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE & COMPENSATION 15 (1978).

The plaintiff in *Hall* alleged that mobilehome owners were able to sell their mobilehomes at prices far above industry "blue-book" values. *Hall*, 833 F.2d at 1274. However, the Blue Book is not a reliable indicator of mobilehome values in a particular locality. In a subsequent case, a federal court used the

> Blue Book not to determine the value of the mobilehomes sold in plaintiff's park, but as a measuring stick to determine the amount of the alleged sales premium caused by the [rent stabilization ordinance]. For example, if a mobilehome in plaintiff's park sells for $10,000 over the . . . Blue Book price, and a [comparable] mobilehome . . . in a comparable, but non-rent controlled park sells for $5,000 over the . . . Blue Book price, this is evidence of a premium of $5,000 caused by the rent control ordinance.

Azul Pacifico, Inc. v. City of Los Angeles, 740 F. Supp. 772, 779 n.2 (C.D. Cal. 1990).

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regulate rents in light of the tenants lack of bargaining power and the practical immobility of mobilehomes.[224] Such allegations were largely in the nature of socio-economic and legal conclusions about the impact of the mobilehome rent and eviction regulations on rents and property rights.

The court concluded that these allegations required a resolution of "fact-bound" issues.[225] But, a resolution of the question of whether the ordinance resulted in "reduced" rents depended on how "reduced" rents were defined, rather than on fact issues. (E.g., were they defined as rents below levels that could be obtained in the absence of rent control, or rents below "balanced" market levels, or rents below fair return levels?)

While the court used the concept of "reduced" rents to find a basis for a takings claim, it never defined that concept.[226] The court noted that "mobile homes are mobile only in the sense that they are not permanently anchored to a foundation."[227] However, it did not give any acknowledgment or weight to the potentially monopolistic features of the relationship and the obvious consequences of the total immobility of mobilehomes, the fact that their values could be effectively appropriated by park owners via unlimited rent increases. Furthermore, the court did not make any note of tenants' substantial investment in mobilehomes (and accompanying improvements). Reviewing virtually the same factual allegations, the California Court of Appeals had declared that: "Rent control attempts to restore free market conditions by limiting rent increases to that level which would occur under general market conditions—a competitive housing market as opposed to a monopolistic or oligopolistic one."[228]

1. TREASURED STRANDS

The *Hall* court also concluded that there were allegations to the effect that Santa Barbara's eviction regulations transgressed what *Loretto* considered as "one of the most treasured strands in an owner's bundle of property rights"—"[t]he power to exclude."[229] The potentially treasured strands included the right of a park owner to "occupy [a space] himself; or to allow a friend or relative to stay there; or to keep it vacant

224. *See, e.g.*, FREMONT, CAL., MUNICIPAL CODE § 3-13101 (1987); OCEANSIDE, CAL., MUNICIPAL CODE § 16.B.1 (1982).

225. *Hall*, 833 F.2d at 1282.

226. At one point, the court stated that the trial court must determine "the value of what the Halls received . . . in addition to normal rental payments." *Id.* at 1281.

227. *Id.* at 1273.

228. Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside, 204 Cal. Rptr. 239, 251 (Cal. Ct. App. 1984).

229. *Hall*, 833 F.2d at 1277 (citing Kaiser Aetna 444 U.S. 164, 179-80 (1979)); *see also* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435-36 (1982)).

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. . . or to rent it to a new tenant"[230] or to "select attractive pleasant applicants . . . ."[231]

In the context of mobilehome park ownership, it stretches the imagination[232] to conclude that the rights of owner occupancy and selection of tenants on the basis of personal friendship are "treasured strands." These rights are associated with the ownership of small residential properties.[233] As a practical matter, the power to exclude may be seen as almost solely an "economic" right that may be used to increase profits through increased rents or conversion to a more profitable use.[234]

2. LIFE AFTER *HALL*: CONSIDERATION OF THE *HALL* TAKING DOCTRINE BY OTHER COURTS

As the following chart demonstrates, since the *Hall* decision, state appellate courts have consistently rejected its legal conclusions on the basis that they are not persuasive. In most instances, federal courts have either criticized *Hall*'s conclusions or have dismissed challenges which are based on its theories on procedural grounds.

FEDERAL COURT AND STATE APPELLATE COURT OPINIONS[235] IN RESPONSE TO *HALL* BASED TAKING CLAIMS

Case/Decision Date	Court	Ruling
Eamiello (8/88)	Conn. S. Ct.	*Hall* not persuasive
Pinewood (3/90)	U.S.C.A. (N.J.)	followed *Hall*

230. *Id.* at 1279.

231. *Id.* at 1279 n.23.

232. The plaintiff's park had seventy-one mobilehome spaces. *See id.* at 1276. Parks typically have one hundred or more spaces. DRURY, *supra* note 30, at 16.

233. A New Jersey appellate court ruled that an owner of a three-unit building had the right to evict for owner-occupancy. *See* Sabato v. Sabato, 342 A.2d 886 (N.J. Super. Ct. Law Div. 1975). However, it indicated that it probably would have taken a different view if a larger building had been involved. It distinguished between "buildings or structures ordinarily utilized for owner occupancy as opposed to large apartment houses or garden apartment complexes clearly representing 'investment type' properties." *Id.* at 897.

New York City rent regulations permit eviction for occupancy by a landlord or the landlord's immediate family without a showing of "immediate and compelling necessity" only in buildings containing not more than twelve units. N.Y. UNCONSOL. LAWS § 2104.5 (McKinney 1991).

234. In situations in which increases are permitted upon vacancies, the right to select tenants may be valuable to the extent that park owner can select tenants who are likely to remain a shorter period of time and thereby increase the number of vacancy increases. *See Hall*, 833 F.2d at 1279 n.23.

235. Case citations are included in the following discussion.

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Azul Pacifico (4/90)	U.S.D.C. (S. Cal.)	bound by *Hall* but criticized reasoning
Yee (10/90)	Cal. Ct. App. (4th Dist.)	*Hall* not persuasive
Tubach (12/90) (unpublished)	Cal. Ct. App. (4th Dist.)	*Hall* not persuasive
Peppard (1/91) (depublished)	Cal. Ct. App. (2d Dist.)	*Hall* not persuasive
Palomar (2/91) (unpublished)	Cal. Ct. App. (4th Dist.)	*Hall* not persuasive
Carson (4/91)	U.S.D.C. (S. Cal.)	*Hall* criticized federal abstention
Casella (5/91)	Cal. Ct. App. (6th Dist.)	*Hall* not persuasive
DeAnza (6/91)	U.S.C.A. (N. Cal.)	challenge to ordinance & damages barred by statute of limitations
Sierra Lakes (7/91)	U.S.C.A. (9th Cir.)	followed *Hall*
Azul Pacifico (11/91)	U.S.C.A. (9th Cir.)	followed *Hall*

In 1988, in *Eamiello v. Liberty Mobile Home Sales*,[236] the Connecticut Supreme Court rejected *Hall*'s conclusions on the taking issue, although it also found that its case was distinguishable on the basis that the regulations in issue did not include rent controls.[237] The Connecticut court concluded that the mobilehome rent regulation scheme that was the subject of the *Hall* case differed significantly from the physical invasion that was found in *Loretto*.[238] It explained that *Loretto* involved the case of a building owner who was "compelled to allow the attachment of objects to his building for the purpose of supplying a service to which he had never

236. 546 A.2d 805 (Conn. 1988).

237. *Id.* at 816. In 1989, a U.S. District Court rejected a taking challenge to Connecticut's mobilehome eviction protections. *See* Gibbs v. Southeastern Investment Corp., 705 F. Supp. 738 (D. Conn. 1989). *Gibbs* distinguished *Hall* on the basis that Connecticut's regulations did not include rent controls, while the plaintiffs in *Hall* alleged that the applicable ordinance provided for "a perpetual lease at a below-market rental rate . . . ." *Gibbs*, 705 F. Supp. at 743 (quoting Hall v. City of Santa Barbara, 833 F.2d 1270, 1274 (9th Cir. 1986)).

238. *See Eamiello*, 546 A.2d at 816.

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agreed."[239] In contrast, the mobilehome space regulations only require owners to continue to allow a use to which they had consented.

> There are significant differences in the degree of infringement upon common law property rights between a governmentally authorized placement of wires and related devices by a private cable television company on a building without the consent of the owner, as in *Loretto*, and the right given by our statutes to mobile home owners and their transferees to continue to occupy sites within a mobile home park that were originally leased to them or their predecessors for that purpose consensually. . . . [The park owner] is not being compelled to permit his land to be occupied for a use to which he never consented.[240]

The court went on to note that the Connecticut mobilehome space rent and eviction regulations were less restrictive than the scheme upheld in *Fresh Pond Shopping Center v. Callahan*[241] that prohibited a property owner from ceasing to retain an apartment building on the property because, under Connecticut law, park owners retained the right to evict in order to leave the mobilehome park business.[242]

Four years after the *Hall* decision, a challenge based on its theories reached the U.S. Court of Appeals in New Jersey. In March 1990, in *Pinewood Estates v. Barnegat Township Leveling Board*,[243] the U.S. Court of Appeals for the Third Circuit adopted the reasoning of *Hall*.[244] In that case, as in *Hall*, the trial court dismissed the complaint.[245]

The court of appeals concluded that the rent control law granted the tenants an interest in property that belonged to the landlord:

> This is not a case in which a property owner has simply been told that he cannot do something on his property or that he must use his property a certain way. The situation is aggravated by the fact that the transfer is accompanied by the payment not to the landlord but to the departing tenant of what amounts to rent for the use of the pad. The "rent" is for the possessory interest of the landlord. Thus, this is a case where other persons, tenants, have been granted interests in property which properly belongs to the appellants, the landlords.[246]

From October 1990 through May 1991, California Courts of Appeals in three districts rejected the reasoning of *Hall*.[247] In each case, the state

239. *Id.*
240. *Id.* at 816–17.
241. 464 U.S. 875 (1983).
242. *Eamiello*, 546 A.2d at 817.
243. 898 F.2d 347 (3d Cir. 1990).
244. *See id.* at 353–54.
245. *See id.* at 348.
246. *Id.* at 353.
247. *See* Yee v. City of Escondido, 274 Cal. Rptr. 551 (Cal. Ct. App. 1990), *petition for hearing denied* No. S018568, 1991 Cal. LEXIS 353 (Jan. 24, 1991), *cert. granted*, 112 S. Ct. 294 (1991); Casella v. City of Morgan Hill, 280 Cal. Rptr. 876 (Cal. Ct. App. 1991), *reviewed denied*, (July 17, 1991).

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supreme court denied petitions for hearing to review the decisions.[248] The first rejection by a California appellate court, in *Yee v. City of Escondido*,[249] was by the same appellate panel that had previously ruled against the possessory taking challenge in *Oceanside*. In response to the new *Hall*-based challenge, the panel noted that "*Hall* . . . does not discuss or even cite our prior decision in *Oceanside*."[250]

The panel explained that mobilehome park spaces and mobilehomes were "complementary" goods.[251] Therefore, it was "inevitable that where government acts to . . . limit increases in the rental prices charged for mobilehome spaces, the price of mobilehomes will increase."[252] It concluded that "[w]here a government regulation purports to reduce the *excessive and unfair price to a reasonable level*, the mere fact that the price for complementary goods and services rises as a result does not transmute an otherwise reasonable price regulation into a compensable 'taking.' "[253] This assumption provided the underpinning for a different conclusion than that of the *Hall* court, which had relied on the allegation that the ordinance resulted in "reduced" rentals.[254]

The panel took issue with *Hall*'s conclusion that the creation of a monetizable possessory interest elevated the regulation to a physical taking.[255] It noted that, in the case of mobilehome rent control, the benefit of the regulation was limited to those mobilehome owners renting spaces at the time the ordinance was enacted while, in the case of apartment rent controls, the economic benefit of the regulation is spread

248. Yee v. City of Escondido, No. S018568, 1991 Cal. LEXIS 353 (Jan. 24, 1991); Casella v. City of Morgan Hill, (July 17, 1991).

249. 274 Cal. Rptr. 551. One justice dissented from the denial of the petition. *See id.* at 557–59 (Huffman, J., dissenting).

250. *Yee*, 274 Cal. Rptr. at 555.

251. *Id.* at 553.

252. *Id.*

253. *Id.* (emphasis added).

254. The dissent commented that the panel's conclusion in Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside, 204 Cal. Rptr. 239 (Cal. Ct. App. 1984), that "the Oceanside ordinance was fairly structured not to reduce rents more than required for the purposes of the police power . . . does not in any fashion analyze the issue presented here." *Yee*, 274 Cal. Rptr. at 558–59. The two diverse premises about the impacts of the rent ordinances on rents were central to the opposing opinions on the panel.

Hirsch's article, which provided a background for the *Hall* analysis, assumes that "the fair rental value of the space would be the rental that the space would bring in a relatively free market context (i.e. a comparable market without rent control)." Hirsch & Hirsch, *supra* note 8, at 427, n.98.

255. *See Yee*, 274 Cal. Rptr. at 555.

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among all succeeding tenants.[256] "In both cases, however, the value 'taken' from the property is conceptually identical."[257]

Three months later, in January 1991, another division of the California Court of Appeals adopted the reasoning set forth in the *Yee* opinion.[258] However, that opinion was not published.[259]

In February 1991, another panel of the same district that had issued the *Yee* decision followed its reasoning in an unpublished decision.[260]

Six months after *Yee*, the court of appeals of another district delivered a biting rejection of *Hall*.[261] The court "reject[ed] Hall's espousal of the notion that economic regulation such as the rent control measure challenged here could metamorphose into the type of physical occupation described in *Loretto*."[262] It also commented:

> It is apparent to us that the Ninth Circuit's analysis in *Hall*—that the effect occasioned by the combination of the state regulations and the local ordinance was a "physical invasion"—was no more than a convenient means . . . of distinguishing a loss the court considered "clearly compensable" from one which it did not.[263]

The court then concluded that the allegations about transfers of wealth and "windfalls," which "*Hall* found to be crucial, [were] a truism; an inevitable part of the unique relationship between a mobilehome park owner and his or her tenant."[264] In the court's view, the fact that the mobilehome owners reaped an economic benefit does not address the issue of whether the regulation constitutes a taking.[265]

Furthermore, the court questioned the view that the rental income which park owners lost by virtue of the rent controls was even their property.

256. *Id.* at 555.
257. *Yee*, 274 Cal. Rptr. at 556.
258. *See* Peppard v. City of Carpinteria, 278 Cal. Rptr. 98, 100 (1991) (Review denied by the California Supreme Court and order that opinion not be officially published March 21, 1991).
259. *See id.*
260. *See* Palomar Mobilehome Park Ass'n v. City of San Marcos, No. DO11484, 1991 Cal. LEXIS 2026 (Cal. Ct. App. Feb. 6, 1991), *petition for review denied*, (Cal. 1991). Petition for hearing by the U.S. Supreme Court was filed in June 1991.
261. *See* Casella v. City of Morgan Hill, 280 Cal. Rptr. 876 (Cal. Ct. App. 1991).
262. *Id.* at 881.
263. *Id.*
264. *Id.* at 881–82. The court noted that it was not bound to admit all allegations in a complaint. "'A demurrer . . . does not admit contentions, deductions or conclusions of fact or law alleged therein.' . . . '[W]here an allegation is contrary to law or to a fact of which a court may take judicial notice, it is to be treated as a nullity.'" *Id.* at 878 (quoting Daar v. Yellow Cab Co., 433 P.2d 732, 745 (Cal. 1967); Dale v. City of Mountain View, 127 Cal. Rptr. 520, 522 (Cal. Ct. App. 1976)).
265. *See id.* at 882.

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> Professor Manheim has suggested the premise underlying *Hall*'s conclusion—that the "economic fruits of enhanced site value are naturally the property of the park owner"—is itself subject to question. . . . [the question is rather whether the concept of property includes the right to charge "quasi-rent;" the amount attributable to space scarcity and moving costs].[266]

3. PROCEDURAL BARS TO *HALL*-BASED CLAIMS

Since the *Hall* decision, federal courts have found procedural obstacles to *Hall*-based claims. Prior to the recent California appellate court decisions rejecting the *Hall* theory, some federal courts abstained, pending the exhaustion of state court remedies.[267] Subsequent to the state decisions, one federal trial court ruled that a state determination in a *Hall*-based claim is a final determination on the merits, which can only be appealed to the U.S. Supreme Court.[268]

In *Carson Harbor Village, Ltd. v. City of Carson*,[269] the same trial court judge who had been overruled in *Hall* ruled that state claims must be exhausted before a federal claim can be brought,[270] notwithstanding state appellate rulings that no cause of action existed in *Hall*-type challenges. The trial court held that:

> the denial of review is not equivalent to an affirmation by the Supreme Court, even though some lawyers might treat the two as having the same effect. . . . The Supreme Court is not bound by the denial of review of the appellate decision and could decide to review another of the many *Hall* type claims pending in the state court system. Moreover, other appellate departments are not bound by the decision of Department One in the *Yee* case.
>
> This court realizes that, in a practical sense, this ruling makes it very difficult for these plaintiffs to have their claims heard in any court. Plaintiffs will have to take each one of these cases to state court where they will be dismissed under *Yee* at the trial level, then they will have to appeal, probably up to the California Supreme Court which may or may not grant review. However, the fact remains that this issue should be addressed by the California courts under state law before coming to the federal courts.[271]

Subsequently, the U.S. court of appeals (in a decision authored by Judge Kozinski) held that park owners do not have a remedy in state

266. *Id.* (citations omitted).
267. McDougal v. County of Imperial, 942 F.2d 668 (9th Cir. 1991); Kuebler v. City of Escondido, 933 F.2d 1014 (9th Cir. 1991) (unpublished). *But see* Richardson v. Honolulu, 759 F. Supp. 1477 (D. Haw. 1991).
268. *See* Yee v. City of Escondido, 274 Cal. Rptr. 551 (S.D. Cal. 1989).
269. No. CV-90-3428-LEW (C.D. Cal. April 16, 1991) (Order).
270. *Id.* at 11-12.
271. *Id.*

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courts for takings claims based on the theories of *Hall*.[272] Therefore, they may bring their actions in federal court.

However in June 1991, after years of costly litigation without resolution, a Ninth Circuit panel ruled that *Hall*-based constitutional challenges and damages claims were subject to a one year statute of limitations, running from the date of enactment of the ordinance.[273] The effect of this decision, if it stands, will be to eliminate virtually all potential *Hall*-based claims to the ordinances which still have the vacancy control provisions which were in effect at the time of the *Hall* decision.

4. PETITION FOR U.S. SUPREME COURT REVIEW OF *HALL*-BASED CLAIMS

In June 1991, after the California Supreme Court denied a petition for review of their claims and the federal trial court held that it had no jurisdiction,[274] Escondido and San Marcos park owners petitioned to the U.S. Supreme Court for a writ of certiorari,[275] which has been granted.

VI. Does the Combination of Lease Assignability and Vacancy Control Constitute a Per Se Taking of Property?[276]

The central issues in *Hall* and its progeny have been:

(1) whether space rent and occupation regulations constitute a "permanent physical occupation" which is a *per se* taking, and

(2) whether what *Hall* and *Pinewood* describe as the "windfall" or "premium" is the "property" of mobilehome park owners that has been taken without just compensation.

272. *See* Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951 (9th Cir. 1991).

273. *See* DeAnza Properties Ltd. v. County of Santa Cruz, 936 F.2d 1084 (9th Cir. 1991).

274. *See* Yee v. City of Escondido, No. 89-0234B(CM) (1991); Palomar Mobilehome Park Ass'n v. City of San Marcos, No. 91-0157B(JEG), 1991 Cal. LEXIS 2026 (S.D. Cal.) (judgment filed Feb. 6, 1991), petition for hearing by the U.S. Supreme Court filed in June 1991. *See also* Casella v. City of Morgan Hill, No. C91-1035EFL, 1991 U.S. Dist. LEXIS 14904 (filed Oct. 4, 1991).

275. *Yee*, 112 S. Ct. 294 (1991).

276. Alternative views of the application of taking theories to mobilehome rent and eviction regulations are presented in Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 WIS. L. REV. 925; Thomas G. Moukawsher, *Mobile Home Parks and Connecticut's Regulatory Scheme; A Takings Analysis*, 17 CONN. L. REV. 811, 826-28 (1985); Neal Stout, *Making Room at the Inn: Rent Control as a Regulatory Taking*, 38 J. URB. & CONTEMP. L. 305 (1990); Mary E. McAlister, Hall v. City of Santa Barbara: *A New Look at California Rent Controls and the Takings Clause*, 17 ECOLOGY L.Q. 179 (1990).

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The purpose of this section is to provide additional comment and perspective on the analysis of these issues.

A. *The Permanent Physical Invasion Issue*

While there has been extensive consideration by the courts of what constitutes a regulatory taking, consideration of what types of governmental actions are physical occupations that are *per se* takings has been more limited.[277]

1. HISTORICAL PERSPECTIVE

An understanding of the development of the concept that a permanent physical invasion constitutes a per se taking is useful in providing a perspective on an appropriate scope of the doctrine. The concept is not based on the intent of the Framers of the Constitution. In fact, constitutional taking concepts in general are a product of judicial interpretation, rather than any design by the Framers of the Constitution.[278]

Early taking theories rested on "natural justice" theories regarding private property rights and were countered by theories that compensation was not required because all property was originally held at the sufferance of the sovereign.[279] From the outset, the taking concepts did not have a precisely defined scope. Taking discussions arose primarily in response to claims related wartime seizures of private property,[280] water rights, or flooding cases.[281] The debate was over whether there could be a taking without a taking of title and/or physical entry, rather than being over whether a physical invasion constituted a per se taking. Most courts took the position that taking of title or physical entry was

277. The debate over whether "permanent" physical occupations constitute per se takings may be seen as an inversion of the debates of earlier eras over whether a taking could occur in the absence of a physical invasion.

278. Much of the early consideration of taking principles was based on state constitutional principles because the just compensation provisions in the Bill of Rights only applied to takings by the federal government. Only two of the original thirteen states included property protections in the declarations of rights that were included in their original constitutions. Prior to the adoption of the Fourteenth Amendment, state courts of the original thirteen states relied on natural law theories. *See* J.A.C. Grant, *The "Higher Law" Background of the Law of Eminent Domain*, 6 WIS. L. REV. 67, 70, 77–81 (1931).

Virtually all of the states that were subsequently admitted to the Union provided for compensation in their first constitution. *See* J.A.C. Grant, *The 'Higher Law' Background of the Law of Eminent Domain*, 6 WIS. L. REV. 67 (1931).

279. MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 63–66 (1977).

280. Joseph L. Sax, *Takings and the Police Power*, 74 YALE L.J. 36, 56 (1964).

281. *See, e.g.*, Sanguinetti v. United States, 264 U.S. 146, 149 (1924); Monongahela Navigation Co. v. Coons, 6 Watts & Serg. 101 (Pa. 1843).

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a prerequisite to a taking.[282] A related question was whether a physical invasion had occurred. In some cases, public acts that totally destroyed private property through flooding or other means were not considered takings.[283]

The formalistic approach of requiring an actual physical appropriation became the subject of widespread criticism. In 1857, a constitutional scholar commented that:

> To differ from the voice of so many learned and sagacious magistrates, may almost wear the aspect of presumption; but I cannot refrain from the expression of the opinion, that this limitation of the term *taking* to the actual physical appropriation of property or a divesting of title is, it seems to me, far too narrow a construction to answer the purposes of justice, or to meet the demands of an equal administration of the great powers of government.[284]

However, these arguments were countered by widespread concerns that consequential damage concepts could have ruinous economic impacts for public entities.[285]

By the second half of the century, courts awarded compensation in instances in which public action destroyed the usefulness of a property, although it did not take title, and many states amended their constitutions to require compensation for "damaging" as well as "taking" property through public action.[286]

In a leading case, *Pumpelly v. Green Bay Company*,[287] the Supreme Court found that there had been a taking where a public dam caused

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282. It seems to be settled that, to entitle the owner

> to protection . . . the property must be actually taken in the physical sense of the word, and that the proprietor is not entitled to claim renumeration for indirect or consequential damage, no matter how serious or clearly and unquestionably resulting from the exercise of the power of eminent domain. This rule has been repeatedly declared in many of the States of the Union.

Joseph M. Cormack, *Legal Concepts in Cases of Eminent Domain*, 41 YALE L.J. 221 (1931) (citing THEODORE SEDGWICK, STATUTORY AND CONSTITUTIONAL LAW 519 (1857)).

283. *E.g.*, Monongahela Navigation Co. v. Coons, 6 Watts & Serg. 101 (Pa. 1843) (no compensation required for flooding of a mill resulting from public obstruction of a stream); Beseman v. Pennsylvania R.R., 13 A. 164 (1888) (no taking when a railroad company rendered land unfit for habitation by permitting cars with offensive freight within ten feet of a house).

284. Joseph M. Cormack, *Legal Concepts of Eminent Domain*, 41 YALE L.J. 221 (1931) (citing SEDGWICK, THEODORE SEDGWICK, STATUTORY AND CONSTITUTIONAL LAW 519–24 (1857)).

285. *See* HORWITZ, *supra* note 279, at 69.

286. For discussion of these developments, see Robert Kratovil & Frank J. Harrison, Jr., *Eminent Domain—Policy and Concept*, 42 CAL. L. REV. 596 (1954).

287. 80 U.S. (13 Wall.) 166 (1871).

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overflowing of private land.[288] Subsequently, the Court found that when the government "takes away the use and value . . . it is of little consequence in whom the fee may be vested."[289] The movement during this era was from analysis based on the physical nature of the government action to analysis based on its impact on property.

At the same time that courts differed over whether physical invasions were required in order for takings to occur, they also split over whether permanent physical invasions were per se takings which required compensation in the absence of a substantial loss in value. In *Loretto v. Teleprompter Manhattan CATV Corp.*,[290] the Court stated that it had squarely "affirm[ed] the traditional rule that a permanent physical occupation of property is a taking"[291] "without regard to whether the action . . . has only minimal economic impact on the owner."[292] However, in the nineteenth century the rule was far from settled.

Until 1851, openings of public roads on unimproved land were not a taking, based on the theory they increased the value of property.[293] In 1899, the Massachusetts Supreme Judicial Court held that:

> even the carrying away or bodily destruction of property might be of such small importance that it would be justified under the police power without compensation. We assume that one of the uses of that convenient phrase, police power, is to justify those small diminutions of property rights which, although within the letter of constitutional protection are necessarily incident to the free play of the machinery of government.[294]

In 1910, the Supreme Court ruled that the laying of a street across a privately owned right of way did not constitute a taking when no loss in value occurred as a result of the public action.[295] In a subsequent case, the Court stated that "it is the character of the invasion, not the amount of damage resulting from it, *so long as the damage is substantial*, that determines the question of whether it is a taking."[296]

But in other cases courts ruled that a physical taking required compen-

288. *Id.* at 180–81. But, the Court did not find that there was a taking when the construction of a coffer-dam and accompanying excavations adjacent to private property obstructed access to a privately owned dock. Transportation Co. v. Chicago, 99 U.S. 635 (1878).

289. United States v. Lynah, 188 U.S. 445 (1903).

290. 458 U.S. 419 (1982).

291. *Id.* at 441.

292. *Id.* at 434–35.

293. Grant, *supra* note 278, at 67.

294. Bent v. Emery, 53 N.E. 910, 911 (Mass. 1899).

295. Boston Chamber of Commerce v. City of Boston, 217 U.S. 189 (1910).

296. United States v. Causby, 328 U.S. 256, 266 (1946) (citing United States v. Cress, 243 U.S. 316, 328 (1917)).

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sation even if it did not result in a diminution in value. In 1851, the Georgia Supreme Court required compensation for the placement of a road on *un*enclosed land.[297] The court explained that compensation was essential in order to protect private property from public abuse.[298] In 1906, the New York Court of Appeals ruled that stringing telephone wire over a property constituted a taking. " '[A]n owner is entitled to the absolute and undisturbed posession of every part of his premises. . . . ' "[299] The West Virginia Supreme Court explained in a case involving a physical invasion that "a question of right is involved, and not a question of value."[300]

In the twentieth century, the general rule has been that utility installations constitute takings, "even if they occupy only relatively insubstantial amounts of space and do not significantly interfere with the landowner's use of his land."[301]

Loretto's facts tested the hypothetical limits of the per se taking doctrine.[302] The state requirement that compelled apartment landlords

297. Parham v. Decatur County, 9 Ga. 341 (1851).

298. *Id.* at 354–55.

299. United States v. Causby, 328 U.S. 256 (1946) (quoting Butler v. Frontier Tel. Co., 79 N.E. 716, 718 (N.Y. 1906)).

300. Lovett v. West Va. Cent. Gas Co., 65 S.E. 196, 199 (W. Va. 1909).

301. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 430 (1982). On the one hand, during this century, the judiciary has worked toward a substantive approach to determining what constitutes a regulatory taking. On the other hand, it moved towards creating a mechanical test of what constitutes a per se taking.

302. *Loretto*'s per se taking doctrine has been subject to widespread criticism. *See* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 442 (Blackmun, J., dissenting) ("[T]he Court's approach 'reduces the constitutional issue to a formalistic quibble' over whether property has been 'permanently occupied' or 'temporarily invaded'."); *see also* Casella v. City of Morgan Hill, 280 Cal. Rptr. 876, 880–81 (Cal. Ct. App. 1991).

See also Ray Mulligan, Comment, Loretto v. Teleprompter Manhattan CATV Corporation: *Another Excursion into the Takings Dilemma*, 17 URB. LAW. 109 (1985); Robert M. DiGiovanni, Note, *Eminent Domain*—Loretto v. Teleprompter Manhattan CATV Corp.: *Permanent Physical Occupation as a Taking*, 62 N.C. L. REV. 153 (1983).

One of the leading constitutional scholars of the era has sharply criticized the "fetishism" associated with the approach pursued in *Loretto* and the illogical results that ensued. Professor Laurence Tribe wrote:

> The majority opinion [in *Loretto*] contains several pages of hyperbolic rhetoric in which a few feet of ½ inch cable and a couple of small silver boxes—the totality of the offending installation—are described as having effectively destroyed the landlord's use of his roof space. We are told that to allow a "*stranger*" to "invade" and "exercise complete dominion" over the landlord's property is "literally to add insult to injury." The majority even takes the dissent to task for underestimating the size of the CATV [cable TV] installation, which actually displaced more than 1½feet!
>
> This obsession with permanent physical invasions of even the most de minimis variety borders on fetishism. The majority apparently finds merely *temporary* limita-

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to accept cable TV lines in their buildings, was minimal in terms of a physical invasion. Furthermore, it differed from prior physical occupations that were found to be per se takings. In the case of the cable TV line, the physical occupation was for the benefit of the tenant occupants of the property, while in the other physical occupation cases, which typically involved utility lines or roads, the occupation was for the benefit of the general public and not for the parties that had either nonpossessory or possessory interests in the property.

In order to distinguish its holdings in *Loretto* from its prior decisions upholding regulations of landlord-tenant relationships, the Court noted that none of the landlord-tenant cases involved a "*permanent* occupation of the landlord's property by a third party."[303]

The Supreme Court has not applied the per se taking rule in cases where the physical invasions were not "permanent." In *Pruneyard Shopping Center v. Robins*,[304] a case involving state authorization of free speech in a privately owned shopping center, the Court held that "the fact that [the speakers] may have 'physically invaded' appellants property cannot be viewed as determinative."[305]

tions on the right to exclude, such as those in *Pruneyard*, *Kaiser Aetna*, and the intermittent flooding cases; to be less constitutionally offensive even though the economic deprivation of those incursions far exceeds that worked by CATV installations . . . .

The final oddity of the *Teleprompter* decision is that the majority concedes that its analysis turns upon the fact that the CATV company, rather than the landlord, *owns* the offending installation. The Court claims that its holding does not affect the state's power to require landlords to provide such things as mailboxes, smoke alarms, and utility connections. The reason is that, although the expense in those situations is imposed directly on the landlord, and her dominion over the property is certainly impaired, *she owns* the installation, albeit unwittingly.

LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW, 602–03 (2d ed., 1988).

The distinctions between physical and regulatory takings have been repeatedly criticized as artificial. Hirsch concludes that the mobilehome space regulations constitute a taking, but suggests that a nexus test should be used "instead of stretching doctrine to conclude that government has 'physically occupied' property." Hirsch & Hirsch, *supra* note 8, at 466.

303. *Loretto*, 458 U.S. at 440. While *Loretto* considered "permanency" for the purpose of finding a taking even in the absence of economic impact, it may be that "permanency" was originally considered for the purpose of showing the serious impact of the invasion. In Sanguinetti v. United States, 264 U.S. 146 (1924), the Supreme Court explained that a flooding must "constitute an actual, permanent invasion of the land, amounting to an appropriation of and not merely an injury to, the property." *Id.* at 149. Among the Court's bases for not finding a taking was that "Appellant was not ousted, nor was his customary use of the land prevented." *Id.*

304. 447 U.S. 74 (1980).

305. *Id.* at 84.

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2. DO MOBILEHOME PARK RENT AND EVICTION CONTROLS CONSTITUTE PER SE TAKINGS UNDER *LORRETO*?

Loretto stated that "whether a permanent physical occupation has occurred presents relatively few problems of proof" and found a per se taking in a situation involving "[t]he placement of a fixed structure on land . . . an *obvious fact* that will rarely be subject to dispute."[306] Since *Loretto*, the question of whether or not there has been a physical invasion has been the "subject of dispute" rather than an "obvious fact."[307]

Hall and *Pinewood* distinguished the landlord-tenant regulations that would remain untouched under *Loretto* from the regulations in the mobilehome cases on the basis that the mobilehome rent controls authorized occupations in "perpetuity."[308]

The mobilehome rent regulations may be distinguished from the "permanent physical occupations" that were subject to the per se rule of *Loretto*.[309] None of the numerous occupations which were cited by *Loretto* as examples of per se physical occupation takings were occupations entered into pursuant to rental agreements for the benefit of the landowner,[310] as is the case in mobilehome space tenancies. None of them involved readjustments of preexisting landlord-tenant relationships.

The "third party" nature of the physical occupation was critical to *Loretto*. At one point, the court notes that the outcome of its analysis would not have been the same if the government had required landlords to "provide" cable installations rather than authorizing installations by

306. *Loretto*, 458 U.S. at 437 (emphasis added).

307. *Hall* is not the only case in which it has not been obvious whether or not government action constituted a physical taking. *See* United States v. Sperry Corp., 493 U.S. 52 (1989), *rev'g* Sperry Corp. v. United States, 853 F.2d 904 (Fed. Cir. 1988) (reversed on the issue of whether a physical taking occurred).

308. *See* Hall v. City of Santa Barbara, 833 F.2d 1270, 1276 (9th Cir. 1986); Pinewood Estates v. Barnegat Township Rent Leveling Bd., 898 F.2d 347, 355 & n.1 (3d Cir. 1990).

309. These distinctions are subject to the caveat that "formalistic distinctions" should not prevail over substance.

310. The types of cases cited by *Loretto* as per se takings were as follows: Flooding—United States v. Kansas City Life Ins. Co., 339 U.S. 799 (1950); Sangvinetti v. United States, 264 U.S. 146 (1924); United States v. Cress, 243 U.S. 316 (1917); United States v. Lynah, 188 U.S. 445 (1903); Pumpelly v. Green Bay Co., 80 U.S. (13 Wall.) 166 (1871); telephone & telegraph lines—Southwestern Bell Tel. Co. v. Webb, 393 S.W.2d 117 (Mo. Ct. App. 1965); Western Union Tel. Co. v. Pennsylvania R.R., 195 U.S. 540 (1904); St. Louis v. Western Union Tel. Co., 148 U.S. 92 (1893); utility lines—Lovett v. West Virginia Cent. Gas Co., 65 S.E. 196 (W. Va. 1909); overflights—United States v. Causby, 328 U.S. 256 (1946); permanent military guns directed over private land—Portsmouth Co. v. United States, 260 U.S. 327 (1922); seizure of property—United States v. Pewee Coal Co., 341 U.S. 114 (1951).

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third parties.[311] It explained that "[o]wnership would give the landlord rights to the placement, manner, use, and possibly the disposition of the installation. The fact of ownership is . . . not simply incidental."[312] In the case of the mobilehome space regulations, the park owners authorized the installation of the mobilehomes and control their "placement, manner [and] use" for the purposes of advancing the returns from their ownership.[313]

The invasion in *Loretto* may also be distinguished from the mobilehome rent control on the basis that the cable TV occupation involved an occupation which extinguished all *nonpossessory* as well as possessory uses. The Court noted that, in the area occupied by the cable TV lines, the apartment owner "not only cannot exclude others, but can make *no nonpossessory use* of the property."[314] Under the mobilehome space regulations, the park owner retains the primary "nonpossessory" use of the property—the right to collect rent—which, in fact, is its primary function for park owners.

Loretto points to a situation in which "even though the owner may retain the bare legal right to dispose of the occupied space by transfer or sale, the permanent occupation of that space by a stranger will ordinarily empty the right of any value."[315] In contrast, in the case of the mobilehome park, the "permanent occupation of that space by a stranger" creates substantial value in the form of a secure income stream. In fact, the occupation was proposed by the park owner for the purpose of creating value.

One commentator states: "'Indeed, where physical possession by others is the very nature of the enterprise carried on by the property owner, 'occupation' not only does not interfere with 'investment-backed expectations;' it is the essence of them."[316]

However, as previously indicated, because the regulations provide mobilehome owners with assignable permanent tenancies, they raise questions which the Court specifically declined to resolve in its consideration of the occupation by the cable TV lines.[317]

Other Court opinions of the past two decades have also undercut the notion that the type of occupation authorized by the mobilehome space

311. *Loretto*, 458 U.S. at 440.
312. *Id.* at 440 n.19.
313. *Id.*
314. *Id.* at 436 (emphasis added).
315. *Id.*
316. Manheim, *supra* note 276, at 961.
317. *See infra* text accompanying notes 334.

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regulations falls into the categories targeted by *Loretto*. They find that there are takings only where "treasured" strands of ownership have been destroyed by the public action. In regard to the physical occupation addressed in *Pruneyard Shopping Center v. Robins*,[318] the right to political expression in a shopping center, the Court commented, "[A]ppellants have failed to demonstrate that the 'right to exclude others' is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a 'taking'."[319]

Penn Central Transportation Co. v. City of New York[320] lends support to the view that mobilehome rent and eviction regulations do not fall into the category of a physical occupation. The *Penn Central* Court concluded that a landmark preservation law was not a physical invasion[321] and distinguished its circumstances from *United States v. Causby*,[322] where the Court found that overflights that destroyed the underlying land constituted a physical invasion.[323] In *Penn Central*, the Court noted that "New York City law has in nowise impaired the present use of the Terminal, the Landmarks Law neither exploits appellants' parcel for city purposes nor facilitates nor arises from any entrepreneurial operations of the city."[324] Similar conclusions may be reached about the mobilehome space regulatory scheme.

The most fundamental weakness of the *Hall* analysis may be that it relies on allegations about the economic characteristics of the park owner-mobilehome owner/landlord-tenant relationship in order to find a per se physical taking. *Loretto* found that economic consequences were irrelevant. "[W]hen the 'character of the governmental action' is a permanent physical occupation of the property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action . . . has only minimal economic impact on the owner."[325]

In contrast, the taking claim in *Hall* is anchored in the scope of the alleged economic consequences. *Hall* states that a taking claim has been presented because the ordinance has "transferred a possessory interest

318. 447 U.S. 74 (1980).
319. *Id.* at 84.
320. 438 U.S. 104 (1978).
321. *See id.* at 130–31.
322. *Id.* at 135 (citing United States v. Causby, 328 U.S. 256 (1946)).
323. *See id.* at 128 (citing United States v. Causby, 328 U.S. 256, 262–63 n.7 (1946)).
324. *Id.* at 135.
325. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434–35 (1982) (citations omitted).

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. . . this interest consists of the right to occupy the property in perpetuity *while paying only a fraction of what it is worth in rent.*"[326] The court distinguishes the mobilehome space rent control from apartment rent controls on the basis that rent control gives the tenant a right which is "transferable to others, [has] a market value, [is] traded in the open market and [results in] a monetary windfall."[327] The court then notes that "[t]his is not a minor difference; it is crucial. The fact that the tenant can sell his interest to third parties drastically affects the *economic realities* of the landlord/tenant relationship."[328]

Since *Hall*, the Supreme Court has issued an opinion which provided clarification on per se takings analysis in the context of landlord-tenant relations but specifically declined to resolve the issues raised by *Hall*. In *FCC v. Florida Power Corp.*,[329] the U.S. Supreme Court ruled that continued cable attachments to its utility poles by a cable TV company, after the state drastically reduced the rents, did not constitute "third party" occupancy.[330]

In the *Florida Power* case, the U.S. Court of Appeals concluded that the cable TV companies were not invitees in the sense that they were not invited at the rate they were allowed to occupy their space: They "certainly weren't invited at the rate imposed by the FCC. In our opinion, the cable companies' occupation of Florida Power's poles at the rate specified by the FCC [which was about one-quarter the agreed upon rate] is anything but invited."[331] However, the Supreme Court rejected this basis for concluding that they were not "invitees"; it is the "invitation," rather than the "rent," that makes the difference.[332]

326. Hall v. City of Santa Barbara, 833 F.2d 1270, 1276 (9th Cir. 1986) (emphasis added).

327. *Id.* at 1278.

328. *Id.* at 1279 (emphasis added). In United States v. Sperry, 110 S. Ct. 387 (1989), the Supreme Court rejected the view that deductions of a percentage of a monetary award constituted a physical appropriation of property. "It is artificial to view deductions of a percentage of a monetary award as physical appropriations of property. Unlike real or personal property, money is fungible." *Sperry*, 110 S. Ct. at 395 n.9. A critical element of the taking analysis in *Hall* and *Pinewood* is the reduction in rent.

329. 480 U.S. 245 (1987).

330. *Id.* at 252–53.

331. Florida Power v. FCC, 772 F.2d 1537, 1543 (11th Cir. 1985). In contrast, in the mobilehome owners' case, rents increases have been regulated, but rent were not substantially reduced.

Mobile home rent ordinances usually provide for rent rollbacks to levels in effect before their adoption. Rollbacks of up to six months are typical. In some cases rollbacks have been for periods of up to several years. The purposes of the rollbacks are to offset exceptional increases due to the tightening market and/or increases in anticipation of regulation.

332. *Florida Power*, 480 U.S. at 252–53.

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> Appellees contend, in essence, that it is a taking under *Loretto* for a tenant invited to lease at a rent of $7.15 to remain at a regulated rent of $1.79. But it is the invitation, *not the rent*, that makes the difference. The line which separates these cases from *Loretto* is the unambigouous distinction between a commercial lessee and an interloper with a government license.[333]

In contrast, under the *Hall* and *Pinewood* analysis it was the "reduced rent" that was central to the analysis.

While the Court's reasoning in *Florida Power* may distinguish rent controlled tenancies from physical takings, the Court specifically stated that it was not deciding "what the application of *Loretto* . . . would be if the FCC in a future case required utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements."[334]

3. "COMPULSIONS" TO RENT OUTSIDE OF THE MOBILEHOME CONTEXT

While *Loretto* may provide the closest "semantic" link to the issues raised in *Hall* based on the permanent physical occupancy question, cases involving "compulsions" to rent may raise the closest substantive link to the issues raised by the mobilehome space rent controls.[335]

Such "compulsions" have taken varying forms. Some have compelled landlords to continue to rent space that is tenant occupied. Others have required the rental of vacant space. Such laws may be seen as comparable to the mobilehome space regulations in the sense that, like the mobilehome regulations, they require that the property be put to rental use, as well as regulating the rent that may be charged.

a. "Compulsions" to Continue to Rent: *Pinewood* comments that the Supreme Court has distinguished the rent and eviction control ordinances that it has upheld from permanent occupations on the basis that the laws it considered either did not compel any landlord to rent or were only temporary measures.[336] A World War I case, *Block v. Hirsch*,[337]

333. *Id.* (emphasis added).

334. 480 U.S. at 251 n.6.

335. Another type of regulation that may parallel mobilehome space rent and evictions in a significant way are historic preservation laws. They require a permanent continuation of the current use of the property. As the California Supreme Court explained: "Ordinances which prohibit demolition of historic monuments, such as the one upheld in *Penn Central* . . . not only limit the freedom of choice of the owner as to the use of his property, and as to the type of business or occupation he may engage in upon the premises . . . ." Nash v. City of Santa Monica, 688 P.2d 894, 899–900 (Cal. 1984).

336. Pinewood Estates v. Barnegat Township Leveling Bd., 898 F.2d 347 (3d Cir. 1990).

337. 256 U.S. 135 (1921).

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is cited for the proposition that a rent control measure was valid only because it involved a "*temporary measure*. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."[338] However, that conclusion was pursuant to a doctrine that has since been discarded, the rule that price regulations and rent controls are only valid in an emergency.[339]

Pinewood goes on to note that, in a challenge to World War II rent regulations, the Supreme Court pointed out that " '[w]e are not dealing here with a situation that involves a "taking" of property. . . . '[N]othing in this Act shall be construed to require any person . . . to offer any accomodations for rent.' "[340] But, that language only seems to indicate that landlords could not be compelled to rent vacant units, rather than indicating that they could terminate existing tenancies. This decision was in the context of the understanding that the rent control measure in issue was an emergency measure that would terminate within a few years.

In two cases within the past decade, federal courts upheld ordinances that prohibited evictions for owner occupancy for the life of the tenant, but did not grant transferable tenancy interests. In one case, *Loeterman v. Town of Brookline*,[341] a district court upheld a Brookline, Massachusetts, ordinance that prohibited evictions from condominiums for owner-occupancy by landlords who purchased after the adoption of the restriction.[342] The court reasoned that the landlords "had no legitimate *expectation* of occupying their condominium at the time they purchased it."[343]

In the other case, *Troy Ltd. v. Renna*,[344] the U.S. Court of Appeals for the Third Circuit rejected the view that a grant of lifetime tenancies to senior and disabled tenants who were in possession at the time of the

338. *Pinewood*, 898 F.2d at 355 n.1 (quoting Block v. Hirsh, 256 U.S. 135, 157 (1921) (emphasis added).

339. *See* Kenneth K. Baar & W. Dennis Keating, *The Last Stand of Economic Substantive Due Process—The Housing Emergency Requirement for Rent Control*, 7 URB. LAW. 447–509 (1975), and subsequent state supreme court decisions specifically ruling that an emergency was not a prerequisite to the constitutionality of rent controls as cited in Kenneth K. Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723, 755 n.114 (1983).

340. *Pinewood*, 898 F.2d at 355 n.1 (quoting Bowles v. Willingham, 321 U.S. 503, 517 (1944)).

341. 524 F. Supp. 1325 (D. Mass. 1981).

342. *See id.* at 1326.

343. *Id.* at 1329 (emphasis in original).

344. 727 F.2d 287 (3d Cir. 1984).

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condominium conversion constituted a taking pursuant to the reasoning of *Loretto*.[345]

Courts have also upheld laws which require apartment owners to remain in the rental business. In *Nash v. City of Santa Monica*,[346] the California Supreme Court upheld a prohibition of apartment demolitions.[347] Nash claimed that the prohibitions and evictions constituted a form of involuntary servitude,[348] but did not raise any taking claims. Nevertheless, the court raised and then rejected the possibility of a takings claim using the tests applied in *Penn Central*-interference with owner's primary investment-backed expectations and fair return.[349] Such ordinances were seen as an "adjunct to limitations upon eviction which have generally been upheld by the courts."[350]

The Massachusetts Supreme Judicial Court concluded that the right to curb removals is essential to the maintenance of the rental housing stock: "If the power to control rents is to be anything more than an interim measure effective for only the short period needed to convert the entire rental housing stock, it must include by implication the power to make reasonable regulations governing removals from the rental housing market."[351]

On the other hand, after *Hall*, a federal trial court in the Ninth Circuit struck down a commercial rent control ordinance which was comparable to mobilehome rent regulations, in that it required landlords to continue to rent to tenants who made substantial investments in their premises and effectively granted them transferable occupancy rights at a controlled rent.[352] In *Ross v. City of Berkeley*,[353] a U.S. District Court

345. *Id.* at 300 (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)).

346. 688 P.2d 894 (Cal. 1984).

347. *Id.* at 896. In response to the decision, the state legislature adopted the "Ellis Act," which authorizes landlords to cease renting their units. CAL. GOV'T CODE §§ 7060–7060.7 (West 1986). The authorization only applies if the landlord ceases to rent all units in a building. *Id.* § 7060.7(3).

348. *Nash*, 688 P.2d at 898.

349. *Id.*

350. *Id.* at 900 (citations omitted).

351. Flynn v. City of Cambridge, 418 N.E.2d 335, 338–39 (Mass. 1981).

352. *See* Ross v. City of Berkeley, 655 F. Supp. 820 (1987). The Berkeley ordinance contained a vacancy decontrol provision. *Id.* at 826. However, vacancies are difficult to track in a commercial situation since occupancy is tied to a paper entity rather than specific individuals. *Id.* at 837–38. However, the tenancy may be held by a corporation which has a perpetual life under California law. *Id.* at 837.

353. 655 F. Supp. 820. Subsequently, the state instituted a ban on commercial rent control ordinances. CAL. CIVIL CODE §§ 1954.25–1954.31 (West 1982).

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ruled that the regulation constituted a taking because it did not permit evictions for owner-occupancy.[354]

b. "Compulsions" to Make Vacant Units Available for Rent. In a decision subsequent to *Hall* but prior to *Pinewood*, a U.S. District Court upheld a Hoboken, New Jersey, ordinance that required landlords to rent vacant units.[355] The court applied a regulatory taking standard and concluded that there was no taking because there was no evidence that the landlords had been denied all economically viable use of their property.[356] Furthermore, the court noted, landlords had the option of converting their units to condominiums in lieu of renting.[357]

However, in a recent case that has received widespread attention, *Seawall Associates v. City of New York*,[358] the New York Court of Appeals struck down a New York City ordinance which required owners of Single Room Occupancy (SRO) multiple dwellings to rehabilitate and rent up vacant units at controlled rents.[359] The court ruled that the loss of the right to exclude and the coerced rental to "strangers" constituted a physical taking.[360]

But, the court went on to distinguish this case from other cases in which landlords were compelled to continue to rent on the basis that the other cases

> merely involved restrictions imposed on *existing* tenancies where the landlords had *voluntarily* put their properties to use for residential housing. . . . [T]hose regulations did not force the owners, in the first instance, to subject their properties to a use which they neither planned nor desired.[361]

In this case, the rent-up provisions were particularly onerous because they were preceded by a municipal policy, relied upon by the purchasers, of encouraging the demolition and redevelopment of SRO's.[362] The court concluded that this exclusion was "far more offensive and invasive than the easements in *Kaiser Aetna* or *Nollan* or the installation of CATV equipment in *Loretto*."[363]

Hall and *Pinewood* distinguished their facts from *Troy* and other landlord-tenant cases on the basis that the other cases did not authorize

354. *Ross*, 655 F. Supp. at 836–39.
355. Help Hoboken Housing v. City of Hoboken, 650 F. Supp. 793 (D.N.J. 1986).
356. *See id.* at 797–98.
357. *Id.* at 798.
358. 542 N.E.2d 1059 (N.Y. 1989).
359. *See id.* at 1065.
360. *Id.* at 1072–74.
361. *Id.* at 1064–65 (emphasis added).
362. *See id.* at 1072–74.
363. *Id.* at 1064.

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a *permanent* physical occupation.[364] In order to reach this conclusion, these decisions distinguished between transferable tenancies and extensions of tenancies ("invasions") that may last the remainder of a lifetime.[365] As a practical matter, the difference may be small for the landlord. In cases where tenants remain as long as they live, the greatest portion of the value in a property is taken up by the occupancy rights within a ten or twenty year period.[366]

4. IS THE "WINDFALL" OR "PREMIUM" THE PROPERTY OF THE PARK OWNER?

The other central prong to the taking conclusions in *Hall* and *Pinewood* is that the "premium" or "windfall" (the benefit of the regulation) is the property of the park owner.[367] In *Pinewood*, the court explained:

> The operation of the Barnegat Ordinance in connection with state law has created valuable property interests for which [the park owners] have not been compensated. . . . This is not a case in which a property owner has simply been told that he cannot do something on his property or that he must use his property a certain way. The situation is aggravated by the fact that the transfer is accompanied by the payment not to the landlord but to the departing tenant of what amounts to rent for the use of the pad. This "rent" is for the possessory interest of the landlord. Thus, this is a case where other persons, tenants, have been granted interests in property which properly belongs to . . . the landlords.[368]

a. Defining Property. Two basic and competing precepts of takings doctrine are that not all potential interests constitute property and that constitutional protections against takings cannot be nullified simply by redefining what constitutes property.

One commentator notes the perils of definition:

> Justice Jackson's adoption of the Bentham principle, that property is only that economic advantage that has the sanction of law, is a description not a guide. If this principle were followed to its logical conclusion, government could redefine property rights as subordinate to all government claims and then destroy, take, or damage without compensation because no "property rights" were taken.[369]

364. Hall v. City of Santa Barbara, 833 F.2d 1270, 1278–79 (9th Cir. 1986); Pinewood Estates v. Barnegat Township Leveling Bd., 898 F.2d 347, 333–35 (3d Cir. 1990).

365. City of Santa Barbara, 833 F.2d at 1278–79; Barnegat Township, 898 F.2d at 333–35.

366. If the interest rate is ten percent, the present value of a reversion at the end of ten years is thirty-eight percent of its current value; at the end of twenty years it is fifteen percent of its current value; and at the end of thirty years it is six percent of its current value. *Annual Compound Interest Tables in* STEPHEN A. PHYRR & JAMES R. COOPER, REAL ESTATE INVESTMENT 760 (1982) In addition, the income stream during the occupancy period would have value.

367. *See* Hall v. City of Santa Barbara, 833 F.2d 1270, 1280 (9th Cir. 1986); Pinewood Estates v. Barnegat Township Leveling Bd., 898 F.2d 347, 353 (3d Cir. 1990).

368. *Pinewood*, 898 F.2d at 353.

369. Allison Dunham, *Griggs v. Allegheny County in Perspective: Thirty Years of Supreme Court Expropriation Law*, 1962 SUP. CT. REV. 63, 81.

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On the other hand, if states were left without the power to define property, all interests could become protected property interests.

In between these principles is the general rule that property interests are the product of law and understandings that guide our society: "[P]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law."[370]

In a case involving water rights, the Supreme Court explained that:

> only those economic advantages are "rights" which have the law back of them, and only when they are so recognized may courts compel others to forbear from interfering with them or to compensate for their invasion. . . . We cannot start the process of decision by calling such a claim as we have here a "property right"; whether it is a property right is really the question to be answered.[371]

370. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1001 (1984) (quoting Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980)).

Even if the "premium" or "windfall" is the property of the park owner, a basic precept of the police power is that respective property rights of parties in economic relationships can be adjusted. In fact, such a power is at the essence of the legislative power. The Supreme Court has repeatedly upheld legislation that has reallocated prior "rights and burdens."

It may be argued that in the case of mobilehome parks, the park owners have benefited from mobilehome owners substantial investments in fixed improvements in their parks. As a result, they have had a secure income and their park spaces have had an increased rental value.

In a case involving Black Lung Benefits, the Court ruled that Congress could allocate costs associated with work related disabilities to employers "who have profited from the fruits of [their employees'] labor." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 18 (1976). This reallocation altered the arrangements that governed the original formation of those employment relationships and the parties respective expectations.

In fact, the Supreme Court has ruled that "it cannot be said that the Takings Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another." Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 223 (1986).

In *Connolly*, the Court upheld legislation which created new pension liabilities for past employment. It noted that "the United States has taken nothing for its own use, and only has nullified a contractual provision limiting liability by imposing an additional obligation that is otherwise within the power of Congress to impose." *Id.* at 224.

371. United States v. Willow River Power Co., 324 U.S. 499, 502–03 (1945). In a concurring opinion in Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74 (1980), Justice Marshall commented:

> The constitutional terms "life, liberty, and property" do not derive their meaning solely from the provisions of positive law. They have a normative dimension as well, establishing a sphere of private autonomy which government is bound to respect. Quite serious constitutional questions might be raised if a legislature attempted to abolish certain categories of common-law rights in some general way. Indeed, our cases demonstrate that there are limits on governmental authority to abolish "core" common-law rights, . . . at least without a compelling showing of necessity or a provision for a reasonable alternative remedy.

Id. at 93–94 (Marshall, J., concurring) (footnotes omitted).

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In *United States v. General Motors Corp.*,[372] the Supreme Court explains that property rights inhere in a citizen's relation to things, rather than the actual physical thing.

> It is conceivable that [the term "property" in the takings clause] was used in its vulgar and untechnical sense of the physical thing with respect to which the citizen exercises rights recognized by law. On the other hand, it may have been employed in a more accurate sense to denote the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it. In point of fact, the construction given the phrase has been the latter.[373]

In the mobilehome context, the property interests alleged to have been taken are the space rent above the rent-controlled rent and the value created by the assignability of the mobilehome leases. *Pinewood* states that "[t]he operation of the Barnegat Ordinance in connection with state law has created valuable property interests for which appellants have not been compensated."[374]

In *Eamiello v. Liberty Mobile Homes Sales*,[375] the Connecticut Supreme Court found that these "economic advantages" could be seen as products of the state created "near-monopoly status of the [mobilehome park] industry."[376] It ruled that no constitutional principle was violated by the state's selection of the tenant "as the recipient of this economic advantage arising from the near-monopoly status of the industry."[377]

In *Yee v. City of Escondido*,[378] the California Court of Appeals re-

372. *See* United States v. General Motors Corp., 323 U.S. 373 (1945).
373. *Id.* at 377–78.
374. Pinewood Estates v. Barnegat Township Leveling Bd., 898 F.2d 347, 353 (3d Cir. 1990).
375. Eamiello v. Liberty Mobile Home Sales, 546 A.2d 805 (Conn. 1988).
376. *Id.* at 820.
377. *Id.* In a dissent from an opinion upholding a provision in San Jose's rent control ordinance which incorporated the particular tenant's income as a factor in the rent setting process, Justice Scalia commented:

> Of course all economic regulation effects wealth transfer. When excessive rents are forbidden . . . landlords as a class become poorer and tenants as a class (or at least incumbent tenants as a class) become richer. Singling out landlords to be the transferors may be within our traditional constitutional notions of fairness, because they can plausibly be regarded as the source or the beneficiary of the high-rent problem.

Pennell v. City of San Jose, 485 U.S. 1, 22 (1988) (Scalia, J., dissenting).

Before mobilehome rent controls were considered, one commentator stated:

> Zoning restrictions have given park owners oligopolistic control of mobile home rental sites in many communities. This control of the market permits the abuses catalogued above. Since government, through restrictive zoning, has helped make these abuses possible, it seems unconscionable for government to refuse to protect helpless tenants from the resulting overreaching by landlords.

Stubbs, *supra* note 162, at 234.

378. Yee v. City of Escondido, 274 Cal. Rptr. 551 (Cal. Ct. App. 1990).

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jected the view that a compensable taking occurs "[w]here a government regulation purports to reduce the excessive and unfair price to a reasonable level, the mere fact that the price for complementary goods and services rises as a result does not transmute an otherwise reasonable price regulation into a compensable 'taking.' "[379]

b. Income in Excess of Legal Price Limits Is Not "Property". U.S. Supreme Court treatment of just compensation and damages issues in the context of price regulations also lends support to the view that the "premium" associated with the rent regulations and the possessory interest is not the property of the park owners. The Court has repeatedly taken the position that there is no right to compensation for the taking of revenue in excess of that authorized under the price controls and that market value is not the appropriate measure of "just" compensation in cases involving shortages resulting from public action.[380] In essence, "excess" revenue has not been viewed as property.

In one World War II case, the Supreme Court noted that "it has refused to make a fetish even of market value, since that may not be the best measure of value in some cases."[381] Instead, the Court held that the right to just compensation for a tugboat that was requisitioned by the government did not include the "enhanced price" created by the war.

> In time of war . . . the demand of the government . . . causes the market to be an unfair indication of value. . . . It is not fair that the government be required to pay the enhanced price which its demand alone has created. . . . That is a value which the government itself created and hence in fairness should not be required to pay.[382]

In another World War II case, three Justices concluded that "under controlled-market conditions, the constitutionally established maximum price is the only proper standard of 'just compensation.' "[383] But, another three declined to reach this issue and two Justices concluded that "the constitutional guaranty of just compensation for private property taken for public use becomes meaningless if the Government may first, under its 'war powers,' fix the market price and then make its controlled figure the measure of compensation."[384]

379. *Id.* at 553.
380. United States v. Virginia Elec. & Power Co., 365 U.S. 624 (1961); United States v. Commodities Trading Corp., 339 U.S. 121 (1950).
381. United States v. Cors, 337 U.S. 325, 332 (1949).
382. *Id.* at 333–34.
383. United States v. John J. Felin & Co., 334 U.S. 624, 643 (1948) (Reed, J., concurring).
384. *Id.* at 651–52 (Jackson, J., dissenting).

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Subsequently, the Court explained that regulated prices, rather than free market prices, may be the measure of value since the price controls compensate for abnormal conditions.[385]

c. "Windfall" Not the Measure of Damages. In *Hall*, the "windfall" to the beneficiary became the measure of damages,[386] in lieu of the traditional standard of the damage—the loss to the party suffering from the taking.[387] In the case of mobilehome rent controls, this distinction is critical because, as *Pinewood* acknowledges,[388] the park owner would not be significantly better off if the rent regulations remained in place but the mobilehome owners did not have the right to sell their homes in place and, therefore, lose their transferable possessory interest.[389]

In *Boston Chamber of Commerce v. City of Boston*,[390] the Court ruled that the measure of damages was dependent on what the owner has "lost," rather than on what the taker has "gained."[391] The Constitution "requires that an owner of property taken should be paid for what is taken from him. It deals with persons, not with tracts of land. And the question is what has the owner lost not what has the taker gained."[392] This rule has been applied to the detriment of government as well as to its benefit. In a case involving the question of whether a taking of possession of a laundry for three years for wartime purposes required

385. United States v. Commodities Trading Corp., 339 U.S. 121 (1950).

386. *See* Hall v. City of Santa Barbara, 833 F.2d 1270, 1278 (9th Cir. 1986). Plaintiff's claim rested on the fact that mobilehomes sold at far above "blue book" values. *Id.* at 1273. "The blue book is the Kelley Blue Book for Manufactured Housing (Mobile Homes), published by the Kelley Blue Book Company of Costa Mesa, California. Like the similar blue book for automobiles, it is the standard reference for prices of mobile homes." *Id.* at 1274 n.5.

In Azul Pacifico, Inc. v. City of Los Angeles, 740 F. Supp. 772 (C.D. Cal. 1990), the effect of rent regulations was measured by comparing the differences between the Blue Book values and average values for particular types of mobilehomes in rent controlled and nonrent controlled situations rather than by comparing the difference between Blue Book value and market values. *See id.* at 779.

387. *See, e.g.*, United States v. Causby, 328 U.S. 256 (1946). " 'It is the owner's loss, not the taker's gain, which is the measure of the value of the property taken.' " *Id.* at 261 (quoting United States v. Miller, 317 U.S. 369 (1943)). *See also* United States v. Virginia Elec. & Power Co., 365 U.S. 624 (1961); United States v. Twin City Power Co., 350 U.S. 222, 228 (1956).

388. *See supra* text accompanying note 248.

389. "At times some elements included in the criterion of market value have in fairness been excluded, as for example . . . where it has a special value to the taker because of its peculiar fitness for the taker's project." United States v. Cors, 337 U.S. 325, 332 (1949).

390. 217 U.S. 189 (1910).

391. *Id.* at 194.

392. *Id.* at 195.

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compensation for the lost clientele, which had value to the owner but not the taker, the Court declared:

> Because gain to the taker, on the other hand, may be wholly unrelated to the deprivation imposed upon the owner, it must also be rejected as a measure of public obligation to requite for that deprivation. The value compensable under the Fifth Amendment, therefore, is only that value which is capable of transfer from owner to owner and thus of exchange for some equivalent.[393]

The dissent opined that "[t]he truth of the matter is that the United States is being forced to pay not for what it gets but for what the owner loses."[394]

5. IS THE APPLICATION OF THE PER SE TAKING RULE TO MOBILEHOME RENT CONTROLS CONSISTENT WITH THE PURPOSE AND HISTORY OF THE TAKINGS DOCTRINE?

A basic tenet of legal interpretation is that laws shall be interpreted in a manner designed to carry out their intent. This theme is also central to constitutional construction. Beyond these central principles the only uniform agreement about the meaning of the Takings Clause is that there has been no agreement. A leading commentary on takings, which is typical of the scholarly literature on the subject, states that "the predominant characteristic of this area of law is a welter of confusing and incompatible results."[395] Commentary on the Takings Clause can be described as a series of unsuccessful efforts to find a central thread in takings doctrine.

Here, it is suggested that the constitutional analysis depends on the intent and purposes of the "just compensation" requirement, the protection of citizens from "unfair or arbitrary government;" and "*uncontrollable* power over the private fortune of every citizen."[396] "The idea is that compensation is required when the public helps itself to good at private expense, but not when the public simply requires one of its members to stop making a nuisance of himself."[397] The mobilehome space rent regulations insure a fair return while preventing the abuses that flow from the somewhat unique economic interrelationships between mobilehome ownership and park ownership.

393. Kimball Laundry Co. v. United States, 338 U.S. 1, 5 (1949) (citations omitted).
394. *Id.* at 23 (Douglas, J., dissenting).
395. Sax, *supra* note 280, at 36.
396. *Id.* at 60 (latter passage quoting 2 JOSEPH STORY, CONSTITUTION 547–48 (4th ed. 1873)).
397. Frank I. Michelman, *Property Utility and Fairness: Comments on the Ethical Foundations of Just Compensation Law*, 80 HARV. L. REV. 1165, 1196 (1967).

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VII. Conclusion

Currently, the relative legal status of hundreds of thousands of mobilehome owners and thousands of investors turns on a semantic debate over what constitutes a "permanent physical invasion."

As government regulation has become increasingly varied in form, constitutional scholars have searched without success for coherent approaches to the taking issue. However, one unity among the analyses is that none of them have suggested a per se taking approach based on a distinction between physical invasions and other types of government actions, as was adopted in *Loretto*. One of the most respected commentaries on taking analysis concludes that a formalistic physical invasion concept is "preposterous": "For constitutional questions to depend on such formalities is, as these cases demonstrate, preposterous. The formal appropriation or physical invasion theory should be rejected once and for all."[398]

If the drafters of the Constitution had attempted to develop a formal definition of a taking, the courts would have been forced to develop a body of exceptions as its literal terms became unworkable, as occurred in the case of the Contracts Clause.

When the courts of the nineteenth century tried the formalistic approach of limiting takings to situations involving actual physical occupations, they created absurd results.[399] As a result, state legislatures were compelled to redefine takings to include situations in which property was "damaged" by public action[400] and courts were compelled to reformulate their analysis to allow for compensation in situations in which the use and value of property were destroyed even though it was not physically touched by public action.

Loretto undertakes the task of formulating a definition when history has made it clear that definitions cannot resolve taking issues. *Hall* and *Pinewood* illustrate the absurdity of formalistic approaches to takings analysis. They adopt the flip side of a type of analysis that failed to lead to reasonable results in the nineteenth century. The old analysis used the mechanical approach of making physical entry a prerequisite to taking. The new approach makes a permanent physical occupation constitute an automatic taking. As one commentator noted:

398. Sax, *supra* note 280, at 48. *See also* Michelman, *supra* note 397, at 1184–90 for a critique of formalistic physical invasion theories.

399. *See supra* text accompanying notes 279–83.

400. *See supra* text accompanying note 286.

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> If "permanent physical occupation" constitutes a per se taking, no state interest can outweigh the impact on the property owner's interest. But, it hardly seems reasonable that a possessory takings claim is made out simply because the right to reverter (or right to exclude) is abridged. There must be more to it. That more is an economic analysis of the law's impact. This is clearly required in regulatory taking cases. Avoidance of it in possessory taking cases obfuscates takings theory.[401]

Hall and *Pinewood* have transformed takings analysis into a semantic debate. Up to now, two federal circuit courts of appeal have concluded that a permanent physical invasion occurred.[402] Numerous state appellate courts and trial courts have reached the opposite view about this "technical" question.[403]

In order to reach their conclusions that a physical taking has occurred, *Hall* and *Pinewood*:

1. Convert the right to charge in excess of regulated rents and the right to prohibit assignments of tenancies into physical property.
2. Determine that the rights to rents in excess of regulated levels (which may be "quasi"-rents) and the rights to the benefits of space rental assignability are the property of mobilehome park owner.
3. Use the "benefit to the taker" rather than the "value lost to the party as a consequence of the regulation" to establish the damages component of the "taking."
4. Read *Loretto* in isolation from the vast body of Supreme Court analysis of takings doctrine.

Hall and *Pinewood* also run counter to the basic power of government to curb monopoly-type abuses. Up to this time, regulations that protect against monopolies have been considered constitutional, provided they permit property owners a fair return.[404]

The mobilehome space rental regulations of the past two decades constitute a readjustment of benefits and burdens in response to the monopoly-like realities of the park owner-mobilehome owner relationship. They involve a fundamental institution-home ownership—and a situation in which the tenants are immobile homeowners with an investment that is three times as great as the investment of their landlords.[405] These relationships were created by the park owners in order to develop their land investments into profitmaking ventures.

It is understandable that park owners would prefer not to be severely regulated, especially as to such basic matters as the rents that they

401. Manheim, *supra* note 276, at 1013.
402. *See* Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir. 1986); Pinewood Estates v. Barnegat Township Leveling Bd., 898 F.2d 347 (3d Cir. 1990).
403. *See, e.g.*, *supra* text accompanying notes 247–266.
404. *See, e.g.*, Munn v. Illinois, 94 U.S. 113 (1887).
405. *See supra* note 12.

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charge and the assignability of the rental interests in their spaces. However, their invitation of immovable investments, with the understanding that these investments would be the shelter and major asset of low- and moderate-income households, made the regulations that followed virtually inevitable.[406]

The purpose of the just compensation requirement is to protect individuals from government oppression and to ensure that the public does not enrich itself at the expense of individual property rights. The purpose of the mobile home space regulations is to protect individuals from the exploitation of monopoly-like relationships. Turning these regulations into takings is to turn the taking concept on its head.

In a recent mobilehome case,[407] in which the court opinion was written by the author of the *Hall* opinion, a concurring opinion characterized the *Hall* analysis as "metaphysical":

> I concur under the compulsion of precedent, but for the record I want to note that I have not forgotten the difference between the physical and the metaphysical. *Hall* reached a commendable *legislative* result by calling a regulatory ordinance a physical taking. I am in somewhat the same position as I found myself upon first reading *Roe v. Wade* applauding the result but disturbed by the method.[408]

In *Hall* and *Pinewood*, two federal circuit courts conducted a "semantic bypass operation" in order to evade the balancing tests which the mobilehome space regulations have repeatedly withstood. *Loretto* addressed itself to the "obvious fact" of a permanent physical invasion. *Hall* and *Pinewood* formulated a concoction composed of economic consequences in order to find a physical invasion. Clearly, the "obvious fact" of a permanent physical invasion is a missing element in the finding that a mobile home space regulation scheme may be a per se taking. The fact that numerous appellate courts have concluded that such schemes do not constitute permanent physical invasions and that the Supreme Court specifically declined to address the issue in the *Florida Power*[409] case are testimonials to the lack of

406. One commentator stated:

> [N]o mobile home purchaser would invest 10,000 dollars for a mobile home unless he had a place in which to locate that mobile home. The assertion that a mobile home tenant may at any time be evicted and his investment made worthless for no valid reason is contrary to the very purpose of the transaction.

Kenneth Meiser, *Litigating on Behalf of Mobile Home Tenants*, 5 RUT. CAM. L.J. 453, 468 (1974).

407. Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951 (9th Cir. 1991).

408. *Id.* at 959 (Goodwin, J., concurring) (citations omitted).

409. *See supra* text accompanying note 334.

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an "obvious fact" in this case.[410] A return to the use of a balancing test in order to evaluate the constitutional issues raised by the mobilehome space rent and eviction regulations would achieve the purposes of the takings clause and take the analysis out of the vagaries of definitional debates.

410. Courts may come to opposite conclusions about whether a taking has occurred. However, one judicial approach is not reasonable by any standard. That would be to permit more delay in resolution of this issue than is necessary. Hundreds of thousands of mobilehome owners and thousands of park owners should not be held in limbo, stuck on the reef of judicial irresolution, buried under doctrines that in effect justify the creation of a judicial maze that continually defers substantive decisions until another day.

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Chapter 5.72
MOBILE HOME RENT STABILIZATION

Sections:

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5.72.020 Findings.
5.72.030 Definitions.
5.72.040 Applicability of chapter.
5.72.050 Exemptions from this chapter.
5.72.060 Permissible rent increases.
5.72.070 Automatic annual increases based on increases in the Consumer Price Index.
5.72.080 Allowable rent following the expiration of an exempt lease.
5.72.090 Allowable rent increases upon in-place transfers of mobile home ownership.
5.72.100 Fair return standard.
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5.72.120 Rent increases for new capital improvements.
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5.72.150 Information to be supplied by the park owner to tenants and prospective tenants.
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5.72.200 Retaliation prohibited.
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5.72.220 Excessive rents—Civil penalties.
5.72.230 Rules and guidelines.
5.72.240 Authority of city council to bring civil action to compel compliance.
5.72.250 Administrative service fees.
5.72.260 Appeal of decisions pursuant to this chapter.
5.72.270 Severability.

5.72.010 Purpose.

A. It is the purpose of this chapter to:

1. Prevent excessive and unreasonable increases in mobile home park space rents.

2. Prevent the exploitation of the shortage of available mobile home park spaces in the city and neighboring areas.

3. Enable mobile home owners to preserve their equity in their mobile homes.

4. Permit mobile home park owners to receive a fair return.

5. Help preserve affordable space rents within the city. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.020 Findings.

A. There are five mobile home parks with a total of three hundred ninety-nine spaces in the city of Marina.

B. Studies Prior to Adoption of Chapter. In 2009, the city commissioned two studies of the mobile home park space rental market by experts with extensive experience on issues related to mobile home park tenancies.

C. Rent Increases. From 2002 to 2009, rent increases in the parks substantially exceeded the percentage increase in the Consumer Price Index (CPI). In four of the five mobile home parks in the city, rent increases during this period exceeded forty percent compared with a sixteen percent increase in the CPI during this period. In one park rents increased by sixty-four percent during this period.

D. Captive Nature of Mobile Home Park Tenancies. As a practical matter, the mobile homes in Marina's mobile home parks are "immobile" homes. As of 2009, fifty-one percent of the mobile homes were manufactured before 1980 and seventy-three percent were manufactured before 2000. Very few mobile home parks in the area will accept mobile homes that are more than a few years old. The cost of moving and setting up a mobile home in a park is substantial.

About half of the mobile homes are "doublewide" structures that consist of two ten- or twelve-foot-wide sections that are joined together when they are installed on a lot on top of a simple foundation.

Mobile homes are rarely moved after they are placed in mobile home parks. When mobile home park residents move they sell their mobile homes in place.

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

1. The "historical" investments of the mobile home owner (tenants) in mobile homes in mobile home parks generally exceed those of the landlord park owners.

2. The physical relocation of mobile homes is costly.

3. Relocation within metropolitan areas is practically impossible because there are virtually no vacant spaces in mobile home parks.

4. Park owners generally will not permit older mobile homes to be moved into their parks when they do have vacant spaces for rent.

5. The supply of mobile home park spaces in urban areas in California is either frozen or declining. Mobile home park construction in urbanized areas of California virtually ceased by the early 1980's as alternative land uses became more profitable and land use policies continually tightened restrictions on the construction of new mobile home parks.

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

In 2001, the California Supreme Court concluded:

BACKGROUND:

THE MOBILEHOME OWNER/MOBILEHOME PARK OWNER RELATIONSHIP

This case concerns the application of a mobilehome rent control ordinance, and some background on the unique situation of the mobilehome owner in his or her relationship to the mobilehome park owner may be useful. "The term 'mobilehome' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. [Citation.] A mobile home owner typically rents a plot of land, called a 'pad,' from the owner of a mobile

> home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile homeowner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located." (Yee v. Escondido (1992) 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153.) Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances—typically a greater investment in his or her space than the mobilehome park owner. [cite omitted] The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners. (Galland v. Clovis, 24 Cal.4th 1003, 1009 (2001))

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

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

In response to the special situation of mobile home park residents, California has adopted landlord-tenant laws which provide special protections for mobile home park tenants. (California Civil Code Section 798.)

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

E. Income Level of Mobile Home Owners. As of 2009, thirty-three percent of the mobile home owner households had annual incomes of twenty thousand dollars or less and twenty-eight percent had an annual income between twenty thousand dollars and twenty-nine thousand, nine hundred ninety-nine dollars. In comparison, in 2008, the income ceilings for households classified as "very low" income under federal HUD standards (fifty percent of area median income or under) are twenty-two thousand, seven hundred dollars for one-person households and twenty-five thousand, nine hundred dollars for two-person households. The income ceilings for households classified as "extremely low" income (thirty percent of area median income or under) are thirteen thousand, six hundred dollars for one-person households and fifteen thousand, five hundred dollars for two-person households.

F. Mobile Home Owners' Investments. Mobile home owners, unlike apartment tenants or residents of other rental units, are in the unique position of having made a substantial investment in a residence which is located on a rented or leased parcel of land. Their investment commonly includes the purchase of the mobile home and the cost of installing the mobile home on its space and installing related improvements such as a foundation, carports, and integrated landscaping.

The 2009 studies commissioned for the city found that long-term residents have typically paid prices in the range of twenty thousand dollars to forty thousand dollars for their mobile homes and that mobile home owners who have moved in since 2000 had paid an average of ninety-five thousand dollars for their mobile homes. Their

investment commonly includes the purchase of the mobile home and the cost of installing the mobile home on its space and installing related improvements such as a foundation, carports, and integrated landscaping. Excessive rent increases may drastically reduce or eliminate mobile home owners' equity in their mobile homes, causing mobile home owners to lose a substantial portion or all of their investments in their mobile homes.

G. Fair Return. A "maintenance of net operating income" (MNOI) standard is a "fairly constructed formula," Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd., 64 Cal.App.4th 1159 (1998).

H. Adoption of Chapter Would Not Have Significant Environmental Impacts. Adoption of this chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2)—the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3)—the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.030 Definitions.

A. "City manager" shall include the city manager or a person designated by the city manager to perform the functions required by this chapter.

B. "Consumer Price Index" means the Consumer Price Index—All Items for all urban consumers for the San Francisco-Oakland-San Jose area (base year equals 1982—1984) as reported by the Bureau of Labor Statistics of the United States Department of Labor.

C. "In-place transfer" means the transfer of the ownership of a mobile home with the mobile home remaining on the mobile home lot following the transfer.

D. "Landlord" means a mobile home park owner, mobile home owner, lessor or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and the agent, representative or successor of any of the foregoing.

E. "Mobile home" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.

F. "Mobile home park" means any area or tract of land where two or more mobile home lots are rented or leased, or held out for rent or lease, to accommodate mobile homes used for human habitation for permanent, as opposed to transient, occupancy.

G. "Rent" means any consideration, including any bonus, benefit or gratuity, demanded or received by a landlord for or in connection with the use or occupancy, including housing services, of a rental unit or in connection with the assignment of a lease or in connection with subleasing of the rental unit.

"Rent" shall not include:

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

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

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

4. Charges for laundry services.

5. Storage charges.

H. "Rent increase" means any rent demanded of or paid by a mobile home owner or mobile home tenant in excess of rent paid for the rental unit immediately prior to such demand or payment. Rent increase includes any reduction in the services provided to a mobile home resident or transfer of the cost without a corresponding reduction in the moneys demanded for or paid as rent.

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

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

K. "Service reduction" means a decrease or diminution in the basic service level provided by the park since July 2011 including but not limited to services the park owner is required to provide pursuant to:

1. California Civil Code Sections 1941.1 and 1941.2.

2. The Mobile Home Residency Law, California Civil Code Section 798 et seq.

3. The Mobile Home Parks Act, California Health and Safety Code Section 18200 et seq.

4. The landlord's implied warranty of habitability.

5. An express or implied agreement between the landlord and the resident. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.040 Applicability of chapter.

This chapter shall be applicable to all mobile home park spaces within the city of Marina except as provided in Section 5.72.050 of this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.050 Exemptions from this chapter.

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

1. Spaces that are subject to a lease which exempts that space from rent regulation pursuant to the California Mobilehome Residency Law, California Civil Code Section 798 et seq.

2. New mobile home park spaces which are exempted pursuant to Civil Code Section 798.45.

3. Spaces which are not the principal residence of the mobile home owner, which are exempt pursuant to Civil Code Section 798.21.

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

B. Units Owned or Operated by Government Agencies. This chapter shall not apply to mobile homes or mobile home parks owned or operated by any governmental agency or any rental unit whose rent is subsidized pursuant to a public program that limits the rent that can be charged for the mobile home.

C. Mobile Home Parks with Less Than Ten Spaces. This chapter shall not be applicable to spaces in mobile home parks with less than ten spaces. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.060 Permissible rent increases.

No rent in excess of rent in effect on July 6, 2011, may be charged unless authorized by one of the following sections: Section 5.72.070 (Automatic annual increases based on increases in the Consumer Price Index), 5.72.080 (Allowable rent following the expiration of an exempt lease), 5.72.090 (Allowable rent increases upon in-place transfers of mobile home ownership), 5.72.100 (Fair return standard), or 5.72.120 (Rent increases for new capital improvements) of this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

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

A. Annual Rent Increases Starting in 2012. Starting in 2012, on or after May 1st of each year, the rent may be increased over the allowable rent as of May 1st of the prior year by one hundred percent of the percentage increase in the CPI last reported as of January 30th in the current year over the CPI last reported as of January 30th in the prior year. The percentage amount of said increase shall be rounded to the nearest one-quarter of one percent.

However, in 2012, the rent may not be increased over the rent in effect as of January 1, 2010, by a percentage that exceeds the percentage increase in the CPI from January 1, 2010, to the date of the notice of the increase.

B. Notice of Annual Allowable Annual Rent Increase.

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

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

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

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

E. Compliance with State Law. Rent increases permitted pursuant to this section shall not be effective and shall not be demanded, accepted, or retained until the landlord has given the notice required by state law. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.080 Allowable rent following the expiration of an exempt lease.

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

5.72.090 Allowable rent increases upon in-place transfers of mobile home ownership.

A. Subject to the limitations stated in this section, upon the closure of an in-place transfer or other conveyance of a mobile home subject to this chapter the park owner may increase the space rent by five percent.

B. No increase may be imposed pursuant to this section when an existing mobile home owner or resident replaces an existing mobile home with another mobile home, occupying the same mobile home space.

C. No increase may be imposed pursuant to this section where title to the mobile home passes to one or more person(s) who, at the time of the title transfer, (1) was/were also lawful, authorized resident(s) of the mobile home, or (2) were/are parents, siblings, children, nieces, or nephews of the mobile home owner and the mobile home remains in the same space.

D. No increase may be imposed pursuant to this section if an increase was imposed pursuant to this section within the twenty-four-month period preceding the most recent transaction that would justify the increase pursuant to this section.

E. Rent increases authorized by this section shall be in addition to any other space rent increases authorized by this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.100 Fair return standard.

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

B. Fair Return. A park owner has the right to obtain a net operating income equal to the base year net operating income adjusted by one hundred percent of the percentage increase in the CPI since the base year. It shall be presumed this standard provides a fair return. The base year CPI shall be the annual average CPI for 2010. The current year CPI shall be the annual average CPI for the calendar year which is used as the current year in the application.

C. Base Year.

1. Except as provided in subsection (C)(2) of this section, "base year" means the 2010 calendar year.

2. In the event that a determination of the allowable rent is made pursuant to this section, if a subsequent petition is filed the base year shall be the year that was considered as the "current year" in the prior petition.

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

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

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

a. Extraordinary amounts were expended for necessary maintenance and repairs.

b. Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of services provided.

c. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

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

a. If the gross income during the base year was lower than it might have been because some residents were charged reduced rent.

b. If the gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

c. The pattern of rent increases in the years prior to the base year and whether those increases reflected increases in the CPI.

d. Base period rents were disproportionately low in comparison to the base period rents of other comparable parks in the city.

e. Other exceptional circumstances.

F. Calculation of Net Operating Income.

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

2. Gross Rental Income.

a. Gross rental income shall include:

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

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

b. Gross rental income shall not include:

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

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

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

iv. Charges for laundry services.

v. Storage charges.

3. Operating Expenses.

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

i. Reasonable costs of operation and maintenance.

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

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

iv. Real Property Taxes. Property taxes are an allowable expense, subject to the limitation that property taxes attributable to an assessment in a year other than the base year or current year shall not been considered in calculating base year and/or current year operating expenses.

v. License and Registration Fees. License and registration fees required by law to the extent these expenses are not otherwise paid or reimbursed by tenants.

vi. Landlord-Performed Labor. Landlord-performed labor compensated at reasonable hourly rates.

(A) No landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed.

(B) There shall be a maximum allowed under this provision of five percent of gross income unless the landlord shows greater services were performed for the benefit of the residents.

vii. Costs of Capital Replacements. Costs of capital replacements plus an interest allowance to cover the amortization of those costs where all of the following conditions are met:

(A) The capital improvement is made at a direct cost of not less than one hundred dollars per affected rental unit or at a total direct cost of not less than five thousand dollars, whichever is lower.

(B) The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefited by the improvement.

(C) The costs are amortized over a period of not less than thirty-six months.

(D) The costs do not include any additional costs incurred for property damage or deterioration that result from any unreasonable delay in undertaking or completing any repair or improvement.

(E) The costs do not include costs incurred to bring the rental unit into compliance with a provision of the Marina Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.

(F) At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

(G) The amortization period shall be in conformance with a schedule adopted by the city manager unless it is determined that an alternate period is justified based on the evidence presented in the

hearing.

viii. Legal Expenses. Attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:

Reasonable fees, expenses, and other costs incurred in the course of successfully pursuing rights under or in relationship to this chapter and regulations adopted pursuant to the chapter including costs incurred in the course of pursuing successful fair return petitions. Said expenses shall be amortized over a five-year period, unless the city manager concludes that a differing period is more reasonable.

Recovery of expenses incurred in the course of preparing and presenting a fair return petition shall be limited when a park owner rejects a settlement offer and then does not recover more than proposed settlement. The purpose of this limitation is to encourage both park owners and mobile home owners to minimize, to the extent possible, the cost and expense of fair rate of return mobile home space rent administrative proceedings by providing a mechanism for the early settlement of fair rate of return administrative proceedings.

At any time after filing a fair rate of return rent application, the designated representative of the residents of the mobile home park may serve an offer in writing in the mobile home park owner who has filed that petition to stipulate to a compromise amount for the fair rate of return rent increase requested in the petition. The designated representative shall also file a copy of this written settlement offer with the city in a separately sealed envelope and with a statement on the outside of the envelope stating that it is a written settlement offer pursuant to this subsection.

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

A mobile home park owner is not entitled to recover a portion of application expenses, fees, or other costs that are incurred following the submission of a prevailing offer and the residents may recover reasonable attorneys' fees incurred by the residents after the rejection of a "prevailing" offer. The designated mobile home owners' representative shall be determined to have made a prevailing offer if a settlement offer has been made and that offer has not been accepted by the park owner within seven days after the making of that offer, and the park owner's rent increase award fails to exceed the amount of that settlement offer.

Allowable legal expenses which are of a nature that does not recur annually shall be amortized over a reasonable period of time. At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.

ix. Interest Allowance for Expenses That Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses; the allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market

Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

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

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

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

iii. Land lease expenses.

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

v. Depreciation.

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

vii. Unreasonable increases in expenses since the base year.

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

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

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

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

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

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

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

v. A base year expense is exceptionally low by industry standards and/or on an inflation adjusted basis is exceptionally low relative to current year expenses although the level or type of service has not changed significantly;

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

G. Rent Increases for Periods Preceding Date That a Park Owner May Implement Rent Increases Pursuant to This Section. In the event that the period for determining the allowable rent increase pursuant to this section exceeds one hundred twenty days, the park owner may recover increases that would have been permitted if the rent increase decision had been made within one hundred twenty days. The allowance for these increases may be amortized or may be factored into the prospective allowable increase in order to avoid undue hardship on the mobile home owners.

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

I. Assurance of a Fair Return. It shall be presumed that the MNOI standard provides a fair return. Nothing in this chapter shall preclude the city manager or hearing officer from granting an increase that is necessary in order to meet constitutional fair return requirements. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.110 Procedures for review of fair return petitions.

A. Right to Petition. A park owner may petition for a rent increase in order to obtain a fair return. No petition for a fair return rent adjustment may be filed pursuant to this chapter until thirty days after this chapter goes into effect. After 2011, no petition may be filed in November or December except in cases of exceptional unforeseen circumstances.

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

C. Submission of Petition.

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

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

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

a. A list of the names and addresses of all mobile home park tenants subject to the rent increase.

b. A statement of the date the rent increase is proposed to be effective.

c. The rent for each space in the park in the base year, the current year, and the three prior years.

d. An income and expense statement for the base year, the current year, and the three years prior to the current year.

e. Evidence documenting the income and expenses claimed by the park owner.

f. All other documentation and opinion testimony upon which the park owner is relying to justify the rent increase.

g. A statement of the petitioner's theories in support of the rent increase application.

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

a. Sending a hard copy and electronic .pdf copy of the petition to the homeowners' representative;

b. Providing the city with hard and electronic copies of the petition;

c. Notifying each tenant household that the petition has been filed on a form provided by the city.

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

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

7. Cost of Expert Analysis. Upon the receipt of a fair return application, the city manager shall determine if the employment of experts will be necessary or appropriate for a proper analysis of the applicant's petition. If the city manager so determines, the city manager shall also determine the anticipated cost of employing any such experts. The resulting figure shall be communicated to the petitioner. The petition shall not be further processed until the petitioner has paid to the city the estimated cost of expert analysis. Within thirty days after a petition and the required fee, if any, is submitted to the city, the city manager shall determine if the petition is complete. Any unused portion for payments so collected shall be refunded to the petitioner.

8. Contents of Expert Analysis. Any analysis pursuant to this subsection shall include a determination of:

a. Base year and current year rental income;

b. Base year and current year operating expenses by category;

c. Base year and current year overall operating expenses;

d. Base year and current year net operating income;

e. The percentage change in net operating income between the base period and the current period;

f. The percentage change in the CPI between the base period and the current period;

g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;

h. The rent adjustment required under an MNOI standard pursuant to chapter.

9. Submission by Mobile Home Owner Tenants. The mobile home owner tenants may submit a written response to the park owner's submission within twenty days after the petition is deemed complete.

D. Review Procedures.

1. An application for a fair return adjustment shall be decided by the city manager within sixty days of the date that the application has been complete.

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

2. Appeal of City Manager's Decision. The decision of the city manager may be appealed within twenty days to a hearing officer. An appeal by the mobile home owner tenants must be signed by residents from a majority of the mobile home spaces that are subject to the city manager's decision. The appealing party shall be required to pay for costs of the appeal process in accordance with any fees set forth by resolution of the city council.

3. Procedure for Selection of a Hearing Officer.

a. Qualifications. Hearing officers shall be licensed attorneys of the State Bar of California in good standing, and shall have no financial interest in mobile homes, mobile home spaces or mobile home parks and shall not have represented mobile home park owners or mobile home park residents in rent setting cases or park closing or park conversions or any disputes between park owners and park residents.

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

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

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

4. Time of and Scheduling of Hearing.

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

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

c. The presentations of each party at the hearing and of the city staff and experts shall be limited to ninety minutes each unless there is good cause for providing a greater period of time. Each party and the city shall be permitted one hour of cross-examination of expert witnesses.

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

6. Requests for Additional Information by Opposing Party.

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

b. The hearing officer may order production of such requested documentation, if the hearing officer determines the information is relevant to the proceedings.

7. Submission of Reports.

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

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

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

8. Conduct of Hearing.

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

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

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

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

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

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

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

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

a. Base year and current year rental income;

b. Base year and current year operating expenses by category;

c. Base year and current year overall operating expenses;

d. Base year and current year net operating income;

e. The percentage change in net operating income between the base period and the current period;

f. The percentage change in the CPI between the base period and the current period;

g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;

h. The rent adjustment required under an MNOI standard pursuant to Section 5.72.100 and this section.

10. Conditions for Allowance or Disallowance of Rent Increase. The allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.

11. Deadline for Decision. An application for a fair return adjustment shall be decided by the hearing officer within sixty days of the date that the filing of the appeal, including the receipt of fees, has been deemed complete, unless the hearing officer determines that there is good cause for an extension of this period or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer.

12. Notice of Decision. The city manager shall mail copies of the decision to the park owner and all affected mobile home park tenants within three days of the decision. Copies of the decision shall be emailed to the park owner and residents' representative as soon as possible after the decision is made and in all cases within twenty-four hours after the decision is made.

13. Preservation of Record. Any findings pursuant to this section shall be reported to the city in an agenda packet and permanently preserved in the city records, so that they are available in the event of a future rent increase application involving the same mobile home park.

14. Representation of Parties.

a. The parties in any hearing may be represented at the hearings by a person of the party's choosing. The representative need not be an attorney.

b. Written designation of representatives shall be filed with the city manager or hearing officer.

c. The written designation of the representative shall include a statement that the representative is authorized to bind the party to any stipulation, decision or other action taken at the administrative hearing.

15. Modification of Decision in the Event of Mathematical or Clerical Inaccuracies. Any party alleging that the hearing officer's statement of decision contains mathematic or clerical inaccuracies may so notify the hearing officer and the other party within fifteen calendar days of the mailing of the decision. The hearing officer may make any corrections warranted, and re-file the statement of decision within ten working days

after receiving the allegation of the mathematical error. Upon re-filing of the statement, the decision shall be final.

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

E. Overall Period for Review of Fair Return Petition. After a petition is deemed complete, the overall time for a decision of the city manager and conducting a hearing and issuing a final decision by the hearing officer shall not exceed one hundred eighty days, unless the hearing officer determines that there is good cause for extending this deadline or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.120 Rent increases for new capital improvements.

A. A park owner may obtain a pass-through of a new capital improvement cost under this section. Any capital improvement assessment shall be identified separately and listed on rent statements along with their date of expiration.

B. New Capital Improvements. Improvements that did not previously exist in the park shall be deemed "new capital improvements," unless the park owner was required by law to make the capital improvements. A park owner may charge each affected mobile home owner as additional rent the pro rata share of new service and capital improvement costs including financing costs subject to the following preconditions:

1. Prior to initiating the service or incurring the capital improvement cost, the park owner must consult with the mobile home owners regarding the nature and purpose of the improvements and the estimated cost of the improvements.

2. The park owner must obtain the prior written consent of at least one adult mobile home owner in each of a majority of the mobile home spaces which are occupied by the mobile home owner to the proposed capital improvement. Each space shall have only one vote. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.130 Rent reductions for service reductions.

A. Definition. "Service reductions" shall mean the elimination or reduction of any service or facility provided as of September 2008. "Service" shall also include physical improvements or amenities.

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

1. The affected spaces;

2. The prior level of service established by the park owner for that homeowner's mobile home space and common facilities used by that homeowner;

3. The specific changes in the prior level of services comprising the alleged reduction in service;

4. The date the service reduction was first noticed by the homeowner;

5. The date of notice to the park owner of the alleged service reduction, and if such notice was given, whether the notice was given orally or in writing;

6. When and how the park owner responded to the homeowner's notice, if notice was given;

7. Whether the condition was improved or corrected, and if so, when and how;

8. The status of the condition as of the date the complaint is signed; and

9. Where such service reduction was the result of a vote of a majority of the affected homeowners.

C. Submission of Service Reduction Complaint to Hearing Officer.

1. Thirty days after the service reduction complaint is submitted to the city manager, if the dispute is not settled, either one-third of the tenants in a park or the park owner may request that the dispute be submitted to a hearing officer.

2. If the hearing officer finds that a material service reduction has occurred, the hearing officer shall determine the resultant percentage reduction in the homeowners' enjoyment of their homes due to the service reduction.

3. Rent shall be reduced by that percentage or amount. The homeowners also shall be entitled to a rebate of the following sum: the monthly rent reduction multiplied by the number of months between the date the homeowners notified the park owner of the reduction in service, and the date the city manager determined the rent reduction.

4. A service reduction shall not include the elimination or reduction of a recreational facility or service when such elimination or reduction and rent decrease resulting therefrom have the prior written approval of two-thirds of the homeowners. In such cases no rebate shall be required.

5. No recreational service or facility which has been reduced or eliminated shall be reinstituted at any cost to the homeowners without prior written approval of two-thirds of the homeowners.

D. Consolidation of Service Reduction Complaint with Consideration of Fair Return Petition. In the event that a service reduction claim is filed while a fair return petition is pending, either the city, the park owner, or the tenants may require consideration of a claim pursuant to this section in conjunction with the fair return claim. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.140 Waivers.

A. Any waiver or purported waiver by a mobile home owner or mobile home tenant of rights granted under this chapter shall be void as contrary to public policy.

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

C. It shall be unlawful for a landlord to deny or threaten to deny tenancy in a mobile home park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a mobile home owner or mobile home tenant by this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.150 Information to be supplied by the park owner to tenants and prospective tenants.

A. Posting of Chapter. A copy of this chapter shall be posted in the office of every mobile home park and in the recreation building or clubhouse of every mobile home park. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

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

The city's web page shall include a copy of this chapter, a summary of this chapter and other issues related to mobile home park space rentals within the city, and a copy of California's Mobilehome Residency Law. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.170 Resident representatives.

The residents of each mobile home park in the city shall annually elect by majority vote, with one vote per space, a resident representative to receive all notices required by this chapter. The residents shall advise the city manager of the name, address and phone number of the elected resident representative in writing no later than January 31st of each year and shall promptly notify the city manager of any change of representative. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.180 Rights of prospective tenants.

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

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

Any effort to circumvent the requirements of this section shall be unlawful. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.190 Annual registration and other notices required from owner.

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

B. Contents of Registration Form. The registration forms shall include the name(s), business address(es), and business telephone number(s) of each person or legal entity possessing an ownership interest in the park and the nature of such interest; the number of mobile home spaces within the park; a rent schedule reflecting the current space rents within the park; a listing of all other charges, including utilities not included in space rent, paid by mobile home owners within the park and the approximate amount of each such charge; the name and address to which all required notices and correspondence may be sent; and other information required by the city manager.

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

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

E. Notice to Prospective Park Purchasers. The park owner shall provide prospective park purchasers with a copy of this chapter and notice that the following would be a prerequisite to filing a rent increase application pursuant to Sections 5.72.100 and 5.72.110:

1. A statement of the base year income, expenses, and net operating income of the park with a breakdown of income and expenses by category.

2. Documents supporting the amounts reported in the income and expense statement. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.200 Retaliation prohibited.

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

1. Retaliation for the mobile home owner's or mobile home tenant's organizing, petitioning government for rent relief, or exercising any right granted under this chapter; or

2. Evasion of the purposes of this chapter.

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

1. Threatening to bring or bringing an action to recover possession of a rental unit.

2. Engaging in any form of harassment that causes the owner or tenant to quit the premises.

3. Decreasing housing services.

4. Increasing rent.

5. Imposing or increasing a security deposit or other charge payable by the owner or tenant. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.210 Excessive rents or demands therefor.

It shall be unlawful for a park owner to demand, accept, receive, or retain any rent in excess of the amounts authorized by this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.220 Excessive rents—Civil penalties.

A. If any person is found to have demanded, accepted, received or retained any payment of rent in excess of the maximum rent allowed by this chapter, such person shall be liable to the mobile home owner or mobile home tenant from whom such payment was demanded, accepted, received, or retained for damages as determined by a court of competent jurisdiction.

B. In the event a mobile home owner or mobile home tenant is the prevailing party in a civil action against a person found to have demanded, accepted, received or retained any payment of rent described in subsection A of this section, such mobile home owner or mobile home tenant, in addition to damages as determined by the court pursuant to subsection A of this section, may, in the discretion of the court, be awarded an amount not to exceed five hundred dollars or three times the damages determined by the court pursuant to subsection A of this section, whichever is greater. For the purposes of this subsection, a mobile home owner or mobile home tenant shall be deemed to be a prevailing party if the judgment is rendered in such mobile home owner's or mobile home tenant's favor or if the litigation is dismissed in such mobile home owner's or mobile home tenant's favor prior to final judgment, unless the parties otherwise agree in the settlement or compromise.

C. Remedies provided by this section are in addition to any other legal or equitable remedies and are not intended to be exclusive. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.230 Rules and guidelines.

The city manager may adopt rules and procedures to implement the applications, notices, registration, verification and certification required by this chapter, and for the review of rent increase applications and the conduct of hearings. Such rules and guidelines shall be submitted to the city council for review and approval. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

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

The city council may institute a civil action to compel compliance with this chapter. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.250 Administrative service fees.

A. Definition. "Administrative service fee" or "fee" means a charge upon persons occupying a space within a mobile home park for the privilege granted by this chapter of receiving the specific rent stabilization benefits conferred by this chapter.

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

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

These costs may include, but not be limited to, the costs of administering and enforcing the rent stabilization provisions of this chapter; defending those provisions and their administrative enforcement from litigation challenging them; defending the administrative decisions of the city that would result in the preservation of the mobile home spaces receiving the benefits of this chapter as rental spaces that are qualified, under state law, to continue to receive the benefits of this chapter from their conversion to subdivided lots or other uses that would result in their loss of the rent stabilization benefits and privileges conferred by this chapter from litigation challenging them and providing grants to mobile home park homeowners' associations, or legal service providers, to partly cover the costs of providing the legal services necessary for enforcing their rights in administrative proceedings under this chapter. All moneys collected by the city through this administrative fee shall be set aside and used by the city only for the purposes set forth in this subsection and shall not exceed the reasonable costs of conferring the benefits and privileges provided by this chapter to the persons collectively paying the fee, including providing the city with a reserve for covering such future costs, compensating the city for the expenditure of such prior costs and covering the payment of any loans that the city has or may incur to help pay

for the costs of providing the benefits and privileges of this chapter, including loans to help pay the city's costs of defending against litigation that is covered under this subsection.

D. Fees Set by City Council Resolution. The amount of administrative fees and requirements for submission of the fees shall be set by resolution of the city council in compliance with the purpose and limits of this section. Monthly fees applicable to mobile home park spaces covered by this chapter shall be collected by each park owner and submitted to the city on a quarterly basis, within thirty days after the end of each quarter. The payments shall be accompanied by reporting as required on a form provided by the city manager. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.260 Appeal of decisions pursuant to this chapter.

City determinations pursuant to this chapter, including but not limited to fair return determinations, shall be subject to review pursuant to California Code of Civil Procedure Section 1094.5 as a final administrative determination, within the time constraints established pursuant to Code of Civil Procedure Section 1094.6. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

5.72.270 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have passed the ordinance codified in this chapter and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional. (Ord. 2011-05 § 1 (Exh. A (part)), 2011)

APPENDIX A

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

PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM IN EXCESS OF TWELVE MONTHS.

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

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

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

(1) A TERM OF TWELVE MONTHS, OR

(2) A LESSER PERIOD AS YOU MAY REQUEST, OR

(3) A LONGER PERIOD AS YOU AND THE MOBILE HOME PARK MANAGEMENT MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR 30 DAYS BEFORE ACCEPTING OR REJECTING IT.

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

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

(Ord. 2011-05 § 1 (Exh. A (part)), 2011)

The Marina Municipal Code is current through Ordinance 2018-10, passed December 4, 2018.

Disclaimer: The City Clerk's Office has the official version of the Marina Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.