



LAW FOUNDATION of Silicon Valley

Fair Housing Law Project

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May 11, 2017

Via Electronic Mail

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

**Re: City Council Meeting, May 16, 2017
Agenda Items 4.1 and 10.1, Mobilehome Park Protection and Closure Ordinance**

Dear Mayor, Vice Mayor, and Council Members:

The Law Foundation appreciates this opportunity to comment on staff's recommendations regarding Mobilehome Park Protection and the Closure Ordinance. Although we appreciate staff's work, their proposed land use policy changes do not go far enough to protect mobilehome park residents and preserve mobilehome parks. We have included recommendations, below, which will help preserve San José's mobilehome parks and protect residents. San José's land use policies must be strengthened particularly in light of Council's upcoming consideration of the Mobilehome Park Closure Projects Ordinance that, unless rejected or substantially amended as we recommend, will threaten to facilitate the displacement of thousands of residents and destruction of thousands of naturally affordable and rent-stabilized homes from San José's housing stock.

The Law Foundation urges the Council to:

1. Reject the unnecessary proposed Closure Ordinance;
2. If the proposed Closure Ordinance is not rejected entirely, amend it to address crucial flaws;
3. Amend the General Plan text amendments proposed by staff as we have recommended;
4. Uniformly zone all mobilehome parks throughout the City; and
5. Amend the Council Policy to further the intent of and clarify the Conversion Ordinance.

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Policy Recommendations

1. Reject the Proposed Closure Ordinance.

Although San José originally prioritized study and adoption of policies that would preserve mobilehome parks and protect residents, if adopted, the proposed Closure Ordinance will undermine this duty because it will facilitate the displacement of mobilehome park residents and destruction of affordable homeownership housing units across our city. The proposed Closure Ordinance must be rejected entirely because (1) it is unnecessary under the existing mobilehome Conversion Ordinance, where closure is already covered as a “change of use”; (2) it is unnecessary under state law because mobilehome park owners do not have an unmitigated right to go out of business; and (3) it is harmful to the City and its residents because it prevents the evaluation and mitigation of impacts as authorized and required under state laws.

We agree and hereby incorporate William Constantine’s legal analysis of and objections to the proposed Closure ordinance; Mr. Constantine’s letter of May 9, 2017, explains that the Closure Ordinance is not only *not* required by state law and inconsistent with Housing Element law—as we explain below—but that it itself violates state law.

A. **The proposed Closure Ordinance is unnecessary because San José’s existing Conversion Ordinance encompasses all proposals to change the use of a mobilehome park, including closing it.**

The proposed Closure Ordinance is completely unnecessary in light of the existing Conversion Ordinance, which covers closure. The Mobilehome Conversion of Use Ordinance (“Conversion Ordinance”) defines “mobilehome park conversion of use” as a conversion to “*any other use*, excluding mobilehome park conversion to ownership.” (Conversion Ordinance § 20.18.190, emphasis added.) The Conversion Ordinance was enacted to establish requirements and procedures for the control and approval of the conversion of mobilehome parks to other uses, including non-mobilehome park uses. (Conversion Ordinance § 20.180.010(A).) By the plain language of the Conversion Ordinance, it is applicable all changes of use, including closure. The City Attorney supported this position as recently as last summer.

For 30-plus years, the City has maintained that all applications to convert the use of a mobilehome park, including closing it, were to be processed through the Conversion Ordinance. As they have purchased mobile homes, rented homes, raised families, and invested in the improvement of their homes and surrounding parcel, the many residents of the City’s 50-some parks have understood their rights with respect to closure in this context.

In August 2015, the City Attorney issued a memo to the Mayor and City Council that stated that mobilehome park owners seeking to change the use of a park, including closing it, must submit an application and comply with the procedures of the City’s Zoning Code, including the Conversion Ordinance. (Rick Doyle, City Attorney, Memorandum to the Honorable Mayor and Council, August 6, 2015, p. 5.) Council Policy 6-33, which was adopted on February 23, 2016, also made clear that the Conversion Ordinance’s definition of “Mobilehome Park

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Conversion of Use” should not be interpreted to exclude projects described as “park closures” and that they are subject to the Conversion Ordinance’s requirements. (Conversion of Mobilehome Parks to Other Uses, Council Policy 6-33, Number 77673, adopted February 23, 2016, 1(e).)

B. Nothing in State law compels San José to adopt a Closure Ordinance in addition to its existing Conversion Ordinance.

There is no provision in State law that requires San José to adopt a Closure Ordinance. In fact, nothing in State law prevents San José from continuing to rely on its Conversion Ordinance for park closure projects. The Ellis Act, which applies to the withdrawal of certain types of non-ownership rental property from the housing market, does not apply to the change of use of mobilehome parks, by its own terms. (Cal. Gov’t Code § 7060.7(f)). The Ellis Act does not apply to mobilehome park change of use projects, including those labeled as park closures, and it should not guide San José’s mobilehome preservation policies.

Despite this, two cases, *Levin v. City and County of San Francisco* and *Coyne v. City and County of San Francisco*,¹ which interpret the Ellis Act, are frequently cited by park owners to persuade San José that its ability to review and condition applications to close mobilehome parks is limited. Both *Levin* and *Coyne* concerned limits on mitigation measures San Francisco could impose on landlords, not mobilehome park owners, who sought to withdraw their residential rental units under their local Ellis Act ordinance. Neither of these cases pertains to mobilehome conversions, and as such, neither control San José’s ability to require mitigation related to impacts from the closure of a mobilehome park.

Park owners claim that *Keh v. Walters* made clear that park owners have an absolute right to close their parks. In this case, a park owner attempted to close their park by evicting park residents one at a time. (*Keh v. Walters* (1997) 55 Cal. App. 4th 1522, 1533.) The park owner argued that they had a “fundamental vested right” to go out of business. (*Id.*) The court disagreed. (*Id.*) The court held that the park owner’s practice violated both the letter and the spirit of Civil Code § 798.56, the change of use statute. (*Id.*)

Although the court did state that, in its opinion, “a park owner is entitled to convert property used as a mobilehome park to another use, or even to hold it as vacant land,” the court did not say that this right was unfettered. (*Id.*) In fact, the court stated that despite its opinion, or view, its task was limited to interpreting and applying the law. (*Id.*) The court went on to say that park owners have to comply with both State laws *and local ordinances that govern conversion*, including “disclos[ing] and describ[ing] in detail the nature of the change of use” at the time they issued a notice pertaining to their proposal to change the use of the park. (*Id.* at 1533-34, emphasis added.)²

¹ *Levin*, (2014) 71 F.Supp.3d 1072; *Coyne*, (March 21, 2017, CGC-14-540709, CPF-15-514382), ___ Cal.App.4th ___ < <http://www.courts.ca.gov/opinions/documents/A145044.PDF>>.

² The court also stated that the State Legislature wanted to “protect mobilehome dwellers, not only from arbitrary and capricious conversions but also from the harsh effects of displacement resulting from legitimate conversions,” so this is why it required park owners to [first] provide a detailed description and disclosure about the proposed

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We understand the City Attorney's office may rely on the unpublished case of *Traphagen v. City of Dana Point* (2007 Cal. App. Unpub. LEXIS 2650) to justify the need for a closure ordinance. This reliance is misplaced. The case was wrongly decided and it fails to fully recognize the authority granted to local jurisdictions in requiring mitigation of changes of use of mobilehome parks.³ First, the court in that case incorrectly suggested that the Ellis Act permits mobilehome park owners to simply go out of business (see above—the Ellis Act, by its very terms, does not apply to mobilehome parks). Moreover, the court's statement that mobilehome park closures are "ministerial" in nature, rather than "discretionary" land use decisions was made without analysis, in a different context, and is not citable authority.⁴

As we have identified above, nothing in State law provides park owners with an unfettered right to go out of business. Instead, *Keh v. Walters* makes clear that park owners who seek to change the use of their parks, including closing them, must abide by both State and local change of use ordinances. It also emphasized our State Legislature's intention to protect park residents from arbitrary and capricious conversions. San José's Conversion Ordinance, not the Closure Ordinance, would protect against capricious conversions, since the Council would be able to analyze the host of impacts that such a project would trigger. Therefore, nothing in State law compels San José to adopt a Closure Ordinance in addition to its existing Conversion Ordinance.

C. The proposed Closure Ordinance should also be rejected because it prevents San José from evaluating and mitigating impacts of park closure as authorized and required under state laws.

Additionally, San José has the authority to evaluate and mitigate adverse impacts that a proposed mobilehome park closure will generate, since these will not be limited only to the terrible prospect of resident displacement from our City. Whether a park owner intends to convert and redevelop a mobilehome park or close it and wait to redevelop it, there are adverse impacts that affect displaced residents, the City's affordable housing stock, and our environment. All of these impacts must be evaluated and mitigated, even if a park owner only seeks to close the park. Government Code section 65863.7 allows the study and mitigation of adverse impacts

future use of the park under Civil Code section 798.56. (*Id.*) The court found that a statement about some yet-to-be-determined change of use did not meet the statutory requirement for terminating a tenancy that Civil Code section 798.56 requires. (*Id.*)

Unfortunately, San Jose is on the verge of adopting the proposed Closure Ordinance that likely runs afoul of the requirements of Civil Code section 798.56, since it is poised to allow park owners to simply certify that, at the moment they apply for park closure, that they don't want to be in business any longer. This is not the detailed description that the court in *Keh v. Walters* held that Civil Code section 798.56 requires to prevent arbitrary and capricious conversions.

³ Government Code section 65863.7(e) grants local legislative bodies the power to "require, as a condition of [a mobilehome change of use], the [party proposing the change] to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation."

⁴ California Rule of Court 8.1115 states that opinions of the California Court of Appeal that are unpublished generally "must not be cited or relied on by a court or a party in any other action."

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from a park owner's proposal to change the use of a park on park residents when a subdivision is not concurrently sought.

One of the potential impacts of a closure is the diminution of the City's affordable housing stock. San José has a duty to conserve and improve the condition of its existing affordable housing stock, which includes mobilehome housing units. This duty comes from State law, which requires cities to adopt a Housing Element.⁵ The Housing Element is a component of the General Plan, and it specifies the actions that a jurisdiction will take to promote the development of new affordable housing units and preserve existing affordable housing units that will be demolished by public or private action.⁶ Maintaining San José's existing affordable housing stock is the most efficient way to fulfill the City's duty to conserve and improve the existing affordable housing stock.

Mobilehomes are an important component of the existing affordable housing stock, with nearly 11,000 mobilehomes in 59 parks throughout the City.⁷ These parks and mobilehomes provide a vital source of unsubsidized affordable housing to San José's residents. In a city that largely seeks to meet its affordable housing needs through subsidized housing, San José's mobilehome parks provide residents with modest and/or fixed incomes with homeownership opportunities⁸ and modest regulated rents⁹ relative to most apartments in San José. San José previously estimated that up to 73% of mobilehome owners are low- to extremely-low-income, which means that mobilehomes provide housing for nearly 8,000 of San José's low- to extremely-low income households.¹⁰

Mobilehome parks are under increasing threat of closure, or have closed, in Santa Clara County. At least two park owners in San José have expressed interest in redeveloping their mobilehome parks.¹¹ Palo Alto's only mobilehome park, Buena Vista, remains under threat of closure.¹² Since 1991, six mobilehome parks in Sunnyvale have closed.¹³ Although Sunnyvale

⁵ Cal. Gov't. Code § 65583(c)(4).

⁶ *Id.*

⁷ City of San Jose Housing Department, Mobilehome Resource Guide, p. 9, available at <http://www.sanjoseca.gov/DocumentCenter/View/1151>.

⁸ *Id.*, pp. 2-11.

⁹ Mobilehome Rent Ordinance Summary, Department of Housing, City of San José, January 29, 2014, p.3, available at <http://www.sanjoseca.gov/DocumentCenter/View/32825>

¹⁰Memorandum from Leslye Corsiglia on Mobilehome Park Conversions to the Rules and Open Government Committee, Apr. 30, 2014, p. 3, available at <http://sanjoseca.gov/DocumentCenter/View/30282>.

¹¹ City of San Jose, Housing and Community Development Committee, Park Owner's [Winchester Ranch Mobile Home Park's] Proposal for Redevelopment of the Site and Relocation Assistance, October 13, 2016, p. 1, available at <http://www.sanjoseca.gov/DocumentCenter/View/62039>; Letter from Peter Wang, owner, to San Jose staff, regarding Opt-In/Stay in Business Proposal and potential redevelopment of Mobile Home Manor, November 11, 2015, p. 8, available at http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2124&meta_id=557348.

¹² City of Palo Alto City Council Action Minutes, Special Meeting, May 26, 2015, available at <http://www.cityofpaloalto.org/civicax/filebank/documents/47521>.

¹³"Possible Revisions to the Mobile Home Park Conversion Process and Requirements," Council Report Outreach Meeting, City of Sunnyvale, p.4., available at <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/CDD/Housing/HUD%20Programs/MOBILE%20HOME%20PARK%20PPT%20presentation.pdf>. In addition to the mobilehome communities identified in this report that closed, Nick's

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adopted land use policies that served to protect most of its parks, those that were not designated as mobilehome park uses do not benefit from these preservation measures. One of the last remaining parks that does not contain a mobilehome park land use designation, Blue Bonnet, recently received Council approval to close.¹⁴ Over the last two decades, Mountain View has lost about 240 mobilehome lots.¹⁵

In furtherance of its duty to preserve affordable housing, San José must adopt policies that preserve mobilehome housing, which is a vital component of our affordable homeownership housing stock. Although San José originally prioritized study and adoption of policies that would preserve mobilehome parks and protect residents, if adopted, the proposed Closure Ordinance will undermine this duty because it will facilitate the displacement of mobilehome park residents and destruction of affordable homeownership housing units across our city.

Although evaluating and mitigating the impacts on park residents relating to a proposed park change of use, including closure, are paramount, nothing in Government Code section 65863.7, which authorizes this evaluation and mitigation, prohibits San José from analyzing other impacts. San José's long-standing Conversion Ordinance should continue to govern all conversion of use projects, even projects labeled as park closures, since San José has obligations to evaluate and mitigate a host of adverse impacts. The proposed Closure Ordinance would prevent San José from doing what State laws mandate it to do, including evaluating a proposal that seeks to permanently remove hundreds of affordable and rent-stabilized homeownership housing from our community and the environmental impacts associated with this action. San José should reject the proposed Closure Ordinance and continue to utilize its Conversion Ordinance for all projects that seek to change the use of a mobilehome park, including closing it.

2. If the proposed Closure Ordinance is not rejected entirely, it must be amended to address crucial flaws.

While we disagree that adoption of a Closure Ordinance is necessary, we strongly believe that it should contain terms that prevent a park owner from circumventing the Conversion Ordinance's requirements and provide the same protections for residents as those provided in the City's existing Conversion Ordinance and related Council Policy.¹⁶ The proposed Closure

Trailer Park also closed. See: <http://www.mercurynews.com/2016/10/28/sunnyvale-closed-trailer-park-will-make-way-for-108-unit-apartment-project/>

¹⁴San Jose Mercury News, "Sunnyvale: Blue Bonnet mobile park to close soon after conversion report's approval," available at <http://www.mercurynews.com/2017/03/15/sunnyvale-blue-bonnet-mobile-park-to-close-soon-after-conversion-reports-approval/>.

¹⁵ Katie Kramon, Peninsula Press, Mobile Home Parks: A Vanishing Source of Affordable Housing, March 14, 2015. Gina Hall, Silicon Valley Business Journal, Mountain View approves closure of mobile home park, July 10, 2015, available at <http://www.bizjournals.com/sanjose/news/2015/07/10/mountain-view-approves-closure-of-mobile-home-park.html>.

¹⁶ In our letter to the Planning Commission dated March 21, 2017, regarding the March 7, 2017, version of the Closure Ordinance, we identified a substantial number of changes that were required. Although staff incorporated some of the changes we suggested, the present March 21, 2017 version still fails to contain provisions that prevent park owners from utilizing it to circumvent the City's Conversion Ordinance. Further, the relocation assistance benefits afforded under the Closure Ordinance still fall well short of what the Conversion Ordinance requires, which must be corrected. These, and the other deficits we identify above, are most significant problems with the current

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Ordinance provides drastically fewer procedural protections than the Conversion Ordinance and Council Policy. It also provides much more limited benefits and relocation payment to displaced residents. Quite simply, it is ridiculous and obviously unfair that mobilehome park residents—the people most negatively impacted by mobilehome park closure and/or conversion—would be deprived of any protections and benefits simply because of a park owner’s administrative course of action. In addition to the significant problems identified below, we describe a list of Closure Ordinance deficiencies in the attachment to this letter.

A. The Closure Ordinance must follow the existing Conversion Ordinance and Council Policy regarding conversion of use.

After months of staff work, public input, and public deliberation, the City Council adopted certain changes to its zoning code and the Mobilehome Park Conversion Ordinance “Council Policy.” Among other things, this Council Policy provides guidelines for assessing and mitigating adverse impacts as well as proposing relocation benefits that will enable residents to find comparable replacement housing when their mobilehome community is closed or converted and they are faced with the loss of their homes. Although we urge the Council to adopt procedural changes that we recommend below, the Council Policy’s mitigation and relocation provisions are thoughtful, thorough, and fair. The Council Policy represented a promise to the City’s 35,000 mobilehome park residents, a promise that will be broken should the City adopt the Closure Ordinance because it is deficient in numerous ways.

Moreover, the Council Policy does more than establish guidelines for mitigation of adverse impacts of a park closure on residents. The Council Policy also sets forth principles for approval of a proposed park conversion that take into account important City priorities like the need for adequate housing for all City residents regardless of income, facilitating resident ownership of mobilehome parks when feasible, and reducing and avoiding displacement of particularly vulnerable, long-term residents from our community.

San José must additionally protect mobilehome park residents’ due process rights by requiring that an application to close a mobilehome park be heard by the San José City Council. State law calls for the City’s legislative body or its delegated advisory agency, to review the relocation impact report. (Government Code § 65863.7(e).) However, instead of designating San José’s legislative body, the City Council, to consider applications under the Closure Ordinance, the proposed Closure Ordinance designates the Director of Planning to consider these applications unless a park owner or park resident requests a hearing. (Closure Ordinance § 20.180.760(A).) Park residents are afforded no opportunity to appeal the Planning Directors decision to the Council.

Unfortunately, our community knows that even when large-scale projects, like The Reserve, that seek to redevelop rent-stabilized properties, public participation is often absent. The closure of The Reserve displaced hundreds of San Joséans from their rent-stabilized homes,

version of the Closure Ordinance. However, other problems require correction, and we encourage the Council to review our recommendations in that letter. A copy of our letter is available at <http://www.sanjoseca.gov/DocumentCenter/View/66986>.

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and it was obvious that language and employment barriers prevented residents from engaging with staff and the Council about critical adverse impacts that must be mitigated. Similarly, we are concerned that park residents who face similar access barriers will not participate in this public process and that they will be denied important rights.

In contrast to San José's proposed Closure Ordinance, the cities of Palo Alto and Sunnyvale both require hearings on applications to convert parks, including closing parks, and provide appeals processes. (Sunnyvale Conversion Ordinance, 19.72.130(c); Palo Alto Mobilehome Conversion Ordinance, 9.76.040.) Even San José's Zoning Ordinance was specifically amended to ensure that the City Council, and not the Planning Director, would be the decision-maker that considered applications to convert mobilehome parks, and such a significant procedural distinction should exist based on a park owner's decision to simply close rather than convert. State law on the subject provides the bare minimum—San José can and must require a public hearing before the displacement of potentially hundreds of households. Such important land use and displacement issues must be reviewed with greater public scrutiny by appropriate public entities than the proposed Closure Ordinance currently provides.

We understand that some mobilehome park owners have threatened litigation against the City, and that this threat has driven staff to propose this draft Closure Ordinance. We ask that the City not allow itself to be held hostage by threats when the continued stability and well-being of thousands of our city's most vulnerable residents are threatened.

B. To prevent park owners from circumventing the Conversion Ordinance, San José must limit use of the Closure Ordinance to instances where a park owner cannot make a reasonable return on their investment.

If San José adopts a Closure Ordinance, it should include a provision that requires a park owner to prove, through the submission of records and a hearing before the Council, that they cannot make a reasonable rate of return on their investment prior to receiving approval to close a park. This requirement is necessary for the City to ensure that it does not allow for the displacement of hundreds, if not thousands, of households and the loss of vital affordable housing stock based on an owner's whim. Moreover, such a requirement is legally permissible so long as it does not interfere with the owner's primary, investment-backed expectations, and it does not render the owner unable to receive a reasonable return on their investment. (*Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, 102.) As stated above, state Ellis Act does not apply to mobilehome parks, and municipalities can require this showing under their power to regulate land use.

Although *Nash v. City of Santa Monica* was superseded as to conversions of rent-stabilized residential real property when the Ellis Act was adopted, this case and its holding still articulates state law allowing jurisdictions to require that a mobilehome park owner show they can no longer make a reasonable rate of return before they can close and displace all their residents. As such, the City of San José should impose such a requirement to prevent park owners from simply circumventing the Conversion Ordinance by closing, displacing low-income

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residents, destroying rent stabilized affordable housing units, and seeking to redevelop the property with other uses.

As presently drafted, the Closure Ordinance has no provision that prevents a park owner from misusing the Closure Ordinance to circumvent the Conversion Ordinance. The Closure Ordinance's only attempt to limit its misuse is by requiring a park owner to disclose the nature of the use of the parcel(s) where the park is located after the park is closed or a statement that no new use is contemplated under penalty of perjury.¹⁷ (Closure Ordinance § 20.180.740(E).) While this measure is a positive step, it poses no real barrier to misuse of the proposed Closure Ordinance, since it does not even specify what recourse and remedies displaced park residents or the City have to address a park owner's misrepresentations.

We urge the Council to reject the Closure Ordinance since the City's Conversion Ordinance encompasses projects termed as closure applications. However, if the City elects to adopt a Closure Ordinance, it should require significant changes are made because, among other things, the Closure Ordinance fails to preserve San José's 59 mobilehome parks and requires less rigorous relocation impact analyses and fewer relocation benefits for displaced residents than required by the City's longstanding Conversion Ordinance. More specifically, if a Closure Ordinance is adopted, the City should require that 1) it does not prevent owner from using the Closure Ordinance to circumvent the Conversion Ordinance, 2) does not require that the City Council hear the application to close a park, and, 3) it continues to require an inferior relocation impact analysis and mitigation benefits than what the Conversion Ordinance provides.

3. Adopt General Plan Text Amendment Changes.

Staff has proposed several General Plan text amendments that, if adopted, may help San José maintain an affordable and diverse housing stock, which includes mobilehomes. Again, these changes may become meaningless if the City adopts the present draft of the Closure Ordinance, which facilitates closure of San José's 59 mobilehome parks.

The City should establish a mobilehome park designation in the General Plan if it seeks to preserve its 59 mobilehome parks. Currently, San José has no General Plan designation for mobilehome parks. Although most mobilehome parks are designated as "Residential Neighborhood," some others are designated for industrial and commercial uses. The City should address this problem by adopting and applying this designation to all mobilehome parks, demonstrating that it values mobilehome parks as sources of affordable housing and that it intends to preserve mobilehome parks into the future.

In addition to adopting and applying a mobilehome park designation, the City should also amend the General Plan to establish a policy of "no net loss" of land zoned for mobilehome use.

¹⁷ We are concerned that even this requirement falls far short of what State law requires. State law requires a park owner who seeks to change the use of a park, including closing it, to "disclose in detail the nature of the change of use." (Government Code § 798.56(g)(2).) The proposed Closure Ordinance seems to authorize the park owner to provide something that does not comply with this State law requirement, since the park owner is not asked to provide a detailed disclosure about the nature of the use. (Closure Ordinance §20.180.740(E).)

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There are multiple examples of “no net loss” policies that the City can use to preserve mobilehomes, including San José’s own industrial lands policy, Sunnyvale’s policy of preserving a set number of acres for mobilehomes, and Santa Cruz’s stated policy of preserving a set number of mobilehome units.

First, the City could use San José’s existing industrial lands policy as an example for an effective anti-conversion policy relating to mobilehome parks. This policy enables the City to preserve its valuable employment lands in order to promote economic growth. The vehicle for this policy is a series of clear statements in San José’s General Plan which integrates the industrial lands policy with many of the General Plan’s broad goals and policies. Council should take a similar approach here.

Second, Sunnyvale’s Housing Element and General Plan together take an approach that preserves the amount of mobilehome park acreage within the City through the City’s policy to “maintain at least 400 acres of mobile home park zoning.” Sunnyvale currently has 413.45 acres of mobilehome park zoning, making the “400 acre” policy effectively a no net loss policy.

Third, Santa Cruz implements a “no net loss policy” by preserving its current number of mobilehomes through a similar provision in its Housing Element, which expresses the goal to “Maintain current mobilehome [. . .] conversion regulations to preserve 360 mobilehomes in parks in the community.” San José should take a similar approach and amend its General Plan with a policy protecting either mobilehome acreage or units. We thus recommend that the General Plan be amended to include an exclusively mobilehome park designation and “no net loss” policy similar to the City’s industrial no net loss policy to fortify its commitment to preserving mobilehome park lands and this source of affordable housing.

In addition to these changes, staff’s proposed text amendments need to be clarified, expanded and/or strengthened to further strengthen mobilehome preservation efforts. We believe that the additional goals and actions that we include below to help preserve our City’s 59 mobilehome parks. More specifically, in addition to several of staff’s recommended General Plan text amendments (specifically H-1.1, H-1.10, General Land Use Goal LU-2 - Growth Areas, Implementation Policy IP-5.1(2), and Implementation Policy IP-5.7), we ask that the Council support and recommend the following changes. Underlined text is language we recommend adding while struck-through language is that which we recommend deleting.

Policies - Housing - Social Equity and Diversity

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.

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.

Actions - Housing – Social Equity and Diversity

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H-1.16 Encourage that all proposed Ceonversions of Use or Changes of Use of mobilehome parks to other uses to include mitigation measures that provide displaced residents with housing options that are affordable once any short term subsidy has elapsed purposes other than the rental, or the holding out for rent, of four (4) or more mobilehome sites or spaces to accommodate mobilehomes used for human habitations, including the cessation of use, to mitigate any adverse impact to enable residents to relocate to replacement housing that is affordable and equivalent, including but not limited to their location and amenities.

Implementation Goal IP-5 – Urban Village Planning

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.

Implementation Goal IP-5.2 – Urban Village Planning

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.

Implementation Policy IP-5.4, Urban Village Planning

Prepare and implement Urban Village Plans carefully, with sensitivity to concerns of the surrounding community, residents, and property owners and developers who propose redevelopment of properties within the Urban Village areas. In furtherance of this policy and San José’s obligation to affirmatively further fair housing choice, prepare and report on the number of affordable housing units, including rent stabilized units, and socio-economic characteristics of the of residents who reside in the Urban Village. Urban Village Planning should protect against the displacement of low- and moderate-income tenants and mobilehome park residents who live in the Urban Village, and they must also plan for the mitigation of the loss of any mobilehome housing, rent controlled housing, and other affordable housing options that are lost to the community as a result of redevelopment. As part of the Urban Village Planning process, outreach to and community meetings for residents who face displacement, particularly those in mobilehome communities and multifamily housing, should be conducted. Proceed generally in the order of the following timeline, although some steps may be taken concurrently;

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4. Uniformly Zone all Mobilehome Parks for this Exclusive Use.

San José has an R-MH mobilehome zoning designation which reserves these lands for mobilehome park uses.¹⁸ Currently, at least one third of the City's 59 mobilehome parks are not zoned R-MH.¹⁹ Updating the zoning on mobilehome parks would both demonstrate the City's commitment to mobilehome preservation and enable consistent regulation of R-MH lots. If the City adopts a Closure Ordinance, rezoning all parks so that they were intended for exclusively mobilehome park land use may create at least one barrier that may cause park owners to reexamine their efforts to circumvent the Conversion Ordinance. The City should update every mobilehome park to the R-MH designation to help protect mobilehome parks lands and to help prevent misuse of the proposed Closure Ordinance.

5. Amend the Council Policy to Further the Intent of and Clarify the Conversion Ordinance.

We continue to believe that San José can, and should, do more to strengthen its land use regulations to preserve mobilehome communities, especially if the City adopts a Closure Ordinance that permits a park owner to disregard the Conversion Ordinance and Council Policy. However, in light of staff's and the City's present approach, we request that the Council adopt the following changes to the Council Policy.

A. Do not amend the clarification presently contained in the Council Policy that park closure projects should not be excluded from mobilehome park conversion of use projects.

When the Council adopted the Council Policy to the Conversion Ordinance, it contained a section that stated that "the definition of 'Mobilehome park conversion of use' should not be interpreted to exclude projects described as 'park closure' from the requirements of Chapter 20.180." (Res. No. 77673, Conversion of Mobilehome Parks to Other Uses, Council Policy 6-33,1(e).) Since Council will consider adopting a Closure Ordinance, staff has proposed amending this language. We continue to argue that a separate Closure Ordinance is not necessary and that every application to change the use of a park, including closing it, should be processed through the Conversion Ordinance. If the Council agrees and does not adopt the Closure Ordinance, we ask that the Council not amend this language to make clear that all changes of use projects, including closures, will be processed through the Conversion Ordinance.

B. Define the term "sufficient information" to clarify that it includes more than only an appraisal.

One of the goals of the Conversion Ordinance is to help preserve San José's mobilehome parks by encouraging park owners and residents' associations (called Designated Residents'

¹⁸ San José Municipal Code § 20.30.010(C)(4).

¹⁹ A table that the zoning for all of the City's mobilehome parks may be found starting at page 19 of the Planning Commission's Memo to Council dated March 28, 2017, which may be accessed at: http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2679&meta_id=626699.

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Organizations (DROs) in the Conversion Ordinance) to negotiate for the sale of the park to DROs so that the affordable homeownership housing in these parks is preserved. To submit a viable offer to purchase the park, the DRO needs records relating to the operation and condition of the park. Although the appraisal of the mobilehome park is an important tool in preparing a purchase offer, it is not the only record that the DRO needs to prepare a viable offer. The DRO needs other records that specify the costs to operate the park, its outstanding financial obligations, its future maintenance obligations, and other relevant records. Staff has proposed to amend subsection d(i) of section 1 by providing more detail about what “sufficient information” the DRO will need to prepare its offer. Although staff’s suggested edit to include a reference to an appraisal is helpful, other examples of what constitutes sufficient information must also be specified.

C. Council Policy should call for a confidentiality agreement, not a third party, to protect park owner’s proprietary information.

In line with comments we submitted over a year ago,²⁰ we suggest that subsection d(i), which enables a park owner to have a third party hold information in confidence that the DRO needs to formulate a viable offer to purchase the park, is unworkable. It is inconsistent for the Council Policy to suggest that the park owner provide the DRO with sufficient information to enable it to make a viable offer and then, in the same section, state that the owner may require that a third party hold this information in confidence so that the DRO cannot access it. This information is absolutely necessary to evaluate whether a resident purchase is viable, for identifying financing, and for composing a credible offer to purchase the park. While we understand park owners’ desire for their financial information not to become public, release of that information to the DRO—or to an agent of the DRO—is an essential prerequisite to the good faith negotiations required by the Ordinance and Council Policy. Instead of the present language, the Council Policy could either require or allow the parties to enter into a confidentiality agreement at the outset of their negotiations.

D. Clarify that the required Relocation Impact Report should be interpreted to mean that required under either Government Code § 66427.4 and 65863.7.

Government Code section 66427.4 specifies that a Relocation Impact Report (“RIR”) will be required for conversion of use of mobilehome parks when a the party seeking to convert the park also seeks a map to subdivide the park. Government Code section 65863.7 specifies RIR requirements when conversion, closure or cessation of use of a park is sought without a concurrent subdivision map. As such, and particularly if the Council approves amending the Council Policy to state that the Conversion Ordinance excludes park closure applications, the Council should correct this section to reference the requirements under Government Code section 66427.4

²⁰ A copy of our coalition letter dated February 22, 2016, which includes additional recommendations for changes to the Council Policy, can be found starting at page 51 of the following link:
http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2124&meta_id=557348.

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E. Provide clear guidance regarding how disputes concerning selection of appraisers and RIR Specialists are resolved.

Staff's proposed changes at Sections 2.a. and 2.c. of the Council Policy, which relate to appraiser and RIR Specialist selection, are incomplete and require revision. Section 2.a. discusses the selection of the appraiser that will prepare valuations of mobilehome owners' homes. Section 2.c. discusses selection of the RIR Specialist. Although these two sections allow for parties to select their respective appraisers and RIR Specialists, staff did not provide guidance about how the parties should resolve any disputes regarding the ultimate selection of these professionals, like through mediation that is free of charge to park residents. Therefore, the Council should direct staff to clarify these sections.

F. State that the City, not a park owner, will provide an appeals process where there is a dispute regarding relocation and purchase assistance.

The Council should amend section 2.g. of the Council Policy so that the City, not the park owner, provides an appeals process to resolve disputes regarding relocation and purchase assistance. As we stated before the Council Policy was adopted, this dispute resolution process contained in the Council Policy is unacceptable, since any party hearing an appeal will be directly hired by and be an agent of the park owner. Instead, the City should have and govern an appeals process before a neutral fact finder.

Thank you for your attention and consideration. I welcome the opportunity to discuss the Law Foundation's letter with Council Members. I may be reached at 408-280-2448 or dianac@lawfoundation.org.

Sincerely,



Diana E. Castillo
Senior Attorney



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Closure Ordinance Deficiencies Attachment

The Mobilehome Park Closure Projects Ordinance (hereafter “Closure Ordinance”) fails to fulfill the City Council’s directive to preserve mobilehome parks and protect mobilehome park residents. The Closure Ordinance also fails to comply with State law because it prevents the decision maker from requiring the park owner who seeks to close their park from mitigating any adverse impact on the displaced mobilehome park resident to find adequate replacement housing. In 2016, the City adopted Council Policy 6-33, which are thorough and thoughtful guidelines for interpreting requirements under the City’s Mobilehome Conversion Ordinance (hereafter “Conversion Ordinance”). Adoption of an inferior Closure Ordinance, which requires less rigorous Relocation Impact Report (hereafter “RIR”) analysis and relocation benefits, will make the City’s Conversion Ordinance moot and make it impossible for residents to find adequate replacement housing. We note several of the Closure Ordinance’s deficiencies below and urge the Planning Commission to recommend rejection of the Closure Ordinance unless significant changes are made.

- **Does Not Protect Residents Against Park Owners’ Misuse of the Closure Ordinance to Avoid the Conversion Ordinance’s Procedural and Relocation Assistance Provisions.** As drafted, the Closure Ordinance provides fewer relocation benefits to residents than the Conversion Ordinance. There is no part of the Closure Ordinance that requires or penalizes a park owner who truly seeks to redevelop, versus simply closing the park and immediately applying to redevelop it, to actually proceed through the City’s Conversion Ordinance. The only, and narrow, way this issue is addressed in the Closure Ordinance states that the park owner shall disclose “the nature of the use of the Parcel(s) where the Park is located after Closure is approved *or* [provide] a statement under penalty of perjury that no new use is contemplated” in the RIR. Greater procedural protections must be included in the Closure Ordinance to safeguard against abuse.
- **Does Not Provide Residents with an Opportunity to Negotiate for Park Preservation.** The Closure Ordinance does not enable park residents to negotiate with the park owner to preserve their park. An association of residents, if it elects to, should be allowed to try and negotiate with the park owner to preserve the park, like the Conversion Ordinance provides. (Conversion Ordinance § 20.180.380.) The City’s Closure Ordinance does not allow for this.
- **Does No Provide Residents with a First Right of Refusal.** The Closure Ordinance does not provide residents with a first right of refusal to rent or purchase housing in a future residential development (if the resident qualifies). The Council Policy calls for this. (Council Policy 6-33 § 1(j).)

- **Unreasonably Disqualifies Residents from Relocation Assistance Benefits.** The Closure Ordinance, particularly its definitions section, does not reflect residents' real-world homeownership and space rental realities, including the hardship they will face during a closure application. Since most mobilehomes in San José's parks cannot be moved, we are concerned that many mobilehome owners will be disqualified from receiving compensation for the loss of their homes under the Closure Ordinance based on the Closure Ordinance's definition. Although we appreciate that staff amended this definition in its March 21, 2017, Closure Ordinance draft, we note that it is far narrower than the Conversion Ordinance's definition, which encompasses a host of ways that residents can prove that they are, in deed mobilehome owners. (Closure Ordinance § 20.180.705(R); Conversion Ordinance, § 20.180.160.) As such, the Closure Ordinance's definition should be amended to be the same as the Conversion Ordinance's, which is, "a person who has the right to the use of a mobilehome lot within a mobilehome park on which to locate, maintain, and occupy a mobilehome, lot improvements and accessory structures for human habitation, including the use of the services and facilities of the park." (Conversion Ordinance, § 20.180.160.)

Another oversight is that mobilehome owners who are 55 or older qualify to rent spaces in San José's parks, but, under the Closure Ordinance, seniors need to be 62 years or older to qualify for certain relocation benefits. (Closure Ordinance § 20.180.705(Y).) These overly restrictive definitions unreasonably deny residents vital benefits and are contrary to the requirements of State law.

- **Limits Who is Eligible to Receive Certain Benefits, Like a Rent Differential Subsidy.** The Closure Ordinance provides a rent subsidy only if a resident household qualifies as senior (62 and older), disabled, or low-income. (Closure Ordinance § 20.180.730.) *All* displaced residents should qualify for a rent differential, which is what the Conversion Ordinance provides (§ 20.180.630(d).) San José is home to mobilehome parks that contain upwards of 700 mobilehomes. If 700 households were displaced, a majority would be unable to find other rent stabilized housing, whether in or out of a mobilehome park. If households were mere dollars above some low-income threshold, they would be denied the ability to have the soft landing that a rent subsidy is designed to provide. A park owner should not be able to avoid paying for displacement mitigation protections based solely on the type of application they submit.
- **Does Not Require Individualized Assessment of Long-term Housing Solutions.** We thank staff for amending the March 21, 2017, draft of the Closure Ordinance to incorporate our request that the RIR Specialist prepare individualized assessment for comparable housing evaluation. This evaluation should include longer-term housing solutions so that each displaced resident is not displaced, again, once a housing subsidy terminates. The Closure Ordinance does not require any evaluation of long-term housing solutions for individual households like the Conversion Ordinance and Council Policy

specify. (Council Policy 6-33 §§ 1(g)-(j).) These assessment provisions should be the same under the Conversion Ordinance/Council Policy and the Closure Ordinance.

- **Lacks a Housing Burden Assessment.** The Closure Ordinance fails to require that relocation and purchase assistance provide sufficient subsidies and other measures to allow residents to find other adequate, safe housing priced at a level that does not create a greater housing burden on a resident. (Closure Ordinance § 20.180.730; Council Policy to the Conversion Ordinance 6-33 §§ 1(g)-(j).)
- **Provides Insufficient Subsidy for Large Households.** Unlike the Conversion Ordinance, the Closure Ordinance does not call for more than one housing subsidy if a large household is forced to split into smaller households. (Conversion Ordinance § 20.180.6302(C); Closure Ordinance § 20.180.730.) If any mobilehome park closes, it is likely that most residents will need to move to smaller households. Because other housing opportunities may limit the number of residents who can live in a housing unit, larger families will need to split up. The Closure Ordinance does not require a rent subsidy for multiple households if they must split up, which will severely disadvantage larger households and substantially limit their ability to find replacement housing.
- **Insufficient Guidance for Appraisers.** The Closure Ordinance fails to provide sufficient direction to appraisers in determining value. (Closure Ordinance § 20.180.740.) Appraisals should list in-place value of mobilehomes prior to any public discussion or communication regarding closure of the mobilehome park because of the downward impact that public knowledge of closure has on value. Moreover, if the appraiser identifies lack of maintenance or deterioration of the subject mobilehome park that negatively affects the value of a mobilehome, the appraiser should determine the value of the home with an upward adjustment in value as needed to eliminate the negative effect in value caused by the lack of maintenance or deterioration.
- **Does Not Require Staff to Obtain Confidential Questionnaires if Incomplete.** The Closure Ordinance mandates that the RIR specialist will analyze residents' confidential responses to a questionnaire in evaluating the relocation assistance they require. (Closure Ordinance, § 20.180.750.) As presently drafted, the Planning Director "may but is not required to seek the information directly from the Mobilehome Owner and/or Resident." (Id.) Already stinging from a park owner's broken promise that their park will remain open, park residents will be reticent to entrust confidential information about themselves to an RIR Specialist. Other barriers may exist, fear or denial over the prospect of losing one's home, language-and employment barriers, and disability, may prevent a park resident from submitting questionnaires. This section must be amended to require City staff to make several attempts to obtain information from park residents if their questionnaires are incomplete or not submitted to the RIR Specialist. As such, we ask that the Closure Ordinance recognize this and mandate that the Planning Director will make several attempts to collect this vital information.

- **Contains a Wholly Inadequate Appraisal Dispute Resolution Process.** The Closure Ordinance resolves a dispute about the valuation of a residents' home by requiring the resident to obtain a costly appraisal report, and then, "may require that the Mobilehome Owner be compensated based on the average of the appraisals obtained by the Park Owner and the Mobilehome Owner." (Closure Ordinance § 20.180.730 (B)(5), emphasis added.) This dispute process is wholly inadequate and will lead park owners, who select their own appraiser, to generate low appraisal amounts. It is unlikely that low-income residents will hire their own appraisers, which means that park owners' appraisers will propose artificially low valuations of residents' homes. Even if a resident hires their own appraiser, they will always receive less than what their expert appraiser determines is the value of their home. Instead, the City should have and govern an appeals process before a neutral fact finder.
- **Does Not Enable Decision-Makers to Comply with State Law nor Require Park Owner to Mitigate Any Adverse Impact on Residents' Ability to Find Adequate Replacement Housing.** The Closure Ordinance fails to make clear that, under State law, the RIR Specialist may propose, and the Planning Director or City Council may require, relocation assistance that mitigates *any* adverse impact on a resident's ability to find adequate replacement housing in a mobilehome park. (Government Code § 65863.7(e), emphasis added.) Such instruction is not provided to the RIR Specialist who will prepare the RIR. (Closure Ordinance §§ 20.180.730 -.740.)

To mitigate any adverse impact, the Planning Director has the ability to require relocation assistance amounts that are more than even the 100% appraised value of a residents' home if it takes more assistance to secure adequate replacement housing in another park. The limit, that mitigation shall not exceed the "reasonable cost of relocation," may include more assistance than the limited categories that the Closure Ordinance specifies. The Closure Ordinance must provide the RIR Specialist, the Director of Planning and the Council with a clear statement that they have the ability to require additional mitigation measures if they are necessary to enable the resident to relocate to adequate replacement housing. Failure to include this provision means that the Closure Ordinance fails to comply with State law.

- **Does Not Require a Public Hearing to Review the Sufficiency of the RIR.** The Closure Ordinance states that a public hearing to review the sufficiency of the RIR would only be scheduled if a resident or park owner requests it. (Closure Ordinance § 20.180.740.) Given the displacement of thousands of vulnerable residents in any potential closure, a City Council hearing assessing the sufficiency of the Relocation Impact Report should be required as a matter of course. This requirement would not contravene State law on the subject, which allows the legislative body, the City Council, to review and evaluate the application.

- **Does Not Require that Notices to Park Residents about the Proposed Closure of a Mobilehome Park be Accessible.** The Closure Ordinance identifies notices that residents will receive related to the park closure application. (Closure Ordinance §20.180.760(B).) It will notify them that they can obtain “information on accommodations and how to obtain interpretation and translated information or other accommodations from the RIR Specialist.” (Id.) However, it fails to specify that these initial notices (about how to obtain accommodations and translated information) will be accessible for residents who are disabled or not proficient in English. Further, it states that “information” will possibly be translated, but it doesn’t say that the RIR will be translated. These are major oversights that must be corrected, since these notices and the RIR contain important rights and information that must be accessible for people who are not English-language proficient or who are disabled. This oversight means that many park residents will be unable to understand and assert their rights.
- **Does Not Require that the RIR Report, and Subsequent Amendments, Be Provided to Residents as Required Under State Law.** Contrary to the requirements under State law, which requires that the park owner provide a copy of the RIR to a resident of each mobilehome at the park, the Closure Ordinance state that each resident will be invited to obtain a copy. (Government Code § 65863.7(b); Closure Ordinance §20.180.760(B).) Further, the Closure Ordinance does not specify that this notice will be accessible for residents who are disabled or who are not fluent in English. (Id.) To comply with State law, the Closure Ordinance must require that the RIR and subsequent amendments be provided to a resident from each mobilehome. (Id.) As such, a resident from each mobilehome should receive these subsequent amendments or clarifying letters and at least 30 days prior to any hearing on or consideration of the RIR by the Planning Director and City Council and these should be accessible.
- **Prevents the Decision-Maker from Denying an RIR While Making Full Compensation for Residents’ Relocation Expenses Optional.** The Closure Ordinance only allows the Planning Director or City Council to approve or conditionally approve an RIR. (Closure Ordinance § 20.180.760(C).) It does not specify that these decision-makers have the ability to deny it. (Id.) This means that residents would be left in limbo for potentially significant periods of time during the application process, especially if the park owner causes unreasonable delay.

Further, the Closure Ordinance is patently unfair and unbalanced in how it treats park residents. For example, even though the decision-maker will be unable to deny the RIR, it does not require the decision-maker to fully compensate a homeowner for the in-place value of their home, provide a rent differential, or cover costs to re-install disability-related improvements the park resident will need at their replacement housing. (Closure Ordinance § 20.180.760(D).) Instead, the decision-maker may require a park owner to compensate residents for something far less than what residents need to obtain adequate replacement housing. (Id.)

- **Does Not Specify that Public Hearings on Conditionally Approved RIRs will be Required.** The Closure Ordinance is silent about whether subsequent hearings will be required if an RIR is conditionally approved. (Closure Ordinance § 20.180.760(C).) The findings relating to the adequacy and approval of the RIR should be evaluated at a public hearing. A closure should not be permitted unless and until an RIR is actually approved subsequent to a public hearing.
- **Lacks a Necessary RIR Appeals Process.** The Closure Ordinance permits the Director of Planning to authorize displacement of potentially thousands of residents, the permanent loss of hundreds of affordable and rent stabilized housing units, and closure of a mobilehome park. (Closure Ordinance § 20.180.760(B).) The Closure Ordinance provides for no appeals process in the event that park residents dispute the accuracy of or sufficiency of their relocation benefits. Neighboring cities provide appeals processes before a neutral fact finder. Although we disagree that the Planning Director should have the ability to unilaterally make a decision on a closure application, at a minimum, the City's Closure Ordinance should contain an appeals process for residents to dispute the Planning Director's decision about the adequacy of the benefits approved under the RIR.