



LAW FOUNDATION of Silicon Valley

Fair Housing Law Project

By Electronic Mail

March 8, 2018

San José City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

**Re: City Council Meeting, March 13, 2018
Opt-In/Stay-in-Business Proposal (Item 4.1) and Proposed General Plan Land Use
Overlays and Amendments (Item 10.3)**

Dear Mayor, Vice Mayor, and Council Members:

The Law Foundation appreciates this opportunity to provide input on the Mobilehome Opt-In/Stay-In-Business proposal and proposed General Plan land use overlays and amendments. Following is a summary of the actions that we ask the City Council to take at Tuesday's Council meeting:

- I. Opt-in/Stay-in-Business Proposal - Direct staff to cease working on it.
- II. Land Use General Plan Designation –Direct staff to immediately begin the following now, since mobilehome preservation is currently prioritized:
 - a. Create a General Plan Mobilehome Park designation that is exclusively reserved for mobilehome park use;
 - b. Engage in the necessary analysis and evaluation and apply this mobilehome park designation to vulnerable parks, including at the two identified in staff's March 2, 2018, memo; and
 - c. Track their time and costs and analyze how to streamline their processes for future applications of this land use designation.
- III. General Plan Text Revisions – Direct staff to bring minor revisions to the following four planning and housing policies (as underlined on pages 5 and 6 of this letter) before the next General Plan hearing cycle for the Council's consideration:
 - a. Urban Village Planning Policy IP- 5;
 - b. Urban Village Planning Policy IP-5.2;
 - c. Housing – Social Equity and Diversity Policy H-1.3; and
 - d. Housing – Social Equity and Diversity Policy H-1.9.

These recommendations are discussed in more detail below.

Letter to San José City Council

Re: City Council Meeting, March 13, 2018

Opt-In/Stay-in-Business Proposal (Item 4.1) and Proposed General Plan Land Use Overlays and Amendments (Item 10.3)

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I. Opt-In/Stay-in-Business Proposal (Item 4.1)

We urge the Council to follow the Housing and Community Development Commission's (HCDC)'s recommendations¹ that the Council direct staff to cease working on the Opt-In/Stay-in-Business proposal (Opt-In Proposal). Over the last two-plus years, based on Council direction, staff has engaged the public through various meetings, met with panels of park and mobilehome owner stakeholders, and worked to improve the proposal. Staff has diligently carried out these duties, and, in the process, expended significant resources.

Despite their years of effort, staff has been unable to make the Opt-In Proposal a workable solution for park owners or park residents. For example, after years of work, the Opt-In Proposal does not reconcile conflicts that its adoption would create with the City's other existing ordinances, like the City's Mobilehome Park Conversion to Resident Ownership or to any Other Use Ordinance (Conversion Ordinance). All park conversions, including a slow one under the Opt-In Proposal, must be processed through the Conversion Ordinance. Through the Conversion Ordinance, the City evaluates the mitigation measures proposed to address adverse impacts that such a project creates. Here, **no mitigation measures have been proposed to address the significant loss in equity residents will suffer when they cannot sell their homes in a park that is slowing converting.** If, after two-plus years of analysis, we have been unable to propose a solution to this significant but basic issue, **we must come to the conclusion that the Opt-In Proposal is unworkable** and does not align with our exiting mobilehome-related ordinances. As such, we urge the Council to direct staff to cease working on the Opt-In Proposal.

II. Proposed General Plan Land Use Overlays and Amendments (Item 10.3)

We urge Council to direct staff to immediately begin the following activities, since mobilehome preservation is currently prioritized:

- a) Create a General Plan land use designation that is exclusively reserved for mobilehome parks;**
- b) Engage in the necessary analysis and evaluation and apply this mobilehome park designation to vulnerable parks, including at the two identified in staff's March 2, 2018, memo, and**
- c) Track their time and costs and analyze how to streamline their processes for future applications of this land use designation.**

San José relies on a patchwork of General Plan land use designations, like lower density and higher density residential, industrial, and commercial uses, to discourage the conversion of mobilehome parks to other uses. Creating and applying a General Plan Mobilehome Park land use designation will provide our community with important tools to help preserve parks and

¹ We are informed and believe that HCDC has, on at least three occasions, recommended that the Council direct staff to cease working on the Opt-In Proposal.

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prevent displacement of low-income and senior mobilehome park residents and will not be an insurmountable bar for developers. **Cost, which includes staff time, is described as a major barrier to taking the requested actions. But, these costs are minimal as compared to the costs that park closures and losing low-income families and seniors from San José will create. Therefore, we must act now,** and, for all of the following reasons, urge the Council to do so.

San José's General Plan must include a land use designation that is exclusively reserved for mobilehome parks so that it is clear that our mobilehome parks and park residents are part of our City's future. San José's General Plan is the City's vision and road map for continued growth through 2040. (Envision San José 2040, General Plan, Adopted November 1, 2011, p. 2.) Allowable future uses on mobilehome parks are defined by their General Plan land use designation as well as their applicable zoning districts.² (Memorandum from Rosalynn Hughey to the Honorable Mayor and Council, Analysis of Proposed General Plan Land Use Overlay Amendments for Mobilehome Parks, March 2, 2018, p. 6.) **If our City's vision and road map do not include a General Plan land use designation that is specific to mobilehome parks, then we invite park owners and developers to envision a different future for them.** Daily, our local newspaper describes development projects that are changing our City. Over time, this development pressure will magnify and impact our mobilehome parks. We must be clear, and not depend on other land use designations, to preserve our mobilehome parks. We must signal that we intend to preserve our parks by creating and applying a General Plan land use designation that is exclusively reserved for mobilehome parks.

The Council should direct staff to conduct this General Plan land use designation work, now, instead of referring it to a future Priority Setting Session, since mobilehome preservation work was already prioritized by the Council. The Council prioritized mobilehome preservation work in 2015, and it subsequently adopted a moratorium to allow staff and our community to explore strategies to preserve our parks. During the course of the moratorium, some important work was accomplished, and we are grateful to the Council and staff for it. But, the Council also approved study of proposals that did not contribute to mobilehome preservation, and this work consumed significant amounts of precious time during the moratorium.³ The moratorium has expired, and we cannot depend on the adoption of another to preserve our parks. **Staff's March 2, 2018, memo to Council acknowledges that City-initiated General Plan amendments to change the land use designations of mobilehome parks could strengthen the protection of mobilehome park residents by creating an**

² Since 2014, the Law Foundation has urged the City to zone all mobilehome parks as R-MH to reserve parks for mobilehome uses. The Law Foundation continues to advocate for use and application of this zoning at all parks, since some parks have other types of zoning. The Council did not direct staff to conduct this work. As such, apart from this footnote, we do not address this issue in the body of our letter and focus on requesting that the City adopt and apply a General Plan Mobilehome Park land use designation.

³ For example, the Council authorized study of the Opt-In Proposal, which utilized significant amounts of staff time and resources, which did nothing to preserve parks. Similarly, the Council authorized and directed staff to develop a mobilehome closure ordinance, which also did nothing to preserve our parks. Both of these proposals were authorized and consumer valuable time during the moratorium.

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additional land use entitlement process to redevelop the sites. (Id., p. 11.) As such, we urge Council to direct staff to conduct this work now, and not while we are scrambling to prevent the conversion of a park that is home to thousands of people.

The Council should direct staff to engage in the necessary analysis and evaluation and apply this General Plan land use designation to vulnerable parks, including the two that staff identified in their March 2, 2018, memo. The two mobilehome parks identified by staff, one in Council District 4 and the other in Council District 7, contain 867 homes. Creating and applying a General Plan Mobilehome Park land use designation to these parks could help the City or mobilehome park residents' associations preserve them. A park's General Plan land use designation is a key factor in estimating its value. A General Plan land use designation that specifies a higher future density use than its existing mobilehome park use will make the cost to purchase and preserve the park prohibitively high. Specifying that the park's General Plan land use designation is restricted to mobilehome park use may help the community preserve the park, since its valuation will be in line with what its existing use is. As such, the City should direct staff to engage in work, now, to help preserve vulnerable parks, including the two that staff identified.

If the Council directs staff to engage in this General Plan land use designation work, the Council should also direct staff to track their time and costs and analyze how to streamline their processes for future applications of this land use designation. We appreciate staff's analyses and identification of two vulnerable parks in our City. But, San José has more than two parks that are vulnerable to conversion pressures. If directed to track their time and costs and conduct analyses, this could help San José understand how we can streamline Planning's processes in the event that we apply this mobilehome designation in the future. As such, we urge the Council to direct staff to track their time and costs and analyze how to streamline their processes for future application.

b. Incorporate the Law Foundation's General Plan Text Amendment Recommendations into the General Plan

We also urge the Council to direct staff to bring four minor revisions to the General Plan text that the Law Foundation requested for their consideration at the next General Plan hearing cycle. Although the Law Foundation continues to urge support all of the text amendments we identified in our May 11, 2017, letter to Council, staff has identified three minor amendments to existing General Plan text they would be willing to support and bring before Council for possible incorporation at a future General Plan hearing. These three minor changes would be to the following policies: Urban Village Planning Policy IP-5.2, Housing – Social Equity and Diversity Policy H-1.3, and Housing – Social Equity and Diversity Policy H-1.9. Although staff did not support our recommended amendment for Urban Village Planning Goal IP-5, we ask that the Council direct staff to also bring this amendment to Council for their consideration at a future General Plan hearing.

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Urban Village Planning goal IP-5 expresses a goal of enhancing established neighborhoods. Although staff did not support bringing this minor change forward, we recommend it to make clear that mobilehome parks and residents are long-standing parts of neighborhoods that are in Urban Villages. **All four of our recommended text amendments, including IP-5, set out to make clear that people who rent mobilehome space and housing units, tenants, are valued neighborhood members and who should not be displaced.**

Certain Urban Villages have benefitted from active mobilehome park residents, particularly when language and disability were not barriers for them and who worked to ensure that their voices and preferences were heard. San José's Council District 5 has an urban village, and within it a senior mobilehome park where 108 senior households live. In all of the meetings the Law Foundation has attended related to mobilehome preservation, we have never encountered any residents from this mobilehome park. **We are concerned that they, like the 216 tenant households at The Reserve Apartments, will not be aware or have the ability, due to language barrier or disability, to participate in future Urban Village planning processes where their rights and park's future will be impacted.** Our General Plan planning goals should make it clear that for the remaining Urban Villages that established neighborhoods include and value mobilehome parks and the people who live there. As such, we urge the Council to direct staff to **bring the four minor amendments**, which includes Urban Village Planning Policy IP-5, to the General Plan text **(as underlined below) to the next General Plan hearing cycle:**

Urban Village Planning Policy IP- 5

Use new proposals for residential, mixed use, or employment development to help create walkable, bicycle-, and transit-friendly "Urban Villages" (also referred to as "Villages" within the Envision General Plan) at strategic locations throughout the City, and to enhance established neighborhoods, including existing mobilehome parks. In new Village development, integrate a mix of uses including retail shops, services, employment opportunities, public facilities and services, housing, places of worship, and other cultural facilities, parks and public gathering places.

Urban Village Planning Policy IP-5.2

Develop and use an Urban Village Planning process so that each Urban Village Plan can be successfully completed within an approximately nine month planning period, followed by completion of environmental review as required for adoption of the Plan. Engage Urban Village area property owners and residents to the fullest extent possible, along with representatives of adjacent neighborhood areas, potential developers and other stakeholders in the Urban Village Planning process.

Housing – Social Equity and Diversity Policy H-1.3

Create, preserve, and rehabilitate housing opportunities and accessible living environments that allow seniors to age in place, either in the same home, assisted living facilities, continuing care facilities, or other housing types within the same community.

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Housing – Social Equity and Diversity Policy H-1.9

Facilitate the development, preservation, and rehabilitation of housing to meet San José's fair share of the County's and region's housing needs.

Thank you for considering the Law Foundation's comments. We welcome the opportunity to discuss our letter with members of the Council. I may be reached at

[REDACTED]

Sincerely,

[REDACTED]

Diana Castillo
Senior Attorney

March 7, 2018

Subject: Opt-In

RECEIVED
San Jose City Clerk
3/13/18
2018 MAR -7 PM 3:04
council meeting
item 4.1

Dear Councilmembers Khamis, Davis, Diep

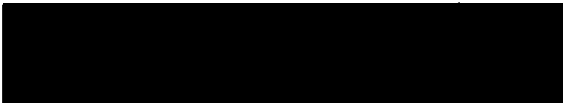
Thank you all for your vote at CED to direct the Housing staff to stop exploring Opt In .
It is time that Housing directed its staff and our tax money to other issues.

As a fiscal conservative and a Republican, I suggest that the proper way to deal with this entire matter is just to follow California Civil Code Section 978.19. This portion of the mobilehome residency law allows any Park owner to implement Opt In in their Park(s). They just negotiate a rental agreement of more than 12 months, for whatever period is agreeable to the residents and them, and bingo - Opt In is in effect in their Park.

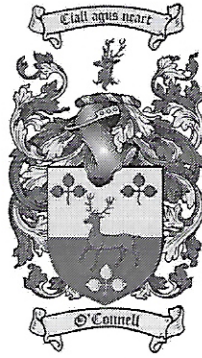
They can also put into that contract that in the event the residents move prior to the expiration of the Opt In period that any subsequent buyer of the mobilehome has to agree to Opt In.

And the government and the Housing Department does not have to be involved in this matter at all.

Regards,



Lee Ellak
San Jose CA



Ciall agus neart – Reason and Strength

March 6, 2018

TO: Mayor and Council

FROM: Martha O'Connell
No on Opt In leadership team

RE: **Council Meeting 3-13-18**
Item 4.1 Mobilehome Opt In Update

Petition from residents of San Jose mobilehome parks

For two and a half years, mobilehome residents have been distressed about Opt In. In her 11-16-17 memorandum to CDC, Jacky Morales Ferrand wrote, "Mobilehome park residents raised serious concerns about the Opt-In proposal, with most participants expressing no interest in considering it further." She also wrote, "In addition, mobilehome residents have indicated they are fatigued with all the mobilehome meetings over the past few years and asked for resolution on these issues."

Jacky's statements are totally accurate.

Attached you will find a disc containing the names of 3,628 mobilehome park residents asking that all work on Opt In cease. In the event that this disc does not download properly please go to <https://www.ipetitions.com/petition/no-on-opt-in> to view all 3,628 names.

More names would be on the petition if some park managers had not interfered with meetings on Opt In and the fear of many residents that if they signed, they will be retaliated against.

These fears are real. At a later date, we will be submitting a written report on this interference and fear.

We ask that you vote not to continue this discussion of Opt In.

**ATTACHMENT IS TOO
LARGE TO UPLOAD**

**YOU MAY VIEW THE COMPLETE
ATTACHMENT AT THE
CITY CLERK'S OFFICE LOCATED AT
200 E. SANTA CLARA ST., 14th FLOOR
SAN JOSE, CA 95113.**

GOLDEN STATE MANUFACTURED - HOME OWNERS LEAGUE



GSMOL Superchapter 0018 - Pepper Tree- and 0018A - Colonial Mobile Manor

March 2, 2018

TO: Mayor and Council

FROM: Glenna Howcroft
Superchapter President

RE: **Council Meeting 3-13-18**
Item 4.1 Mobilehome Opt-in update

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San Jose City Clerk
2018 MAR -2 AM 8:19

GSMOL (Golden State Manufactured Homeowners League), the oldest and largest organization in California representing mobilehome park residents, asks that the Council direct Housing staff to cease and desist any further work on Opt In.

It has been two and a half years since the latest reincarnation of this bad idea was floated. It needs to stop now.

I attach three documents:

- A two page letter dated 10-12-17 from our corporate counsel Bruce Stanton, analyzing the Opt In proposal and in particular the "true impact of proposed \$100.00 vacancy decontrol increase."
- A three page letter dated 2-21-17 from Attorney Stanton expressing GSMOL opposition to Opt In.
- A four page letter dated 5-20-09 from the former director of Housing Leslye Krutko to the Rules Committee in opposition to AB 761 which would have allowed vacancy decontrol.

Years of work have already been spent on this concept which is unneeded, unfair, and unacceptable to Park residents.



To: Housing and Community Development Commission

Date: October 12, 2017

From: Bruce E. Stanton, Corporate Counsel

cc: GSMOL Board of Directors; Gary Smith, Associate Manager; Martha O'Connell, Associate Manager

**Subject: "Opt In/Stay in Business" Analysis
True Impact of Proposed \$100.00 Vacancy Decontrol Increase**

On behalf of the Golden State Manufactured – Home Owners League, Inc. (GSMOL), we are writing to register GSMOL's formal opposition to the "Opt In/Stay in Business" Analysis (hereinafter "the Analysis") which was forwarded to you by Staff with a recommendation to proceed to consider a "Draft Framework" for the Opt In "Concept" based thereon. GSMOL continues to disagree with both the premise of the Concept, and the recommendation that it be the subject of continuing discussion as per the Analysis. Maintaining the infrastructure of San Jose's manufactured/mobilehome communities is obviously an important issue for park residents; one which should be equally as important for any park owner who cares about its investment. It is also important to maintain affordable manufactured/mobilehome housing within San Jose by regulating the closing of parks. But funding park infrastructure or preventing park closure need not require the major changes to the protections set forth in the existing San Jose Mobilehome Rent Stabilization Ordinance (the Ordinance) which the Analysis "recommends". Due to the significant flaw in the Analysis noted below, GSMOL must reject the proposal in its entirety, and joins with the Law Foundation of Silicon Valley in urging that HCDC reject staff's proposed plan and instead recommend that staff seek further direction about the viability of its proposal before proceeding further.

THE PARTIAL VACANCY DECONTROL RECOMMENDATION IS FLAWED

GSMOL's principal objection to the Analysis is found in the section which discusses "Partial Vacancy Decontrol". It recommends a \$100.00 rent increase upon any 'in-place' transfer, erroneously concluding that such an increase "would result in little to no impact to the current assets held by mobilehome owners." This statement is just plain wrong, and flies in the face of long-standing industry opinion and findings.

In support of their conclusion, staff indicates that it interviewed two appraisers who informed them (presumably verbally and without any written analysis based upon empirical data) that "they would make downward adjustments to a home's value if space rent exceeded \$100.00 for a comparable home." Taken literally, the import of this statement is that if the rents differed by \$99.00 the appraisers would find no impact to the home's equity due to the higher rent, and that anything below \$100.00 would have no impact. Firstly, GSMOL does not believe that either appraiser would in fact take such a position or commit same to writing. It would make no sense that \$100.00 is some sort of threshold that must be reached before there is any loss in homeowner equity due to increasing rents. But more importantly it must be remembered that a mobilehome's "appraised value" does not precisely equate to, nor is it the same as, "market resale value", and it is the latter which concerns San Jose's mobilehome owners. What an appraiser might use to value a home for loan purposes can differ significantly from how the resale market reacts to higher space rent.

More reliable empirical studies have been conducted by experts which carry far more weight than the apparent oral opinions of two appraisers. In 1999 the City of Fremont commissioned a study by Seifel Associates entitled "Report on the Economic Analysis of the Fremont Mobile Home Rent Stabilization Ordinance". The Report cited to the "rules of thumb" theretofore used by appraisers and brokers that stated: **For every \$100.00 in increased rent in most metropolitan areas, homeowner equity decreases by \$10,000.00.** Dr. Kenneth K. Baar, a noted expert on mobilehome rent control who has written numerous published articles and has been cited by courts of appeal, also cites to this industry rule. Testing this "rule", the Report found that based upon the 16 examples surveyed, there was indeed a \$9,800.00 increase in equity/sales value "for each \$100.00 less in space rent". If the space rent increased by \$50.00, presumably the equity decrease would have been \$5,000.00. In other words, the findings of this "paired analysis" do not appear to be inflexible or triggered only when the \$100.00 amount is reached.

In September, 2006 a study was undertaken by Lusk Center for Real Estate to determine the impact of rent control on mobilehome parks in seven California counties between 1983-2003. The authors analyzed a 20-year set of 137,221 resale transactions, and found that where (as here) a jurisdiction had full vacancy control upon resale, there was between 7%-34% increase in home value to the selling homeowner. The converse of that, of course, would be a loss in value if full vacancy control was changed. The study found that in jurisdictions with full vacancy control, home values increased in value by \$8,081.00 on average, while home values in jurisdictions with partial vacancy decontrol increased in value in an amount \$1,088.00 less than those with full vacancy control. Thus, the mere presence of vacancy decontrol will have a downward effect on mobilehome equity in San Jose, regardless of the amounts involved. And \$100.00 per transaction would be a significant amount. It is nothing short of dangerous to recommend such a significant change without a reliable basis for the change. The investment dollar amounts at stake for San Jose homeowners are immense.

Prohibiting rent increases at resale, known as "vacancy control", is a main bulwark of the Ordinance. Rents under the Ordinance are currently decontrolled in the event of eviction, foreclosure or voluntary pull-outs of mobilehomes, and each time any of these occur the park owner is able to raise rents to "market". Allowing the transfer increases described in the Concept will expand decontrol and ensure that rent increases will occur in all parks, with sellers facing a commensurate loss of equity. If a current rent of \$750.00 is raised \$75.00, the seller will lose \$7,500.00 in equity.

Finally, any suggestion to open the existing Rent Ordinance to change this protection is not only unnecessary, but also has huge legal consequences. Any amendment of vacancy control language will re-open the statute of limitations, thus inviting constitutional challenges against the City that are now time-barred. The most recent facial legal challenge to the Rent Ordinance which was thrown out of Federal Court as being untimely, is a prime example of why the Ordinance statute of limitations should not be disturbed.

Based upon the above, GSMOL respectfully requests urges that the staff proposal be rejected. Further analysis and input about the viability of the Concept should be solicited before proceeding further.



To: Hon. Mayor and City Council, City of San Jose

Date: February 21, 2017

From: Bruce E. Stanton, Corporate Counsel

cc: GSMOL Board of Directors; Gary Smith, Associate Manager; Martha O'Connell, Associate Manager

Subject: Opposition to "Opt In/Stay in Business" Concept

On behalf of the Golden State Manufactured – Home Owners League, Inc. (GSMOL), I am writing to register GSMOL's formal opposition to the "Opt In/Stay in Business" Concept (hereinafter "the Concept") which was forwarded to you by the Housing and Community Development Commission with a recommendation to end further exploration. GSMOL disagrees with both the premise of the Concept, and the recommendation that it be the subject of continuing discussion in its present form. Maintaining the infrastructure of San Jose's manufactured/mobilehome communities is obviously an important issue for park residents; one which would seem to be just as important for any park owner which cares about its investment. And it is important to maintain affordable manufactured/mobilehome housing within San Jose by regulating the closing of parks. But concerns about park infrastructure or park closure should not be turned into a not-so-subtle attempt to make major changes to the protections set forth in the existing San Jose Mobilehome Rent Stabilization Ordinance (the "Rent Ordinance"), and that is precisely what the proposed Concept would do.

I. THE EXISTING RENT ORDINANCE ALLOWS PARK OWNER TO RECOVER THE COST OF LEGITIMATE AND PROVEABLE CAPITAL COSTS

The issue of park infrastructure was the subject of Mobilehome Advisory Commission meetings and discussions some ten years ago. The park owners' proposal to allowing a stand alone "Capital Improvement Pass Through Procedure" was addressed and rejected then. GSMOL submits that nothing has changed that would warrant implementing such a procedure now, which would amount to a "short cut" from the fair return hearing protections which currently protect mobilehome park owners in the Rent Ordinance. In the past few years at least four hearings have been brought by two San Jose park owners under the Rent Ordinance, each of which involved to some degree capital improvement costs. Where the park owner submitted proper evidence that such costs were timely and reasonably incurred, reimbursement of those costs was awarded. But few park owners have chosen to avail themselves of the Ordinance rent procedure for any reason, and seem well capable of operating their businesses for a fair profit based upon the current regulatory structure. There should be clear evidence that the current Rent Ordinance does not work before opening up its provisions.

Before the City can consider HOW capital improvements shall be paid for, it should first consider two preliminary questions:

1. IS there in fact failing infrastructure in mobilehome parks?
2. If so, then WHO should pay for these improvements?

There is no doubt that there are some parks where capital repairs are needed. But at this point, it is not clear how many, or how severe the problems might be. This issue has been shrewdly coupled to the issue of park conversions by park owners who wish to extract important concessions for the promise to stay in business. But it should never be viewed in such a light. The issue should be carefully and independently examined.

The current Concept language amounts to an amendment of the existing Rent Ordinance, in that it allows reimbursement of capital costs dollar-for-dollar without limit, together with interest thereon, without any inquiry as to whether the park owner is otherwise obtaining a fair return on its investment. The Concept language seeks to "incentivize" park owners to stay in business by giving them what amounts to a "risk free" reimbursement. The park owner would be free to spend whatever amount it wishes on whatever capital items it might choose, regardless of whether it might be actually needed. There is no opportunity for park residents to vote on or approve new, never-before-existing items. And because the park owner is virtually guaranteed recovery for its capital costs dollar-for-dollar, without otherwise accounting for its other income or expenses, then the very richest park owners will be obtaining higher profit from ever-increasing space rents while residents are potentially saddled with the burden of paying for multiple categories of capital business costs. Such might include road repairs, clubhouse refurbishing or sewer system replacement, each of which can potentially run into hundreds of thousands of dollars.

Park owners should be kept accountable for the conditions of their parks, and must establish the need for receiving a capital improvement pass through via a rent increase, taking into account their fair return. Other questions must be asked. Notably, any responsible owner should have a reserve account to fund capital expenditures that are known to be needed. Yet most parks probably have not done this. This is information which should be obtained in any investigation of the issues. Otherwise, homeowners are paying for the financial convenience of the park owner. For each park, we need to know what sort of deferred maintenance history there has been, and what sort of allocation has been made from existing revenues to maintain the park. Those parks where maintenance is poor have many times created the problems themselves by choosing to take their substantial profits and re-invest little back into the property. If parks operated by Brandenburg Staedler & Moore can be so impeccably maintained based upon the income being received, then it makes no sense that other parks can negligently allow pot holes, broken exterior fences or substandard clubhouse facilities.

The Concept's inclusion of direct capital reimbursement in a streamlined hearing procedure presumes that either the current M-NOI hearing process is not working, or is otherwise too burdensome. But the evidence in San Jose is to the contrary. In the past 15 years, there have been less than five M-NOI rent hearings requested by San Jose park owners. One must presume there would have been far more hearings requested if parks were having trouble paying for infrastructure maintenance. The annual increases allowed by the Ordinance have seemingly provided park owners with the income they require. There is no evidence that the current M-NOI procedure does not work well for the parks who do bring them. For this reason, GSMOL is not in favor of such a procedure. A park should be allowed to receive reimbursement for expenditures only if it otherwise does not have the income to pay for them. And the availability of such a procedure could increase hearings, and thus the administrative workload of the City.

If a park owner is not accountable to show income and other expenses to the world, then a stand alone capital improvement reimbursement carries a risk that it could be manipulated. Mobilehome owners should not have to pay for the financial convenience of a park owner. Offering a fair long-term lease agreement has always been an available option for park owners. The problem is that they seldom offer any terms which are fair and reasonable enough to prompt homeowners to sign them. It is likely that the most serious infrastructure problems exist where park residents can least afford to pay more rent. To the extent that any City grant or subsidy programs are available to assist these parks, then we should explore same to their fullest potential.

II. VACANCY CONTROL ORDINANCE PROTECTION SHOULD NOT BE SACRIFICED

Because there is no form of State rent regulation, it is left to local governments to protect mobile and manufactured home residents, and over 100 California cities and counties have enacted some form of mobilehome rent stabilization. These ordinances protect vulnerable mobilehome residents from excessive rents, and thus preserve a vital form of affordable housing. GSMOL members actually live in what are more accurately described as "immobilehomes" in "immobilehome" parks, and are captive to predatory rent practices that can destroy their home equity. For every \$100.00 in increased rent in most metropolitan areas, homeowner equity decreases by \$10,000.00. Without local regulation, there is no protection from rising rents, and the only option for many homeowners is to surrender the home to the lender, or abandon it to the park owner. Recognizing there is no properly operating market system, but instead a captive market akin to a monopoly, local governments have protected their mobilehome residents from excessive rent increases. San Jose has been at the forefront of this kind of regulation, and has one of the finest rent stabilization ordinances in California. Administrative hearings are seldom engaged, and the Rent Ordinance has been upheld as constitutional.

Prohibiting rent increases at resale, known as "vacancy control", is a main bulwark of the Rent Ordinance. The Concept would institute vacancy de-control, allowing for ten percent (10%) rent increases upon resale up to \$100.00 per space, with no limitation upon the number of times this can occur, or without any "phase-in" of decontrol for those current residents wishing to sell their homes and obtain their full equity within a future timeframe. And this is in addition to the risk-free capital cost reimbursement procedures. Rents under the Ordinance are currently decontrolled in the event of eviction, foreclosure or voluntary pull-outs of mobilehomes, and each time any of these occur the park owner is able to raise rents to "market". Allowing the transfer increases described in the Concept will expand decontrol and ensure that rent increases will occur in all parks, with sellers facing a commensurate loss of equity. If a current rent of \$750.00 is raised \$75.00, the seller will lose \$7,500.00 in equity. Park owners will now have incentive to increase their capital improvement spending whether needed or not (and thus residents' pass through liability) so they can meet the financial threshold of \$500.00 per space that allows for much more lucrative benefits of vacancy decontrol rent increases.

Any suggestion to open the existing Rent Ordinance to change this protection is not only unnecessary, but also has huge legal consequences. Any amendment of vacancy control language will re-open the statute of limitations, thus inviting constitutional challenges against the City that are now time-barred. The most recent facial legal challenge to the Rent Ordinance which was thrown out of Federal Court as being untimely is a prime example of why the Ordinance statute of limitations should not be disturbed.

III. CONCLUSION

San Jose park owners have very cleverly sought to capitalize upon the sensationalism of the conversion issue by tying significant Rent Ordinance amendments to a "promise" to stay in business. It is questionable whether any park owner not agreeing to the Concept, and there are many, could otherwise be made subject to a 20-year commitment to stay in business. To attempt such would seem to be unenforceable. Only a limited number of park owners would be subject to the promise. And it would seem unconstitutional to provide capital improvement pass throughs and partial vacancy de-control only to those park owners who agree with the Concept. Those who do not agree would surely be challenging the Rent Ordinance, and alleging that a new statute of limitations has been created by adoption of this Concept. It's just a bad idea.

GSMOL respectfully submits that the issue of park conversion should be addressed separate from rent issues. Allowing park owners, most of whom have no intention of closing their parks or going out of business, to profit at the expense of those few park owners who might seek to convert, would result in across-the-board financial hardship to the entire San Jose mobilehome community. The Council should not lose sight of the core issue, which is the preservation of affordable mobilehome/manufactured home communities within the City.



Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

FROM: Leslye Krutko

SUBJECT: OPPOSE AB 761 (CALDERON)

DATE: May 20, 2009

Approved *Christine J. Shipley*

Date *5/20/09*

**Council District: Citywide
SNI: N/A**

RECOMMENDATION

The Housing Department recommends that:

1. The Mayor and City Council oppose AB 761 (Calderon); and
2. The Committee provide a one-week turn around for Mayor and City Council review.

OUTCOME

If the Rules and Open Government Committee and the Mayor and City Council accept staff's recommendation, the City's lobbyist may collaborate with other organizations to oppose and/or amend AB 761.

BACKGROUND

AB 761 is of particular interest to San José's mobilehome owners and tenants as the bill allows mobilehome park owners to increase rents upon new tenancy, which is not allowed under the City of San Jose's mobilehome ordinance. An analysis of AB 761 is attached for the Rules and Open Government Committee consideration.

ANALYSIS

A fact sheet and analysis of AB 761 is attached.

RULES AND OPEN GOVERNMENT COMMITTEE

May 20, 2009

Subject: Oppose AB 761 (Calderon)—Related to Mobilehome Rents

Page 2

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This legislative item does not meet any of the above criteria.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Intergovernmental Relations Director in the City Manager's Office.

POLICY ALIGNMENT

The attached fact sheet and analysis is consistent with the Council-adopted 2009 Legislative Guiding Principles, and the Council-adopted guidelines.

CEQA

Not a project.


LESLYE KRUTKO
Director of Housing

For more information call Melissa Whatley, Policy Manager, at (408) 975-4418
Attachments (1)

AB 761 (Calderon) - Mobilehomes and Rent Control

What's the issue the bill is trying to resolve?

AB 761 (Calderon) allows the management of a mobilehome park in a jurisdiction with a mobilehome rent control ordinance to set the initial rental rate upon a new tenancy at up to twice the last-charged rent. This bill provides that, upon the sale, assignment, transfer, or termination of an interest in a mobilehome or a mobilehome tenancy in a mobilehome park, the management may offer a new rental agreement containing an initial rent in excess of the maximum rent established by an ordinance, rule, regulation or initiative measure adopted by a city, county or city and county. The bill specifies a mobilehome park owner may establish the initial rental rate for a new mobilehome tenancy as follows:

- Beginning January 1, 2010, the initial rental rate may be increased by up to 20% of the last-charged rent;
- Beginning January 1, 2011, the initial rental rate may be increased by up to 40% of the last-charged rent;
- Beginning January 1, 2012, the initial rental rate may be increased by up to 60 % of the last-charged rent;
- Beginning January 1, 2013, the initial rental rate may be increased by up to 80% of the last-charged rent; and
- Beginning January 1, 2014, the initial rental rate may be increased by up to 100% of the last-charged rent.

The bill contains exemptions from such increases where the changes in ownership or tenancy are due to the death of a mobilehome owner or tenant where the deceased homeowner's or tenant's spouse takes ownership and occupancy; an existing lease that specifies the amount of rent applicable to the assignee upon a transfer of the interest in the mobilehome; or if a park contains common facilities or improvements that are in disrepair, resulting in an unreasonable risk to life, health, or safety, and which remains untreated for six months or longer preceding the vacancy. AB 761 also authorizes higher rent increases if allowed by the local rent ordinance and specifies that after the initial rental rate is set, rent will be subject to the local rent control ordinance, if one exists.

How would the passage of this bill affect San José?

San José has 58 mobilehome parks (10,649 lots) of which 9 parks (1,353 lots) are identified as senior parks where at least one person is age 55 or older. For many San Jose residents, mobilehomes are their only affordable housing option. Current Mobilehome monthly space rents in San Jose range from \$500 to \$1,000. This bill would allow those rents to increase to \$1,000 to \$2,000 over the next five years for any new resident.

AB 761 would have two main impacts. First, it would impact the resale value of Mobilehomes, resulting in a loss of equity for existing Mobilehome owners. Mobilehome owners pay for the unit itself—as well as pay a space rent. If the space rent increases, the overall affordability of the unit is impacted, and thus the price the owner can receive for the unit itself is reduced. In other

words, if a potential buyer could afford to pay \$1,200 a month in total housing costs, if the rent is \$500 a month, they could finance \$700 to pay for the unit itself. But if the rent is \$1,000 a month, they would only have \$200 to use toward the financing of the Mobilehome unit, reducing the amount of money that a seller could achieve. So, even though, under this bill, current residents would not receive space rent increases, the bill impacts the value of their real estate asset—their Mobilehome unit.

Secondly, if rents for new residents are increased, Mobilehome living becomes a less affordable option. Local agencies, including the City of San José, have adopted regulations to control rents during and between transfers of ownership between coach owners to preserve the affordability of this option.

San Jose's mobilehome rent ordinance, adopted in 1986, allows for annual rent increases without an administrative hearing when the increase does not exceed the maximum annual percentage increase which is between 3% and 7% based on 75% of the previous year's consumer price index. There are certain exemptions consistent with the current Mobilehome Residency Law. The ordinance also allows park owners to increase rents in excess of the maximum annual percentage increase by requesting an administrative hearing. Park owners must provide income and expenses that are adjusted for inflation and comparable to the current incomes and expenses.

What is staff's Proposed Position?

Staff recommends that the City oppose AB 761. The consequences for mobilehome owners will be the loss of much of their equity in what is most likely their greatest single asset. Additionally, it will limit future affordable housing opportunities.

Who are the bill's supporters and opponents?

AB 761 is sponsored by the Western Manufactured Housing Communities Association and is supported by the California Association of Realtors and the California Mobilehome Parkowners Alliance. There are over one-hundred opponents of AB 761, including: AARP California, Bay Federal Credit Union, California Alliance for Retired Americans, Californians for Resident Ownership, California Rural Legal Assistance Foundation, Coalition of Mobilehome Owners-California, Golden State Manufactured-Home Owners League, the League of California Cities, and California Hawaiian Mobile Home Park Homeowners Association, which is located in San Jose.

What is the current status of the measure?

AB 761 passed the Assembly Housing and Community Committee on May 13, 2009.