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VIA EMAIL AND HAND DELIVERY

CITY OF SAN LEANDRO
MAY 17 2019
CITY CLERK'S OFFICE

Honorable Mayor Pauline Russo Cutter
Vice Mayor Corina Lopez
Council Member Deborah Cox
Council Member Ed Hernandez
Council Member Victor Aguilar, Jr.
Council Member Benny Lee
Council Member Pete Ballew
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Re: ***Proposed Mobilehome Rent Stabilization Ordinance***
May 20, 2019 City Council Meeting Agenda Item 10-A

Dear Mayor, Vice Mayor, & Council Members:

My client, Brandenburg, Staedler and Moore ("BS&M"), is the owner and operator of fourteen upscale mobilehome communities throughout the Bay Area, including Mission Bay Mobilehome Community ("Mission Bay") in San Leandro. Mission Bay is a five-star park, a Community for Older Persons, and the largest mobilehome park in the City of San Leandro. With 366 spaces, Mission Bay represents forty-three percent (43%) of the mobilehome space inventory in the City. Since opening Mission Bay in 1971, BS&M has taken great pride in maintaining and improving the community, upholding its standards as a housing provider, and maintaining positive relations with residents.

On March 4, 2019, the City Council considered a Proposed Mobilehome Rent Stabilization Ordinance ("Draft RSO") hastily drafted by City Staff and considered on a mere three business days' notice by the City Council. In response to the Draft RSO, my office submitted a letter noting various legal problems with the ordinance, including that it unconstitutionally deprived park owners of a fair return on their investment. (Attached as **Exhibit A** is the aforementioned March 4, 2019 letter.) At the March 4, 2019 hearing, the City Council voted unanimously to continue consideration of the Draft RSO, in order to explore proposed revisions and alternatives. In a show of good-will, various park owners, including my client, agreed to a 90-day moratorium on rent increases. The City Council also directed City Staff to work with park owners and residents to develop solutions to the various problems with the Draft RSO. While City Staff conducted meetings, they did not follow the City Council's direction to engage park owners and make essential changes to the ordinance. Unfortunately, City Staff has proposed an amended Mobilehome Rent Stabilization Ordinance ("Amended RSO") which is virtually identical to the previous draft. The Amended RSO contains the same legal deficiencies as the previous draft, and the few additions to the ordinance only clarify that City Staff does not understand how a rent ordinance operates or the various protections already afforded to mobilehome park residents under state law. The City Council should not pass the Amended RSO and should direct City Staff to once again consider meaningful solutions and alternatives to this unconstitutional, unworkable, and unfair ordinance.

II. The Proposed Amended Mobilehome Rent Stabilization Ordinance Deprives Park Owners of a Fair Return on Investment.

The Amended RSO, as currently written, denies park owners a fair and reasonable return, which is an unconstitutional denial of due process. (see e.g., *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal. 4th 761, 771 (1997) [explaining that price control, including rent control, must not deprive investors a "fair return" and thereby become "confiscatory"].) Specifically, the Amended RSO denies park owners a reasonable rate of return in the following ways:

A. Yearly Base Rent Increases are Capped at <u>the Lesser of</u> 4% or CPI for the Bay Area.

The Amended RSO caps yearly base rent increases at the lesser of four percent (4%) or the rise in the Bureau of Labor and Statistic's Consumer Price Index ("CPI") for the Bay Area. (Amended RSO at 4-39-212(A) ["[A] Rent Increase for a Mobilehome Space that shall be equal to the lesser of CPI or four (4) percent of the Rent charged for the Space in the preceding year, except as permitted by this Article in accordance with a CPI Decrease, an In-place Mobilehome transfer, or extraordinary circumstances."].) The language **<u>"the lesser of</u>"** is significant, because in many years this would deprive a park owner of any reasonable rent increase. For example, the annual CPI increase for the preceding five years (December to December) in the San Francisco-Oakland-Hayward MSA has been 2.67% (2014); 3.18% (2015); 3.53% (2016); 2.94% (2017); and 4.5% (2018). (See U.S. Dept. of Labor and Statistics, Western Information Office, Consumer Price Index.) Indeed, since 2008, with the exception of 2018, the annual CPI increase in any given year has never been more than 3.5%. (*Id.*; See also **Exhibit B** [Bay Area CPI quarterly data since 1990].) Thus, in most years, park owners will be denied a fair and reasonable return, based on the language of the Amended RSO, which tethers rent increases to frequently low rates of inflation.

The City Council knows the current formula is not indicative of a fair and reasonable return. In the City Council's January 14, 2019 work session, you suggested a yearly rent increase the "**<u>greater of</u>** 5% or CPI." Yet, City Staff continues to insist, as in the prior draft of the ordinance, that the Amended RSO cap yearly rent increases in a way that deprives park owners of fair and reasonable return, in that it ties yearly rent increases to low rates of inflation for the Bay Area. A fair and reasonable alternative would be to create a floor, so as to ensure a reasonable rate of return in each year. For example, San Jose's mobilehome rent control ordinance is tied to Bay Area CPI, but contains both a ceiling and a floor to ensure the annual base rent increase is "no [] greater than seven percent nor less than three percent," thereby ensuring a reasonable rate of return. (San Jose Muni. Code § 17.22.155(C).)

B. Capital Improvements and Replacements Cannot Effectively Be Passed Through to Park Residents.

The Amended RSO only allows capital improvements to be passed-through at four percent (4%) of the rent of Special Circumstance Households. (Amended RSO at 4-39-230(F).) Special Circumstances Households is defined broadly and arbitrarily to include homeowners or residents who are age 62 or older, low-income, or disabled.

Mission Bay is a Community for Older Persons[1] and thus restricts occupancy to at least one person per household to age 55 and over. Because Mission Bay provides the finest senior mobilehome living environment in the City of San Leandro, its residents continue to reside there for many years. An estimated seventy percent (70%) or more of households in Mission Bay will qualify as Special Circumstance Households under the Amended RSO because the mobilehome owner or the lessee of the mobilehome space is age 62 or over and/or disabled or low income. This will prevent pass-through of a disproportionately large portion of the funds necessary for capital improvement projects. Such a restriction

[1] See 42 USC § 3601.

is constitutionally impermissible, as the law requires that park owners obtain a reasonable return on investment, including for capital improvements, (See e.g., *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal. 761, 773 ["[A] rent control law that merely allows a landlord to recoup the bare costs of a necessary capital improvement runs the risk of being confiscatory and thereby violating the landlord's right to due process of law."]; see also *Sierra Lake Reserve v. City of Rocklin* (9th Cir. 1991) 938 F.2d 951, 958, vacated in part (9th Cir. 1993) 987 F.2d 662 ["Breaking even is not enough; the law must provide for a profit on one's investment. Thus, [a rent control ordinance] must do more than simply allow plaintiff to pass through certain costs; it must ensure that plaintiff will receive a reasonable return on those expenditures."].) The Amended RSO is unquestionably unconstitutional, because it prevents a park owner from even recovering the cost of capital expenditures, much less making a reasonable return on those expenses. (*Id.*) Instead, the Amended RSO would force a park owner who is already providing a scarce resource in San Leandro, namely senior housing, to subsidize the burden of capital improvements that its tenants will benefit from and enjoy. The adoption of this "Special Circumstance Households" language would force BS&M to re-evaluate whether it can continue to operate Mission Bay as a Community for Older Persons.

Also unlawful, there is no demonstrated factual finding or nexus related to the categories of Special Circumstances Households and their supposed financial inability to pay a reasonable, fair share of pass-through costs for capital improvements. Rent control ordinances cannot be arbitrary in their attempts to limit excessive rent increases. (See e.g., *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* (1984) 157 Cal.App.3d 887, 897 [noting rent control ordinances must be reasonably calculated to further the city's interest in eliminating excessive rents for spaces in mobile home parks].) Simply delineating the age of 62 as a "special circumstance" which precludes effective pass-through of capital improvements, without a demonstrated financial need for such a limitation, is an unconstitutionally arbitrary provision. (*Id.*)

The Amended RSO continues to require fifty percent (50%) plus one of households consent to a capital expenditure pass-through. (Amended RSO at 4-39-230(E) and 4-39-230(F)(3)) This impermissibly takes away the judgment of the park owner of whether a capital replacement or capital improvement needs to be accomplished in favor of the tenants. (See *Kavanau v. Santa Monica Rent Control Bd., supra,* 16 Cal. at 772 [noting that procedural mechanisms for rent adjustments must not be unduly burdensome].) The successful operation and maintenance of a luxury mobilehome community such as Mission Bay is the result of strategic management decision-making as to whether capital improvement or capital replacement projects should be undertaken. The replacement or improvement of vital park utilities and infrastructure systems should not be subject to a campaign by the park owner to persuade its residents to vote to increase their monthly rent obligation.

In sum, the Amended RSO imposes substantial constraints on a park owner's existing right to individualized rent increases following investment in capital improvements, most notably by limiting the annual increase in rent solely attributable to capital improvements to four percent (4%) for "Special Circumstances Households" as arbitrarily defined. Capital improvements are necessary to upgrade and improve San Leandro's mobilehome parks and to prevent blight and urban decay of the City's affordable housing stock. By creating a broad class of "Special Circumstance Households" that is composed of an arbitrary and unknown number of mobilehome owners, park owners will refrain from investing in necessary and desirable improvements to their real property, and mobilehome parks within San Leandro will begin a long decline.

C. Artificially Low Interest Allowance Results in Artificially Low Net Operating Income.

The Amended RSO allows a park owner to submit a "fair return application" to attempt to maintain "net operating income" equal to the base year. (Amended RSO at 4-39-217.) However, the method of calculating "net operating income" is unduly restrictive so as to deprive park owners of a fair and reasonable return. Specifically, net income is calculated by subtracting operating expenses from gross rental income. Operating expenses, however, is defined unduly narrowly, in that the interest allowance on amortized expenses, which can be included in operating expenses, is defined to mean "the interest rate on the cost of the amortized expense equal to the 'average rate' for 30-year fixed rate home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey ("PMMS") as of the date of the initial submission of the application." (Amended RSO at 4-39-105(K).)

Such a calculation is artificially low, in that it caps interest at the Freddie Mac rate, which is a government sponsored enterprise attempting to increase homeownership through affordable (i.e., low) mortgage rates. Moreover, it makes no sense why interest for amortized expenses should be tied to mortgage rates, when the amortized expenses and interest which a park owner would seek to include in operating expenses are associated with the interest rates charged by hard money lenders.

Such a restrictive view of operating expenses in turn artificially restricts operating income, which deprives park owners of a fair return on their investment, irrespective of their ability to file a so-called "fair return application."

III. The Proposed Amended Mobilehome Rent Stabilization Ordinance Does Not Include Full Vacancy Decontrol

The Amended RSO claims to permit vacancy decontrol but has a contradictory provision which requires a new base rent not to exceed the ninetieth percentile (90%) of all subject rents then in effect when a tenancy is terminated or a home is voluntarily and permanently removed from the park. (Amended RSO at 4-39-201(C).) Thus, an increase to the base space rent may not actually occur upon vacancy, as it is generally limited to the ninetieth percentile (90%) of all subject rents then in effect. (*Id.*) This will result in older homes within a park having higher base space rents than brand new mobilehomes and/or new park residents. Such a provision defies logic, as it puts older homes and longer term residents at a disadvantage, and is contrary to true vacancy decontrol. It also reflects the City Staff's unfamiliarity with mobilehome rent control laws and ordinances.

IV. The Proposed Amended Mobilehome Rent Stabilization Ordinance Adds Preexisting Protections for Residents

Inexplicably, while the Amended RSO remains largely unchanged from the previous draft, a new section of the ordinance has been added to require just-cause for eviction of mobilehome park residents. (Amended RSO at 4-29-234.) However, under state law, mobilehome park tenants can only be evicted for cause. (Cal. Civil Code § 798.56 [enumerated the seven bases of for-cause eviction in mobilehome parks].) The addition of a redundant just-cause termination provision in the Amended RSO reflects the City Staff's unfamiliarity with laws and regulations governing mobilehome parks and the protections already afforded to residents. City Staff has added redundant protections for residents, while ignoring the unreasonable and unlawful financial burden the Amended RSO (like the previous draft) would create for park owners.

V. The Proposed Amended Mobilehome Rent Stabilization Ordinance Acknowledges the Creation of an Administrative Burden to be Funded by Park Owners and Residents

The Amended RSO notes that the administration of a rent control program will result in attendant costs, **all** of which can be charged as an administrative fee to park owners, of which half (50%) of that fee can be passed on to park residents. (Amended RSO at 4-39-255(B) [emphasis added].) City Staff recognizes additional costs may result in succeeding years as enforcement and administration of the rent control program expands, thus, the Amended RSO provides that the City Council may adopt additional fees in order to enforce or implement the ordinance, which fees may be passed-on to park owners or residents in the City Council's discretion. (Amended RSO at 4-39-255(C).) Such cost-of-living increases on residents in the name of so-called administrative fees creates the very harm this ordinance is designed to prevent, further counseling against instituting a rent control program of administrative fees and red tape. The City should instead consider alternatives, as explained below.

VI. Action on the Proposed Amended Mobilehome Rent Stabilization Ordinance Should be Deferred and Alternatives Considered.

Contrary to the City Council's directive, City Staff has not developed or proposed solutions in the Amended RSO to the various unreasonable and unlawful provisions of the proposed rent control ordinance. This matter should once again be continued so that City Staff can propose meaningful solutions in concert with input from the community, residents, and park owners. If the City Council decides to consider the Amended RSO at Monday's hearing, it must, at the very least, be substantially revised to constitutionally permit park owners to obtain a fair and reasonable rate of return.

The City Council should also consider alternative ways to successfully prevent unreasonable rent increases on tenants within mobilehome parks. For over twenty years, Mission Bay and a Resident Rent Committee have worked together to negotiate agreements which cap yearly rent increases. Every five years for the last twenty-seven years (i.e., since 1992), Park Management and a Resident Rent Committee have met and agreed upon a schedule of annual rent increases, rent increases upon vacancy, and a dispute resolution process. This process, which has resulted in **six** such agreements, has successfully provided residents with protection against unforeseen rent increases, while allowing BS&M to obtain a fair return on investment. This lengthy history of successfully negotiated agreements provides a model process by which to accomplish the goals of a rent control ordinance without depriving a park owner of a fair return on investment, without stymieing needed capital improvements, and without burdening park residents with unnecessary administrative costs. Said differently, City Staff's apparent solution is in search of a problem. Over the past twenty-seven years, the collaborative approach between Park Management and our Resident Rent Committee has worked and worked well. The path charted by City Staff deviates significantly from past successes and creates potential legal challenges ahead.

Sincerely,

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MEN

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Exhibit A

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March 4, 2019

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VIA EMAIL

Honorable Mayor Pauline Russo Cutter
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835 East 14th Street
San Leandro, CA 94577

Re: Proposed Mobilehome Rent Stabilization Ordinance
March 4, 2019 City Council Meeting Agenda Item 10-A

Dear Mayor, Vice Mayor, & Council Members:

My client, Brandenburg, Staedler and Moore ("BS&M"), is the developer, owner, and operator of 14 upscale mobilehome communities throughout the Bay Area, consisting of approximately 3,500 spaces, including Mission Bay Mobilehome Community ("Mission Bay") in San Leandro. Mission Bay is a five-star park, a Community for Older Persons, and the largest mobilehome park in the City of San Leandro. Mission Bay, with 366 spaces represents forty-three percent (43%) of the mobilehome space inventory in the City. Since opening Mission Bay in 1971, BS&M has taken great pride in maintaining and improving the community, upholding its standards as a business and a housing provider, and maintaining positive relations with residents.

For over twenty years, Mission Bay and a Resident Rent Committee have worked together to negotiate agreements which cap yearly rent increases. Every five years since 1992, Park Management and a Resident Rent Committee have met and agreed upon a schedule of annual rent increases, rent increases upon vacancy and a dispute resolution process. This process, which has resulted in *six* such agreements has successfully provided the residents with protection against unforeseen rent increases, while allowing BS&M to obtain a fair return on investment. This lengthy history of successfully negotiated agreements further demonstrates why the proposed rent control ordinance is unnecessary and can accomplish its goals via other means. City Staff claim that the Draft RSO is necessitated by anecdotal reports of increased rents and displacement of mobilehome residents, yet there are no factual findings explaining why the Proposed Mobilehome Rent Stabilization Ordinance ("Draft RSO") is necessary and a reasonable means to ensure mobilehome rents are controlled while also protecting park owners' investment.

Moreover, as discussed in detail below, unfortunately, there are a litany of legal deficiencies which preclude the City Council's consideration and first reading of the Draft RSO at tonight's hearing.

I. Additional Time is Necessary to Adequately Consider the Proposed Mobilehome Rent Stabilization Ordinance.

The Brown Act,[1] California's most prominent open meeting law, insists that the people have a right to remain informed and that government be open and accessible to the public. (See Cal. Govt. Code § 54950 ["The people insist on remaining informed so that they may retain control over the instruments they have created."].) It would be contrary to the purpose and spirit of the Brown Act and related open government laws to consider a first reading of this ordinance barely a month after the City first decided to study its impacts and necessity. The City Council admitted as much in its January 14, 2019, work session, in which it suggested, in PowerPoint slides, that a draft ordinance would be prepared for public comment and review in Spring of 2019 and a final ordinance would be prepared sometime in Summer of 2019. Yet, inexplicably, City Staff has now hastily submitted the Draft RSO and recommended its passage on a mere three business days' notice to the public, a grossly inadequate amount of time for input and review from the public and various stakeholders on this complex issue. This is contrary to California's commitment to open and transparent government, and the laws (such as the Brown Act) which mandate the same.

II. As Currently Written, the Proposed Mobilehome Rent Stabilization Ordinance Deprives Park Owners of a Fair Return on Investment.

The Draft RSO, as currently written, denies park owners a fair and reasonable return, which is an unconstitutional denial of due process. (see e.g., *Federal Power Commission v. Natural Gas Pipeline Co. of America*, 315 U.S. 575, 584–585, 62 S. Ct. 736, 86 L. Ed. 1037 (1942); *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal. 4th 761, 771, 66 Cal. Rptr. 2d 672, 941 P.2d 851 (1997) [explaining that price control, including rent control, must not deprive investors a "fair return" and thereby become "confiscatory"].)

Specifically, the Draft RSO denies park owners a reasonable rate of return in the following ways:

A. Yearly Rent Increases are Capped at the Lesser of 4% or Annual CPI for the Western Region Rather than the Bay Area.

First and most significantly, the RSO proposes to cap yearly rent increases at the lesser of four percent (4%) or the rise in the Bureau of Labor and Statistic's Consumer Price Index ("CPI") for the Western Region. (See Draft RSO at 4-39-212 ["[A] Rent Increase for a Mobilehome Space that shall be equal to the lesser of CPI or four (4) percent of the Rent charged for the Space in the preceding year, except as permitted by this Article in accordance with a CPI Decrease, an In-place Mobilehome transfer, or extraordinary circumstances.].) The language *"the lesser of"* is significant, because for many years this would more likely than not, deprive a park owner of almost *any* rent increase at all. For example, the annual CPI increase for the preceding five years (December to December) in the Western Region has been 1.27% (2014); 1.81% (2015); 2.5% (2016); 3.14% (2017); and 3.06% (2018). (See U.S. Dept. of Labor and Statistics, Western Information Office, Consumer Price Index.) Indeed, since 2000, the CPI in any given year has never been more than 3.7%. (*Id.*) Thus, in many, if not most years, park owners will be denied a fair and reasonable return, based on the current language of the Draft RSO.

Additionally, the Draft RSO bafflingly uses the CPI index for the entire Western Region, which includes the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington, and the territory of Guam. Other Bay Area mobilehome rent control jurisdictions, such as the City of Hayward and the City of San Jose, which has the most mobilehome parks in the state, use the much more appropriate CPI index for the San Francisco-Oakland-Hayward MSA. (See Hayward Ord. No. 89-057 as

[1] Government Code section 54950 *et seq.*

amended through Ord. 08-12 at §2(d); San Jose Muni. Code § 17.22.115.) The annual percent changes in the San Francisco-Oakland-Hayward MSA are much greater than those found in the Western Region's data. For example, the annual CPI increase for the preceding five years (December to December) in the San Francisco-Oakland-Hayward MSA have been 2.67% (2014); 3.18% (2015); 3.53% (2016); 2.94% (2017); and 4.5% (2018), all of which are significantly higher than the Western Region data. Thus, the Western Region data would lead to significantly and artificially lower annual rent increases under the Draft RSO. The appropriate CPI metric, as other Bay Area mobilehome rent control jurisdictions concede, is the San Francisco-Oakland-Hayward MSA data.

Indeed, the City Council knows the current formula is not an appropriate way to calculate a fair and reasonable return. In slides circulated at the City Council's January 14, 2019 work session, you suggested a yearly rent increase the "*greater of* 5% or CPI." Yet, inexplicably, City Staff has now hastily submitted the draft RSO which caps yearly rent increases in a way that deprives park owners of fair and reasonable returns, in that it ties yearly rent increases to very low rates of inflation for the entire Western Region of the United States (including Guam) rather than the more accurate figures from the Bay Area.

B. Capital Improvements and Replacements Cannot Effectively Be Passed Through.

As written, the Draft RSO only allows capital improvements to be passed-through at four percent (4%) of the rent of Special Circumstance Households. (See Draft RSO at 4-39-230(f).) Special Circumstances Households is defined broadly to include homeowners or residents who are 62 years of age or older, low-income, or disabled. Mission Bay is a Community for Older Persons[2] and thus restricts occupancy to at least one person per household to age 55 and over. Because Mission Bay provides the finest senior mobilehome living environment in the City of San Leandro, its residents continue to reside there for many years. Thus, it is estimated that at least 70% or more of households in Mission Bay will qualify as Special Circumstance Households because the mobilehome owner or the lessee of the mobilehome space is age 62 or over and/or disabled or low income. This will effectively prevent pass-through of a disproportionately large portion of the funds necessary for capital improvement projects. This is constitutionally impermissible, as the law requires that park owners obtain a reasonable return on investment, including for capital improvements, (See e.g., *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal. 761, 773 ["[A] rent control law that merely allows a landlord to recoup the bare costs of a necessary capital improvement runs the risk of being confiscatory and thereby violating the landlord's right to due process of law."]; see also *Sierra Lake Reserve v. City of Rocklin* (9th Cir. 1991) 938 F.2d 951, 958, vacated in part (9th Cir. 1993) 987 F.2d 662 ["Breaking even is not enough; the law must provide for a profit on one's investment. Thus, [a rent control ordinance] must do more than simply allow plaintiff to pass through certain costs; it must ensure that plaintiff will receive a reasonable return on those expenditures."].) The RSO as drafted, is clearly unconstitutional, as it would deprive a park owner from recouping capital expenditures, much less making a reasonable rate of return on those expenses. (*Id.*) Instead, the Draft RSO would force a park owner who is already providing a scarce resource in San Leandro, namely senior housing, to subsidize the burden of capital improvements that its tenants will benefit from and enjoy. The inclusion of criteria for a Special Circumstance Household which includes any person over age 62 as limiting of capital improvement pass-throughs unquestionably deprives a senior community park owner of a fair return on investment.

Notably, there are no demonstrated factual findings or nexus related to the categories of Special Circumstances Households and their supposed financial inability to pay a reasonable, fair share of pass-through costs for capital improvements. Rent control ordinances cannot be arbitrary in their attempts to limit excessive rent increases. (See e.g., *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside (1984) 157 Cal.App.3d 887, 897* [noting rent control ordinances must be reasonably

[2] See 42 USC § 3601

calculated to further the city's interest in eliminating excessive rents for spaces in mobile home parks].) Simply delineating the magic age of 62 as a "special circumstance" which precludes effective pass-through of capital improvements, without a demonstrated financial need or other nexus for such a limitation, is an unconstitutionally arbitrary provision. (*Id.*) For instance, of the last ten household applicants to move into Mission Bay, six (i.e., 60%) have a lessee aged 62 or older, which automatically puts those households into the "special circumstance" category without regard to the household's monthly income or ability to pay.

The adoption of the special circumstance language could force BS&M to re-evaluate whether it can continue to operate the Mission Bay as a Community for Older Persons.

Moreover, it is important to note that Mission Bay is 48 years old, and will undoubtedly need to undertake various capital improvement and replacement projects in the future. As currently written the Draft RSO mandates that pass-through of capital replacement projects or capital improvements can only be accomplished via a "fair return application" where evidence is shown that fifty percent (50%) plus one of households have consented to such pass-through. (See Draft RSO at 4-39-230(E) and 4-39-230(F)(3)) This impermissibly takes away the judgment of the park owner of whether a capital replacement or capital improvement needs to be accomplished in favor of the tenants. (See *Kavanau v. Santa Monica Rent Control Bd., supra,* 16 Cal. at 772 [noting that procedural mechanisms for rent adjustments must not be unduly burdensome].) The successful operation and maintenance of a luxury mobilehome community such as Mission Bay is the result of strategic management decision making concerning whether capital improvement or capital replacement projects should be undertaken. The replacement or improvement of vital park utilities and infrastructure systems should not be subject to a campaign by the park owner to persuade its residents to vote to increase their monthly rent obligation.

C. Artificially Low Interest Allowance Results in Artificially Low Net Operating Income.

The Draft RSO is written to allow a park owner to submit a "fair return application" to attempt to maintain "net operating income" equal to the base year. (See Draft RSO at 4-39-217.) However, the method of calculating "net operating income" is unduly restrictive so as to deprive park owners of a fair and reasonable return. Specifically, net income is calculated by subtracting operating expenses from gross rental income. Operating expenses, however, is defined unduly narrowly, in that the interest allowance on amortized expenses, which can be included in operating expenses, is defined to mean "the interest rate on the cost of the amortized expense equal to the 'average rate' for 30-year fixed rate home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey ("PMMS") as of the date of the initial submission of the application."

Such a calculation is artificially low, in that it caps interest at the Freddie Mac rate, which is a government sponsored enterprise attempting to increase homeownership through affordable (i.e., low) mortgage rates. Moreover, it makes no sense why interest for amortized expenses should be tied to mortgage rates, when the amortized expenses and interest which a park owner would seek to include in operating expenses are associated with the interest rates charged by hard money lenders.

Such a restrictive view of operating expenses in turn artificially restricts operating income, which deprives park owners of a fair return on their investment, irrespective of their ability to file a so-called "fair return application."

III. The Proposed Mobilehome Rent Stabilization Ordinance Is Not Exempt From CEQA. San Leandro Must Conduct an Initial Study to Analyze Potential for Urban Decay and Blight.

As outlined above, the Draft RSO imposes substantial constraints on a park owner's existing right to individualized rent increases following investment in capital improvements by limiting the annual increase in rent solely attributable to capital improvements to four (4) percent for "Special Circumstances Households" as defined. Capital improvements are necessary to upgrade and improve San Leandro's mobilehome parks and to prevent blight and urban decay of the City's affordable housing stock. By creating a broad class of "Special Circumstance Households" that is composed of an unknown number of Mobilehome Owners, Park Owners will refrain from investing in necessary and desirable improvements to their real property. As infrastructure deteriorates, the incidents of leaks and spills of drinking water, storm water and sewerage will increase, along with use of diesel generators when electrical systems fail. These incidents will have an impact on the environment.

The Draft RSO will have a reasonably foreseeable indirect physical change in the environment as defined in California Environmental Quality Act section 21065. Therefore, the City's adoption of the Ordinance constitutes a project subject to CEQA and environmental impact analysis must be done of the cumulative impacts of the City's actions. Under the CEQA Guidelines such an ordinance is a project if it creates a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Additionally, it is well settled that "projects" involving a potential for urban decay and blight are subject to CEQA. (See *Bakersfield Citizens for Local Controls v Bakersfield* (2004) 124 Cal.App.4th 1184.) Local decisions that pose the potential to cause a cumulative impact of closures and long-term vacancies, ultimately creating social and economic impacts that can destroy or cause deterioration in existing neighborhoods must be analyzed under CEQA. (See *Black Property Owners Association v Berkeley* (1994) 22 Cal. App. 974 [effects of City's housing policies must be studied upholding City's reliance on Negative Declaration].)

The burden of establishing an exemption from CEQA rests with the government. (See e.g., *Davidon Homes v San Jose* (1997) 54 Cal.App.4th 106, 112, 113.) The present record is devoid of any analysis whatsoever of the potential environmental impacts of the Draft RSO. Conversely, imposing substantial barriers to capital improvements and replacements raise a substantial possibility of a cumulative impact resulting in decay to the environment.

Contrary to the unsupported conclusion that the Draft RSO is exempt from CEQA because it "does not have a potential for causing significant impact to the environment," San Leandro must first analyze the potential that constraints on rent increases will disincentivize capital improvements leading to a cumulative environmental impact of decay and blight within the City's mobilehome parks. The proposed actions are designed to freeze the land in its current use, which includes aging facilities which cannot be feasibly maintained without the ability to raise rents or pass the costs through. Thus, San Leandro has failed to properly analyze the potential that the Draft RSO could cause a significant impact to the environment.

IV. Action on the Proposed Mobilehome Rent Stabilization Ordinance Should be Deferred and Alternatives Considered.

In closing, the aforementioned arguments countenance against considering a first reading of the Draft RSO at tonight's hearing. At the least, this matter should be taken off-calendar to provide additional time for input from the community and various stakeholders. But, if the City Council decides to consider the Draft RSO, it should not adopt the ordinance as written, as it deprives park owners of a fair and reasonable return. Moreover, there are various other ways to successfully prevent unreasonable rent increases on tenants within mobilehome parks, such as Mission Bay's practice of negotiating reasonable rent increases with a residents' committee since the early 1990s, or by considering amendment to the current apartment rent review ordinance to apply to mobilehome parks. Thus, not only is the Draft RSO unfair and unconstitutional as currently drafted, it is unnecessary, based on alternative approaches which will ensure both tenants' and park owners' interests are effectively protected.

Sincerely,

HOPKINS & CARLEY
A Law Corporation

Margaret E. Nanda

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MEN

cc: Ryan Jasinsky
Jeff Smoker
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Chuck Reed, Esq.
(All Via Email)

Exhibit B

CPI-All Urban Consumers (Current Series)

Series Title	All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted
Series ID	CUURS49BSA0
Seasonality	Not Seasonally Adjusted
Survey Name	CPI-All Urban Consumers (Current Series)
Measure Data Type	All items
Area	San Francisco-Oakland-Hayward, CA
Item	All items

Year	Period	Label	Observation Value	12-Month % Change	= or > 4%
1990	M01	1990 Jan	128.5	3.6	
1990	M02	1990 Feb	129.2	4.2	= or > 4.0%
1990	M03	1990 Mar	130.0	3.3	
1990	M04	1990 Apr	130.7	4.2	= or > 4.0%
1990	M05	1990 May	130.8	3.6	
1990	M06	1990 Jun	131.6	4.3	= or > 4.0%
1990	M07	1990 Jul	132.3	3.8	
1990	M08	1990 Aug	133.1	3.9	
1990	M09	1990 Sep	134.0	5.7	= or > 4.0%
1990	M10	1990 Oct	134.6	5.6	= or > 4.0%
1990	M11	1990 Nov	134.7	5.9	= or > 4.0%
1990	M12	1990 Dec	135.1	6.0	= or > 4.0%
1991	M01	1991 Jan	136.7	6.4	= or > 4.0%
1991	M02	1991 Feb	136.1	5.3	= or > 4.0%
1991	M03	1991 Mar	136.3	4.8	= or > 4.0%
1991	M04	1991 Apr	135.8	3.9	
1991	M05	1991 May	136.2	4.1	= or > 4.0%
1991	M06	1991 Jun	137.6	4.6	= or > 4.0%
1991	M07	1991 Jul	138.2	4.5	= or > 4.0%
1991	M08	1991 Aug	139.1	4.5	= or > 4.0%
1991	M09	1991 Sep	139.7	4.3	= or > 4.0%
1991	M10	1991 Oct	139.6	3.7	
1991	M11	1991 Nov	139.8	3.8	
1991	M12	1991 Dec	139.8	3.5	
1992	M01	1992 Jan	140.3	2.6	
1992	M02	1992 Feb	141.0	3.6	
1992	M03	1992 Mar	141.9	4.1	= or > 4.0%
1992	M04	1992 Apr	141.6	4.3	= or > 4.0%
1992	M05	1992 May	141.9	4.2	= or > 4.0%
1992	M06	1992 Jun	141.9	3.1	
1992	M07	1992 Jul	142.2	2.9	
1992	M08	1992 Aug	142.7	2.6	
1992	M09	1992 Sep	143.7	2.9	
1992	M10	1992 Oct	144.3	3.4	
1992	M11	1992 Nov	144.2	3.1	
1992	M12	1992 Dec	144.3	3.2	
1993	M01	1993 Jan	145.1	3.4	
1993	M02	1993 Feb	145.5	3.2	
1993	M03	1993 Mar	145.7	2.7	
1993	M04	1993 Apr	146.8	3.7	
1993	M05	1993 May	146.9	3.5	
1993	M06	1993 Jun	146.1	3.0	
1993	M07	1993 Jul	146.1	2.7	
1993	M08	1993 Aug	146.2	2.5	
1993	M09	1993 Sep	146.5	1.9	
1993	M10	1993 Oct	147.0	1.9	

1993	M11	1993 Nov	147.2	2.1	
1993	M12	1993 Dec	147.0	1.9	
1994	M01	1994 Jan	147.5	1.7	
1994	M02	1994 Feb	147.4	1.3	
1994	M03	1994 Mar	148.2	1.7	
1994	M04	1994 Apr	148.0	0.8	
1994	M05	1994 May	148.3	1.0	
1994	M06	1994 Jun	148.1	1.4	
1994	M07	1994 Jul	148.9	1.9	
1994	M08	1994 Aug	149.4	2.2	
1994	M09	1994 Sep	149.4	2.0	
1994	M10	1994 Oct	149.4	1.6	
1994	M11	1994 Nov	149.8	1.8	
1994	M12	1994 Dec	149.4	1.6	
1995	M01	1995 Jan	150.3	1.9	
1995	M02	1995 Feb	150.5	2.1	
1995	M03	1995 Mar	151.1	2.0	
1995	M04	1995 Apr	151.5	2.4	
1995	M05	1995 May	151.3	2.0	
1995	M06	1995 Jun	151.7	2.4	
1995	M07	1995 Jul	151.5	1.7	
1995	M08	1995 Aug	151.5	1.4	
1995	M09	1995 Sep	152.3	1.9	
1995	M10	1995 Oct	152.6	2.1	
1995	M11	1995 Nov	152.4	1.7	
1995	M12	1995 Dec	152.1	1.8	
1996	M01	1996 Jan	152.9	1.7	
1996	M02	1996 Feb	153.2	1.8	
1996	M03	1996 Mar	152.9	1.2	
1996	M04	1996 Apr	153.9	1.6	
1996	M05	1996 May	155.1	2.5	
1996	M06	1996 Jun	155.2	2.3	
1996	M07	1996 Jul	155.9	2.9	
1996	M08	1996 Aug	155.6	2.7	
1996	M09	1996 Sep	156.3	2.6	
1996	M10	1996 Oct	156.9	2.8	
1996	M11	1996 Nov	156.9	3.0	
1996	M12	1996 Dec	156.0	2.6	
1997	M01	1997 Jan	157.0	2.7	
1997	M02	1997 Feb	157.9	3.1	
1997	M03	1997 Mar	159.2	4.1	= or > 4.0%
1997	M04	1997 Apr	159.6	3.7	
1997	M05	1997 May	159.8	3.0	
1997	M06	1997 Jun	160.0	3.1	
1997	M07	1997 Jul	160.6	3.0	
1997	M08	1997 Aug	161.2	3.6	
1997	M09	1997 Sep	161.6	3.4	
1997	M10	1997 Oct	162.5	3.6	
1997	M11	1997 Nov	162.6	3.6	
1997	M12	1997 Dec	162.6	4.2	= or > 4.0%
1998	M02	1998 Feb	163.2	3.4	
1998	M04	1998 Apr	164.6	3.1	
1998	M06	1998 Jun	165.5	3.4	
1998	M08	1998 Aug	166.6	3.3	
1998	M10	1998 Oct	167.2	2.9	
1998	M12	1998 Dec	167.4	3.0	
1999	M02	1999 Feb	169.4	3.8	
1999	M04	1999 Apr	172.2	4.6	= or > 4.0%
1999	M06	1999 Jun	171.8	3.8	

1999	M08	1999 Aug	173.5	4.1	= or > 4.0%
1999	M10	1999 Oct	175.2	4.8	= or > 4.0%
1999	M12	1999 Dec	174.5	4.2	= or > 4.0%
2000	M02	2000 Feb	176.5	4.2	= or > 4.0%
2000	M04	2000 Apr	178.7	3.8	
2000	M06	2000 Jun	179.1	4.2	= or > 4.0%
2000	M08	2000 Aug	181.7	4.7	= or > 4.0%
2000	M10	2000 Oct	183.4	4.7	= or > 4.0%
2000	M12	2000 Dec	184.1	5.5	= or > 4.0%
2001	M02	2001 Feb	187.9	6.5	= or > 4.0%
2001	M04	2001 Apr	189.1	5.8	= or > 4.0%
2001	M06	2001 Jun	190.9	6.6	= or > 4.0%
2001	M08	2001 Aug	191.0	5.1	= or > 4.0%
2001	M10	2001 Oct	191.7	4.5	= or > 4.0%
2001	M12	2001 Dec	190.6	3.5	
2002	M02	2002 Feb	191.3	1.8	
2002	M04	2002 Apr	193.0	2.1	
2002	M06	2002 Jun	193.2	1.2	
2002	M08	2002 Aug	193.5	1.3	
2002	M10	2002 Oct	194.3	1.4	
2002	M12	2002 Dec	193.2	1.4	
2003	M02	2003 Feb	197.7	3.3	
2003	M04	2003 Apr	197.3	2.2	
2003	M06	2003 Jun	196.3	1.6	
2003	M08	2003 Aug	196.3	1.4	
2003	M10	2003 Oct	196.3	1.0	
2003	M12	2003 Dec	195.3	1.1	
2004	M02	2004 Feb	198.1	0.2	
2004	M04	2004 Apr	198.3	0.5	
2004	M06	2004 Jun	199.0	1.4	
2004	M08	2004 Aug	198.7	1.2	
2004	M10	2004 Oct	200.3	2.0	
2004	M12	2004 Dec	199.5	2.2	
2005	M02	2005 Feb	201.2	1.6	
2005	M04	2005 Apr	202.5	2.1	
2005	M06	2005 Jun	201.2	1.1	
2005	M08	2005 Aug	203.0	2.2	
2005	M10	2005 Oct	205.9	2.8	
2005	M12	2005 Dec	203.4	2.0	
2006	M02	2006 Feb	207.1	2.9	
2006	M04	2006 Apr	208.9	3.2	
2006	M06	2006 Jun	209.1	3.9	
2006	M08	2006 Aug	210.7	3.8	
2006	M10	2006 Oct	211.0	2.5	
2006	M12	2006 Dec	210.4	3.4	
2007	M02	2007 Feb	213.688	3.2	
2007	M04	2007 Apr	215.842	3.3	
2007	M06	2007 Jun	216.123	3.4	
2007	M08	2007 Aug	216.240	2.6	
2007	M10	2007 Oct	217.949	3.3	
2007	M12	2007 Dec	218.485	3.8	
2008	M02	2008 Feb	219.612	2.8	
2008	M04	2008 Apr	222.074	2.9	
2008	M06	2008 Jun	225.181	4.2	= or > 4.0%
2008	M08	2008 Aug	225.411	4.2	= or > 4.0%
2008	M10	2008 Oct	225.824	3.6	
2008	M12	2008 Dec	218.528	0.0	
2009	M02	2009 Feb	222.166	1.2	
2009	M04	2009 Apr	223.854	0.8	

2009	M06	2009 Jun	225.692	0.2	
2009	M08	2009 Aug	225.801	0.2	
2009	M10	2009 Oct	226.051	0.1	
2009	M12	2009 Dec	224.239	2.6	
2010	M02	2010 Feb	226.145	1.8	
2010	M04	2010 Apr	227.697	1.7	
2010	M06	2010 Jun	228.110	1.1	
2010	M08	2010 Aug	227.954	1.0	
2010	M10	2010 Oct	228.107	0.9	
2010	M12	2010 Dec	227.658	1.5	
2011	M02	2011 Feb	229.981	1.7	
2011	M04	2011 Apr	234.121	2.8	
2011	M06	2011 Jun	233.646	2.4	
2011	M08	2011 Aug	234.608	2.9	
2011	M10	2011 Oct	235.331	3.2	
2011	M12	2011 Dec	234.327	2.9	
2012	M02	2012 Feb	236.880	3.0	
2012	M04	2012 Apr	238.985	2.1	
2012	M06	2012 Jun	239.806	2.6	
2012	M08	2012 Aug	241.170	2.8	
2012	M10	2012 Oct	242.834	3.2	
2012	M12	2012 Dec	239.533	2.2	
2013	M02	2013 Feb	242.677	2.4	
2013	M04	2013 Apr	244.675	2.4	
2013	M06	2013 Jun	245.935	2.6	
2013	M08	2013 Aug	246.072	2.0	
2013	M10	2013 Oct	246.617	1.6	
2013	M12	2013 Dec	245.711	2.6	
2014	M02	2014 Feb	248.615	2.4	
2014	M04	2014 Apr	251.495	2.8	
2014	M06	2014 Jun	253.317	3.0	
2014	M08	2014 Aug	253.354	3.0	
2014	M10	2014 Oct	254.503	3.2	
2014	M12	2014 Dec	252.273	2.7	
2015	M02	2015 Feb	254.910	2.5	
2015	M04	2015 Apr	257.622	2.4	
2015	M06	2015 Jun	259.117	2.3	
2015	M08	2015 Aug	259.917	2.6	
2015	M10	2015 Oct	261.019	2.6	
2015	M12	2015 Dec	260.289	3.2	
2016	M02	2016 Feb	262.600	3.0	
2016	M04	2016 Apr	264.565	2.7	
2016	M06	2016 Jun	266.041	2.7	
2016	M08	2016 Aug	267.853	3.1	
2016	M10	2016 Oct	270.306	3.6	
2016	M12	2016 Dec	269.483	3.5	
2017	M02	2017 Feb	271.626	3.4	
2017	M04	2017 Apr	274.589	3.8	
2017	M06	2017 Jun	275.304	3.5	
2017	M08	2017 Aug	275.893	3.0	
2017	M10	2017 Oct	277.570	2.7	
2017	M12	2017 Dec	277.414	2.9	
2018	M02	2018 Feb	281.308	3.6	
2018	M04	2018 Apr	283.422	3.2	
2018	M06	2018 Jun	286.062	3.9	
2018	M08	2018 Aug	287.664	4.3	= or > 4.0%
2018	M10	2018 Oct	289.673	4.4	= or > 4.0%
2018	M12	2018 Dec	289.896	4.5	= or > 4.0%
2019	M02	2019 Feb	291.227	3.5	

2019	M04	2019 Apr	294.801	4.0	= or > 4.0%