G O L D E N S T A T E M A N U F A C T U R E D – H O M E O W N E R S L E A G U E

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To: Hon. Mayor and City Council, City of San Jose **Date: February 21, 2017**

From: Bruce E. Stanton, Corporate Counsel
(cc: Martha O'Connell, Region One Associate Manager and GSMOL Board of Directors)

Subject: "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 benefit 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. We should have more 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 which demands that the Commission take up this issue?
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 the 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 unconstitutional. So we would be left with only a limited number of park owners being subject to the promise. It would seem equally 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.

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.

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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 entirely, 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, there 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.