

April 9, 2019

Mayor Sam Liccardo
Vice-Mayor Chappie Jones
Council Member Jimenez
Council Member Peralez
Council Member Diep
Council Member Carrasco
Council Member Davis
Council Member Esparza
Council Member Arenas
Council Member Foley
Council Member Khamis

RE: 4/9/19 Agenda, Item 4.4—Assembly Member Stone’s AB 705—OPPOSE

Honorable Mayor, Vice-Mayor and Council Members:

For nearly 50 years, San Jose-based Brandenburg, Staedler & Moore has been one of the largest, if not the largest, owner/operator of mobile home parks in the South Bay, and specifically in our hometown where we currently own and manage seven mobilehome communities totaling 1,387 spaces. In each and all of our 14 mobile home communities throughout the Bay Area totaling just over 3,400 spaces, one consistent hallmark stands above all else—from initial project conception to development to our decade’s long, hands-on management—that is day in and day out to deliver the very best communities while working collaboratively and positively with our many residents. We have always held a respect and clear understanding of the unique “hybrid” ownership model that is MHP-centric in California.

For the myriad of reasons articulated on the attachment to this letter, we stand opposed to AB 705 and encourage your opposition to it as well. Nevertheless, aside from the legal perspectives contained therein, let us discuss practical matters that should provide pause and support further thoughtful dialog.

The last ground-up mobile home park permitted and built in the city of San Jose occurred in 1978, some 41 years ago. Can you name another real estate asset class that has stopped growing over the past four decades? There are several reasons why there has not been another MHP built in San Jose and surrounds since the late 1970’s. In no particular order, cost of land, fees, and general economics are among them. Regulatory matters, another. Land use and the need for intensification certainly a third category. Individually, each category is a challenge but taken together has effectively caused the death of any chance for growth in the MHP industry. There are others. Even if the economics did not work but BS&M wanted to propose a 9-unit per acre MHP on lands within the city’s urban core located along a transportation corridor and near commercial support services (*many existing MHP’s in similar locations today*), what might your response be? Our educated guess—we would be rightly turned away from City Hall

with direction to bring forward a much more dense development that included deed-restricted affordable housing, not a project that included “naturally occurring affordable housing”.

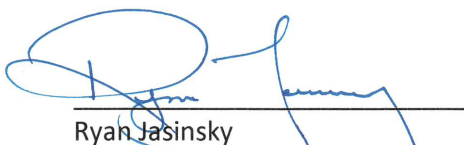
Moreover, other than one trailer park closure (closure included negotiated agreements with residents) located just off of Monterey Road to allow for a much more dense housing development, there has not been ONE MHP closure or conversion in the City of San Jose in the past 40 years. That said, it would seem that pressure is mounting—though we would consider the pressure to be for the right reasons and not the wrong reasons. What we need to do is be thoughtful and mindful to all parties involved.

The question at hand raised by AB 705 is this: How do you intend to lead with regard to future land use of 59 mobile home and trailer parks sitting on 1,123 acres at an average density of 9-units per acre, many located along major transportation/light rail systems proximate to commercial services surrounded by existing dense development?

Some of you may believe that AB 705 is noble in its focus and takes an important step to further protect a land use. Others of you might view AB 705 as an inappropriate—and arguably illegal—grab of land use by the State of California, unreasonably and unnecessarily binding the hands of the City of San Jose and others to navigate the waters of important land use discretion in its own backyard. We fall in the latter category not because we plan to close or convert any of our mobile home parks, but because we view it as an inappropriate abdication of your land use authority. Furthermore, it begs the somewhat rhetorical question as to what other land use abdication might you voluntarily support giving to the State of California?

We urge you to think openly and honestly on this matter. We urge you to understand the potential unintended consequence of an action that, while potentially appealing, is equally potentially devastating to future thoughtful land use discretion in our ever-growing, wonderful city.

Sincerely,
For BRANDENBURG, STAEDLER & MOORE



Ryan Jasinsky
Director, Property Management

AB 705: A Dangerous Bill Seeks to Abolish Park Owners' Right to Cease Operations

By Matthew K. Telford, Esq. and Margaret E. Nanda, Esq.*

Assembly member Mark Stone (D-Monterey Bay) recently introduced legislation (AB 705) to effectively prevent park closures in California, thereby forcing mobilehome park owners to remain in business indefinitely.

Under current law, park owners have a right to close their park and change its use (see California Civil Code section 798.56, subsection (g)) provided certain protections are put into place to aid park tenants and residents in relocating. Presently, local governments *may*, as a condition of park closure, require that relocation assistance be provided to park homeowners and residents, not to “exceed the reasonable costs of relocation.” (Cal. Govt. Code § 65863.7; see also Cal. Govt. Code § 66427.4.) If the appropriate local government determines relocation assistance is adequate to cover the costs of relocation, it *must* permit the park owner to cease operations. (Cal. Civ. Code § 798.56(g)(1).)¹

Dozens of municipalities throughout the state have enacted mobilehome park closure and conversion ordinances which specify the assistance that must be paid to residents prior to approval of a park closure. Often, this includes a rent subsidy, moving expenses (including security deposit and first and last month's rent), and, for homeowners, the in-place fair market value of their mobilehome. Residents are also typically provided the services of a relocation specialist to aid in relocation to the area or dwelling-type of their choice. Often, residents' relocation preferences vary. Some want to remain close to their current residence (e.g., a parent with school age children), others want to move to another part of the state or country (e.g., a retiree), and still others may want to move in with relatives and simply receive a payout of benefits. Cities and counties only approve closures contingent upon generous relocation packages for residents; and, through the help of a relocation specialist, residents can always be successfully relocated.

Our office has years of experience and expertise closing parks around the state. For instance, in 2016 we began closure of the Blue Bonnet Mobilehome Park (“Blue Bonnet”), a 54-space park in the City of Sunnyvale. The Sunnyvale City Council approved Blue Bonnet's closure in March 2017 providing, on average, \$38,058 in mitigation assistance to non-homeowner tenants and \$126,802 in mitigation assistance to homeowners. Every resident who engaged the relocation specialist was successfully relocated to alternate housing. Ten park households sued to block Blue Bonnet's closure, but the Superior Court of Santa Clara County ruled last fall that the City of Sunnyvale and the park owner lawfully closed Blue Bonnet pursuant to state and local law.

¹ The reasons park owners decide to cease operations vary, but often, the land is considered to have a higher economic use. For instance, in 2013, Buena Vista Mobilehome Park in Palo Alto appraised for \$14.5 million under its use as a mobilehome park (98 spaces; 4.5 acres). While efforts to close the park were stalled in litigation, the Santa Clara County Housing Authority decided to purchase the park in 2017 for \$40.4 million dollars in order that it remain a mobilehome park.

The generous monetary assistance and successful relocation of residents at parks such as Blue Bonnet has not pacified affordable-housing advocates, who see mobilehome parks as a primary source of affordable housing in the state.² AB 705 is these groups' attempt to force mobilehome parks to remain in business indefinitely and trample park owners' property rights in the name of affordable housing. AB 705, if passed, would radically rewrite the law on park closures in California and make them virtually impossible, by requiring park owners relocate residents to other local mobilehome parks, and requiring that park owners obtain approval of park closure simultaneous with future use and/or redevelopment plans.

The impact of these proposed changes cannot be overstated. First, AB 705 would require all park residents (both homeowners and non-homeowner tenants) be simultaneously relocated to other mobilehome parks within proximity to the closing park. It is typically impossible to simultaneously relocate all residents to other mobilehome parks within reasonable proximity of a closing park. At any given time, urban portions of California have no more than a handful of vacant spaces or mobilehomes for sale in parks. For example, if today, a 50 space park in San Jose with homes valued around \$200,000 were to close, requiring the simultaneous relocation of park residents, there are **0** known vacant spaces and only approximately **30** comparably-priced mobilehomes for sale within Santa Clara County. The only way all residents of a park of 50 or more spaces could possibly be simultaneously relocated to other mobilehome parks is if the entire state or neighboring states are considered. Yet, because the new legislation requires relocation to comparable mobilehome parks which are "not less desirable" than the closing park's location and residents' place of employment, park owners will be effectively blocked from closing parks, because they will be unable to demonstrate residents can be relocated to other mobilehome parks in the surrounding area. Additionally, such a requirement is actually counter to most park residents' wishes. As noted, residents' relocation preferences vary, and many do not want to relocate to another mobilehome park. Residents frequently prefer to move into an apartment or purchase a stick-built home locally or, sometimes, in another part of the state or country.

Second, AB 705 requires a park's closure and its new intended use be submitted for local-government approval simultaneously, unless the park owner can prove the park is no longer providing a reasonable return on investment. Not only does this force a park owner to close *only after* it creates or obtains a planned re-development proposal, it results in local governments considering both the park's closure and development application *at the same time*, which actually results in less time and attention by local governments to the relocation needs of (and assistance offered to) park households. Such a tandem approval process also changes the nature of the re-development application approval into a policy debate regarding whether the new development is "worthy" of displacing current residents.

Third, the new law prevents closing the park (i.e., issuing termination of tenancy notices) until *all permits* related to the property's proposed new use are obtained. Taken to its logical conclusion, termination of tenancy notices could only be served on remaining residents after all

² There are other, realistic approaches to solving California's affordable housing shortage, such as government-backed, high density housing developments.

redevelopment permits are obtained, such as tree and architectural permits. Such a change in the law conflates issues of adequate relocation assistance with issues relevant only to the anticipated planned redevelopment, and allows tenants who refuse to use their mitigation assistance to relocate to simply sit and wait until the property's new use is completely entitled. Further, park owners will be forced to keep parks open, and endure all the attendant costs of operation, long after many (if not most) residents have accepted relocation assistance and moved away, thereby increasing the financial burden of park closures on owners without any logical correlation to the date the park's closure is approved.

In sum, AB 705's proposed changes would take away what California courts describe as a park owner's fundamental legal right to go out-of-business and cease operation of a mobilehome park (see e.g., *Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1533). It also denies park owners the value of their investment by forcing them to continue operating as a mobilehome park, often under strict rent control conditions.³ As such, the immediate threat this bill poses to park owners and their property rights cannot be overstated. Not only is AB 705 unnecessary, given that park residents are adequately protected from the adverse impacts of park closure under current law, the bill is poorly conceived, as it completely eviscerates the property rights of park owners and conflates issues of park closure with future use or redevelopment of the property. Simply put, AB 705 is disastrous for park owners, effectively preventing closure and/or redevelopment of their property, and provides no real added benefits to park residents, as their relocation preferences vary.

As of this article's publication, AB 705 has been referred to the State Assembly's Committee on Housing & Community Development. Please call or write your state representatives and encourage them to defeat AB 705.

³ The United States Supreme Court has suggested that a law which compels a landowner to rent his property as a mobilehome park may constitute an unconstitutional taking of private property without just compensation. (See *Yee v. City of Escondido, Cal.* (1992) 503 U.S. 519, 528; see also *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123–125 [noting the extent to which a regulation has interfered with investment-backed expectations is critical to analyzing whether an unconstitutional taking has occurred].)

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