

CITY OF HAYWARD MOBILEHOME SPACE RENT STABILIZATION ORDINANCE

City of Hayward Ordinance No. 89-057 C.S.,
as Amended Through Ordinance No. 08-12,
Effective August 29, 2008

TABLE OF CONTENTS

SECTION 1. FINDINGS AND PURPOSE	1
SECTION 2. DEFINITIONS.....	2
SECTION 3. MOBILEHOME SPACE RENT INCREASE LIMITATIONS	4
SECTION 4. INFORMATION TO BE SUPPLIED TENANT	6
SECTION 5. THE RENT DISPUTE RESOLUTION PROCESS	9
SECTION 6. SUBPOENA POWER.....	11
SECTION 7. CONSOLIDATION OF PETITIONS	12
SECTION 8. STANDARDS OF REVIEW.....	12
SECTION 9. NET OPERATING INCOME	14
SECTION 10. OBLIGATIONS OF THE PARTIES.....	17
SECTION 11. TENANT'S RIGHT OF REFUSAL	17
SECTION 12. RETALIATORY EVICTIONS; TENANTS' RIGHT TO ORGANIZE	17
SECTION 13. FEES.....	18
SECTION 14. NONWAIVERABILITY	18
SECTION 15. PENALTIES AND REMEDIES	19
SECTION 16. [REPEALED]	19
SECTION 17. REVIEW BY THE CITY COUNCIL.....	19
SECTION 18. SEVERANCE	20
LEGISLATIVE HISTORY	20
TABLE OF AMENDMENTS	20

SECTION 1. FINDINGS AND PURPOSE

The City of Hayward contains a number of Mobilehome Parks that rent mobilehome spaces to a significant segment of the City's population. The vacancy rate among the mobilehome spaces in these parks is very low and there is a shortage of available spaces in neighboring communities. The cost and risk of potential damage in moving mobilehomes is great, as is the cost of preparing a new site and meeting the code requirements for reinstalling a mobilehome. A significant portion of mobilehome residents in the City are senior citizens, many of whom live on fixed or limited incomes. A majority of mobilehome residents in the City have significant personal and social ties to this community and virtually all mobilehome owners have made a substantial financial investment in their mobilehomes.

Further, this Council observes that the nature of the expenses ordinarily made by Mobilehome Park Owners differs in some respects from the expenses required of persons who own apartment and other residential rental property. This Council also observes that the use of professional hearing officers to resolve rental disputes and the provision of fuller information and notice to Tenants have salutary effects.

These regulations were revised on November 23, 1989, to exempt from the rent increase limitations of the Mobilehome Rent Stabilization Ordinance increases in space rent immediately following an in-place transfer of an mobilehome on a space, sometimes referred to as "vacancy decontrol." From November 23, 1989, to April 28, 1992, when the City Council reinstituted vacancy control, several important purposes of the Mobilehome Rent Stabilization Ordinance were inhibited from being attained, as further described herein. Continuation of rent regulations on spaces following in-place transfers of mobilehomes, sometimes referred to as "vacancy control," is an important part of the City's Mobilehome Rent Stabilization policy as it protects mobilehome owners from excessive space rent increases. Rent stabilization mechanisms, including vacancy control, are consistent with the City's policy to encourage a variety of /housing types, prices, and densities within the community, respond to the need to preserve existing housing stock; and assist in providing housing for low and very low income households. Rent Stabilization regulations, including vacancy control, can assist in protecting affordable housing in combination with City programs and actions designed to reduce costs to the consumer which help to provide a variety of housing types within a range of costs to meet the needs of all income groups.

Current employment forecasts predict an increase in lower paying service and manufacturing jobs which will increase the need for an adequate supply of affordable housing. Over the next decade, census figures indicate there will be a large percentage increase in the population of residents aged 60 and over and such persons often have special housing needs which can be met by mobilehome living. Mobilehomes are often important sources of low and moderate cost housing, making up approximately 5 percent of the City's housing stock. Mobilehomes are frequently occupied by senior citizens and persons on limited incomes.

Vacancy control is intended to insure affordability of mobilehome spaces in the case of in-place transfers of mobilehomes when the mobilehome remains on the space. It is therefore the purpose of the City Council in enacting these provisions to prevent an exploitation of the shortage in vacant mobilehome spaces in the City, to provide Mobilehome Park Owners a guaranteed rate of annual space rent increase that more accurately reflects the rate of inflation given their usual expenses, and to establish an improved process for providing Mobilehome Park Owners a fair return on their property in those cases where the guaranteed annual space rent increase provided by these provisions proves to be insufficient.

SECTION 2. DEFINITIONS.

(a) "Affected Tenants." All Tenants in a Mobilehome Park who have been notified that a space rent increase is to become effective on the same date.

(b) "Arbitrator." A person (1) who is neither a Tenant as that term is defined in this ordinance nor who has an interest in a Mobilehome Park of a nature that would require disqualification under the provisions of the Political Reform Act if the person were an elected state official and (2) a person whom the Rent Review Officer determines meets one of the following criteria:

(1) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Rent Review Officer, provides that person with the knowledge and skills to conduct a space rent dispute arbitration in a professional and successful manner; or

(2) Completion of at least three arbitration proceedings for a superior court or other public entity that involved issues the Rent Review Officer considers similar to those raised in space rent dispute arbitrations.

(c) "Capital Improvements." Those improvements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, and which may be amortized over the useful remaining life of the improvement to the property.

(d) "Consumer Price Index." Consumer Price Index for all Urban Consumers San Francisco-Oakland Area, published by the U.S. Department of Labor, Bureau of Labor Statistics.

(e) "Housing Service." A service provided by the Park Owner related to the use or occupancy of a mobilehome space, which is neither a capital improvement nor substantial rehabilitation as those terms are defined herein, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, laundry facilities, refuse removal, recreational facilities, parking, security service, and employee services.

(f) "In-place Transfer." The transfer of the ownership of a mobilehome with the mobilehome remaining on the mobilehome space following the transfer.

(g) "Mobilehome." A vehicle designed or used for human habitation, including a camping trailer, travel trailer, motor home, and slide-in camper, when used as the principal place of habitation for the occupants thereof.

(h) "Mobilehome Park." Any area of land within the City of Hayward where two or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

(i) "Park Owner." Any owner, lessor, or sublessor of a Mobilehome Park in the City of Hayward, and the representative, agent, or successor of such owner, lessor, or sublessor, who receives or is entitled to receive rent for the use of occupancy of any mobilehome space thereof, and reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

(j) "Mobilehome Space." The site within a Mobilehome Park intended, designed, or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith; provided, however, that the term mobilehome space shall also include the term mobilehome in those cases and in only those cases in which an individual rents or leases both a mobilehome site and the mobilehome located on that site from the Park Owner.

(k) "Mobilehome Tenant." A Tenant, subtenant, lessee, or sublessee, or any other person entitled to the use or occupancy of any mobilehome space.

(l) "Net Operating Income." Net operating income as defined in Section 9 of this ordinance.

(m) "Percent Change in Consumer Price Index." The annual percentage change in the Consumer Price Index, calculated to the nearest tenth, published for the month of February, issued in the month of March. In the event that an index is not published for the month of February, the closest preceding month for which an index is published shall be used.

(n) "Prospective Tenant." A potential Tenant by virtue of his or her consideration of the purchase of mobilehome in a Mobilehome Park.

(o) "Rent." Space rent.

(p) "Rent Increase." Any additional space rent demanded of or paid by a Tenant for a mobilehome space including any reduction in housing services without a corresponding reduction in the amount demanded or paid for rent.

(q) "Rent Review Officer." The person or persons designated by the City Manager to administer and enforce the provisions of this ordinance.

(r) "Rent Stabilization Administration Fee." The fee established from time to time by resolution of the City Council in accordance with the provisions of Section 13 of this ordinance.

(s) "Space Rent." The total consideration, including any bonus, benefit, or gratuity, demanded or received by a Park Owner for or in connection with the use or occupancy of a mobilehome space or any housing services provided with the mobilehome space. Space rent shall not include any amount paid for the use or occupancy of a mobilehome dwelling unit, unless the amount paid for the use or occupancy of a mobilehome is or includes consideration paid to a Park Owner under a rental agreement or other document evidencing tenancy of the mobilehome.

(t) "Substantial Rehabilitation." That work done by a Park Owner to a mobilehome space or to the common area of the Mobilehome Park, exclusive of a capital improvement as that term is defined herein, the value of which exceeds \$200 and which is performed either to secure compliance with any state or local law or to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such work is not reimbursed by insurance or security deposit proceeds.

(u) "Tenant." Mobilehome Tenant.

SECTION 3. MOBILEHOME SPACE RENT INCREASE LIMITATIONS.

(a) Rent Increase Permitted for Cost of Living Increase. Except as provided in Subsections (b), (c), and (f) of this section, from and after March 22, 1985, the space rent payable for use or occupancy of any mobilehome space shall not be increased more than the greater of:

(1) Three percent or

(2) Sixty percent of the percent change in the consumer price index, provided that no rent increase of more than six percent may be imposed.

The Park Owner's notice of rent increase served pursuant to this Subsection shall comply with the requirements of state law and with Subsection 4(b)(1) of this ordinance.

(b) Notice of Pass Through of Rent Stabilization Administration Fee. In the event a Park Owner wishes to increase the space rent payable for any space more than the limit set forth in the preceding Section within a 12-month period in order to apportion to each space on a pro-rata basis the allowable percentage of any increases in rent stabilization administration fees, the following provisions shall apply:

(1) The Park Owner shall provide to all affected Tenants copies of the billing notice or other equivalent documents from the City imposing the rent

stabilization administration fee, together with the calculations used by the Park Owner to determine the amount passed-through to the Tenants. In addition, the Park Owner shall provide all affected Tenants with:

(i) The identity of all other affected Tenants and the spaces which they rent. However, where all spaces in the park are given the increase notice within a one-month period, the Park Owner need only provide a written statement to that effect to the Tenants.

(ii) The address and telephone number of the Rent Review Officer and the fact that the Tenant is encouraged to contact that officer for an explanation of the provisions of this ordinance;

(iii) A copy of the petition form prepared by the Rent Review Officer which initiates the process established by this ordinance.

(2) The documentation required by the preceding paragraph shall precede or accompany the written notice of rent increase required by state law. Failure of the Park Owner to follow the procedure set forth in this Subsection shall be a defense in any action brought to recover possession of a mobilehome space or to collect such rent increase.

(3) Notwithstanding the provisions of Section 8, the standard of review shall be limited to verification of the payment of the rent stabilization administration fee and the calculations used to apportion such fees among the affected Tenants.

(4) A rent increase approved pursuant to the provisions of this Subsection and in accordance with the procedure set forth in Section 5 of this ordinance shall not be considered part of the rent base upon which future rent increases can be made.

(c) Rent Increases For Other Reasons. In the event that a Park Owner wishes to increase the rent payable for any mobilehome space within a 12-month period more than the amount permitted in Subsection (a) for any reason other than the pass through of a rent stabilization administration fee permitted by Subsection 3(b) herein, the notice procedures set forth in Subsections 4(b)(2) shall be followed.

(d) Leases Executed Before March 22, 1980 Not Affected. The rent increase limitations and procedures set forth in this Section shall not apply if doing so would violate the terms of a written lease entered into on or before March 22, 1980.

(e) Equitable Treatment of Similar Tenants Required. No rent increase imposed on any Tenant due to any factor included in sections 8 or 9 of this ordinance, which may reasonably be passed on to all or substantially all Tenants in the park, shall be effective unless the Park Owner

provides notice of rent increases based on such factors to all such Tenants at or about the same time, regardless of the effective dates of such increases.

(f) Freeze on Certain Space Rents. A freeze in space rent shall be affected as set forth below for spaces where there has been an in-place transfer of a mobilehome between November 23, 1989, and April 28, 1992. This Section shall only apply to space rent for spaces upon which there was a transfer of a mobilehome, the mobilehome remained on its space within the park, and the transfer occurred between November 23, 1989, and April 28, 1992. Such space rents shall remain frozen until such time that the lowest rent for a comparable space in a park on the effective date of this ordinance, where no in-place transfer took place between November 23, 1989, and April 28, 1992, attains the same level as the highest amount charged for a space in that park on the effective date of this ordinance and upon which an in-place transfer occurred between November 23, 1989, and April 28, 1992. Upon attainment of the level set forth in the preceding sentence, the space rent freeze provided for in this provision shall be lifted and the rent increase limitation of Subsection (a) of this Section shall then apply.

(g) Information Requirements for In-Place Transfers. Upon each in-place transfer, the Park Owner shall, within 30 days of the execution of the rental agreement between Park Owner and Tenant, give written notice to the Rent Review Officer of the space, old rent, new rent, and names of the previous and new Tenants.

SECTION 4. INFORMATION TO BE SUPPLIED TENANT.

(a) Park Owner's Provision of Ordinance to Tenant. Within 30 days after the effective date of this ordinance and upon rerenting of each mobilehome space thereafter, the Park Owner shall supply each Tenant a current copy of this ordinance.

(b) Rent Increase Notice Requirements. Whenever the Park Owner serves a notice of rent increase, the Park Owner shall at the same time and in the same manner serve the Tenant with a notice that complies with applicable provisions of state law and also sets forth all of the following information:

(1) As to a rent increase based solely on a change in the cost of living permitted by Subsection 3(a) of this ordinance, the Park Owner's notice shall state:

(i) The amount of the rent increase, both in dollars and as a percentage of existing rent; and

(ii) That the Park Owner considers the rent increase consistent with the limitation set forth in Subsection 3(a) of this ordinance; and

(iii) The address and telephone number of the Rent Review Officer and the fact that the Tenant is encouraged to contact the Officer for an explanation of the provisions of Section 3(a) of this ordinance.

- (2) For any notice of rent increase above the cost of living increase permitted by Subsection 3(a) of this ordinance, the Park Owner's notice shall include:
- (i) The amount of the rent increase, both in dollars and as a percentage of existing rent; and
 - (ii) Documentation supporting the level of increase proposed, including at a minimum: a summary of the unavoidable increases in maintenance and operating expenses; a statement of the cost, nature, amortization, and allocation among mobilehome spaces of any substantial rehabilitation or capital improvement; a summary of the increased cost of the Park Owner's debt service and the date and nature of the sale or refinancing transaction; a summary of the Park Owner's net operating income for the preceding 12 months compared to that for the most recent 12-month period before the application to the park of rent stabilization under this ordinance or its predecessors; or other relevant information that supports the level of rent increase desired.
 - (iii) The identity of all other affected Tenants and the spaces which they rent;
 - (iv) A copy of the petition form prepared by the City's Rent Review Office which initiates the arbitration process authorized by this ordinance.
 - (v) Pursuant to Section 11 of the Mobilehome Space Rent Stabilization Ordinance, a mobilehome park owner may not attempt to recover possession of a mobilehome space based on the failure of the resident to pay the contested portion of the proposed space rent increase.

(c) Notice of Service Certification. The Park Owner and Tenant shall execute a single document stating that the information, documents, or notices required by this ordinance have been received by the Tenant. The original of the document acknowledging receipt of information, documents, or notices required by this Section shall be retained by the Park Owner and a copy thereof provided to the Tenant. In the event a Tenant fails or refuses to execute the document required herein within 10 days after the Park Owner's request that the Tenant do so, the Park Owner shall prepare a declaration under penalty of perjury stating that the information, documents, or notices required by this Section have been delivered to the Tenant, the date the Park Owner requested the Tenant to sign the joint document acknowledging receipt, and the date the declaration was executed.

(d) Notice to Accompany Initial Rental Agreement. In addition to the notice required by state law, the Park Owner shall provide a notice which conforms to the following language and is printed in bold lettering of the same type size as the largest type size used in the rental agreement to the Tenant or Prospective Tenant at the time of presentation of a rental agreement creating a tenancy with a term greater than 12 months:

IMPORTANT NOTICE TO HOMEOWNER REGARDING THE PROPOSED
RENTAL AGREEMENT FOR _____ MOBILEHOME
PARK.

PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM IN EXCESS OF 12 MONTHS. BY SIGNING THIS RENTAL AGREEMENT, YOU ARE EXEMPTING THIS MOBILEHOME SPACE FROM THE PROVISIONS OF THE CITY OF HAYWARD MOBILEHOME RENT STABILIZATION ORDINANCE, FOR THE TERM OF THIS RENTAL AGREEMENT. THE CITY OF HAYWARD MOBILEHOME RENT STABILIZATION ORDINANCE, AND THE STATE MOBILEHOME RESIDENCY LAW (CALIFORNIA CIVIL CODE SECTION 798 *et seq.*) GIVE YOU CERTAIN RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT YOU MAY CHOOSE TO SEE A LAWYER. UNDER THE PROVISIONS OF STATE LAW, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR (1) A TERM OF 12 MONTHS, OR (2) A LESSER PERIOD AS YOU MAY REQUEST, OR (3) A LONGER PERIOD AS YOU AND THE MOBILEHOME PARK OWNER MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR 30 DAYS BEFORE ACCEPTING OR REJECTING IT. IF YOU SIGN THE AGREEMENT YOU MAY CANCEL THE AGREEMENT BY NOTIFYING THE MOBILEHOME PARK OWNER IN WRITING OF THE CANCELLATION WITHIN 72 HOURS OF YOUR EXECUTION OF THE AGREEMENT. IT IS UNLAWFUL FOR A MOBILEHOME PARK OWNER TO DISCRIMINATE AGAINST YOU BECAUSE OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE CITY OF HAYWARD MOBILEHOME RENT STABILIZATION ORDINANCE, OR BECAUSE OF YOUR CHOICE TO ENTER INTO A RENTAL AGREEMENT WHICH IS SUBJECT TO THE PROVISIONS OF THAT LAW.

The notice shall contain a place for the Tenant or Prospective Tenant to acknowledge receipt of the notice and shall also contain an acknowledgement signed by the Park Owner that the notice has been given to the Tenant or Prospective Tenant in accordance with this section. A copy of the notice executed by the Park Owner shall be provided to the Tenant or Prospective Tenant.

(e) Improper Collection of Rents. A Park Owner who fails to provide a Tenant or Prospective Tenant the information, documents, or notices required by this Section shall not be entitled to collect any rent increase otherwise authorized by this ordinance from that Tenant or Prospective Tenant nor to any rent increase that might otherwise be awarded by an Arbitrator and such failure by the Park Owner shall be a defense in any action brought by the Park Owner to recover possession of a mobilehome space or to collect any rent increase from the Tenant.

(f) Park Owner's Correction of Notice Defects. A Park Owner may rectify a failure to provide any information, document, or notice required by this ordinance as follows: The Park Owner shall provide the correct information, document, or corrected notice to each affected Tenant

and Prospective Tenant for the full period required by applicable law before collecting any rent increase otherwise authorized hereunder or initiating an action for possession of the space. In addition, the Park Owner shall also serve with such corrected information, document, or notice a written statement informing the Tenant of the right to file a Petition for Space Rent Arbitration in accordance with Section 5 if the Tenant believes that such corrected information, document or notice is deficient. The Park Owner shall pay or reimburse the City for any costs of scheduling the arbitration, including the Arbitrator's fees, if the Park Owner serves the corrected information, document or notice after an arbitration hearing has been scheduled based on a petition challenging the erroneous information, document, or notice earlier provided by the Park Owner.

SECTION 5. THE RENT DISPUTE RESOLUTION PROCESS.

(a) **Tenant Right to Contact Rent Review Officer.** The Tenant may contact the Rent Review Officer for an explanation of the provisions of this ordinance.

(b) **Service Reduction Claims.** Any Tenant who believes that a housing service has been reduced by a Park Owner in violation of this ordinance, and desires to have such service restored or the rent adjusted shall submit a written request for restoration of such housing service or rent reduction no later than one year after the Tenant's actual discovery of such housing service reduction or one year after a prudent person exercising reasonable care would have discovered the service reduction. Upon receipt of such notice, the Park Owner shall respond to the Tenant within 30 days. If the Homeowner and Tenant are not able to resolve their dispute over the alleged housing service reduction, the Tenant shall file a Petition for Space Rent Arbitration with the Rent Review Office no later than two years after the Tenant's discovery of such housing service reduction. Any change in the severity of a service reduction shall give rise to a new claim and the deadlines for service of notice to the Park Owner and the filing of a Petition start to run anew when the Tenant actually discovers or should have discovered the increase in service reduction.

(c) **Petition.** If the Park Owner and Tenant do not resolve the housing service reduction or rent increase dispute between them, the Tenant may file with the Rent Review Officer a Petition for Space Rent Arbitration. The Petition shall be filed with a copy of the notice of rent increase, if applicable, within 30 days after service of the notice of rent increase, or no later than two years after the Tenant's discovery of a housing service reduction. If there are more than ten affected mobilehome spaces as shown on the notice required by Section 3(b) or 4(b) of this ordinance, the Rent Review Officer shall not accept a petition for filing unless it has been signed by Tenants representing at least 51 percent of all affected mobilehome spaces.

(1) **Mandatory Meet And Confer Session.** Upon receipt of a Petition for Rent Review, the Rent Review Officer shall schedule a mandatory meet and confer session with the Park Owner, representative(s) of the Tenant(s), and the Rent Review Officer or a professional facilitator. The purpose of the meet and confer session(s) will be to have the parties review the notice of rent review and any evidence supporting the proposed rent increase. The parties shall participate in good faith and attempt to resolve the dispute informally.

(2) Summary Review of Petition Sufficiency. Any interested person who wishes to contest the sufficiency of a petition may file a written request with the Rent Review Office for a review of the adequacy of the petition. The filing fee and charge for the review of such request shall be \$100.00 (one hundred dollars) and shall be paid by the person requesting such review. The Rent Review Office shall notify the Petitioner of such request for review of the petition and assign a hearing officer to review the matter. Such review shall be based solely on the written documents submitted by the affected parties. The hearing officer shall render a decision within 10 days after the matter has been referred by the Rent Review Office. If the hearing officer determines the petition does not state a claim for relief pursuant to the provisions of this ordinance, the petitioner shall be allowed to amend the petition once within the 12 month period immediately following the hearing officer's decision. If an amended petition is challenged and found to have no merit, the hearing officer may award the cost of the second review proceeding against the petitioner.

(d) Assignment of Hearing Officer and Hearing Date. Upon completion of the mandatory meet and confer session(s), the Rent Review Officer shall, within five working days provide to the parties a list of at least five hearing officers selected from a list of qualified individuals provided to the City by organizations who provide hearing officers, mediators, or arbitrators for administrative hearings. Within ten days of the receipt of the names of the possible hearing officers, the Rent Review Office shall convene the parties for the purpose of selecting the hearing officer. Each party, commencing with the Tenants first and then the Park Owner, shall strike one name from the list until only one name remains. The remaining name shall become the Hearing Officer for the hearing. The Rent Review Officer shall set a date for the arbitration hearing at the earliest possible date based on the availability of the selected Hearing Officer. The Park Owner and Tenants shall be notified immediately in writing by the Rent Review Officer of the date, time, and place of the hearing, and this notice shall be served either in person or by ordinary mail.

(e) Arbitration Hearing.

(1) The Park Owner and Tenants may appear at the arbitration and offer oral and documentary evidence. Both the Park Owner and the Tenant(s) may designate a representative or representatives to appear for them at the hearing. Such designation shall be in writing. The Arbitrator may grant or order continuances of the initial arbitration hearing upon a finding of good cause. No hearing shall be continued for more than 75 days from the initial hearing date, unless all parties agree thereto. The burden of proving that the amount of rent increase is reasonable shall be on the Park Owner.

(2) The Arbitrator shall, within 10 days of the hearing, submit a written statement of decision and the reasons for the decision by mail to the Rent Review Officer who shall forthwith distribute copies of the decision by mail to the Park Owner

and Tenant(s). The Arbitrator shall determine the amount of rent increase, if any, which is reasonable based upon all the provisions of this ordinance.

(3) The decision of the Arbitrator is final and shall be stayed for a period of 90 days. It becomes effective and binding upon the Park Owner and all affected Tenants as follows:

(i) On the 91st day after the mailing of the arbitration decision where no petition for judicial review is timely filed and served; or,

(ii) Alternatively, in accordance with a final judgment, on the day the judgment sustaining the arbitration decision or portion thereof becomes final.

(4) Judicial Review of Arbitration Decision. A Park Owner or Tenant who wishes to contest an arbitration decision shall file and complete service of a petition for judicial review of the arbitration decision in accordance with the filing deadlines set forth in Code of Civil Procedure 1094.6. The petition shall be served on the City Clerk, and the City Clerk shall mail by first class mail, return receipt requested, a copy of the petition to the Tenant representative designated in the Petition for Rent Review within ten days of the date of service of the petition for judicial review. Exhaustion of administrative remedies and compliance with the deadlines set forth in this subsection shall be jurisdictional.

(f) Limitation on Arbitration Relief. An Arbitrator may require an adjustment of rents for a period not to exceed three years prior to the filing of a rent adjustment petition. This limitation on relief may be tolled if the Arbitrator finds that an affected Tenant was unaware of the existence of an ordinance violation due to either Park Owner misconduct or other good cause beyond the Tenant's control during a specified period of time.

SECTION 6. SUBPOENA POWER.

Subpoenas, including subpoenas duces tecum, requiring a person to attend a particular time and place to testify as a witness, may be issued in connection with any dispute pending before an Arbitrator, and shall be issued at the request of the Rent Review Officer, an Arbitrator, or a party. Subpoenas shall be issued and attested by the City Clerk in the name of the City. A subpoena duces tecum shall be issued only upon the filing with the City Clerk of an affidavit showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceeding, and stating that the witness has the desired matters or things in his or her possession or under his or her control, and a copy of such affidavit shall be served with the subpoena. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance may be

served in person or by certified mail, return receipt requested, and must be served at least five days before the hearing for which the attendance is sought. Service by certified mail shall be complete on the date of receipt. Notwithstanding any other provision of this ordinance, any time limits set forth in this ordinance shall be extended for such time as is necessary, but not longer than five days, if a subpoena has been served and five days have not elapsed since the service. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance shall be deemed issued by and in the name of the City Council.

SECTION 7. CONSOLIDATION OF PETITIONS.

As soon as possible after a petition has been filed with respect to mobilehome spaces which are within a single park, the Rent Review Officer shall, to the extent possible consistent with the time limitations provided herein, consolidate petitions involving 10 or fewer affected Tenants.

SECTION 8. STANDARDS OF REVIEW.

In evaluating the space increase proposed or imposed by the Park Owner other than the cost of living increase permitted by Subsection 3(a), and the pass through of rent stabilization administration fees permitted by Subsection 3(b), the following factors may be considered:

(a) Unavoidable increases in maintenance and operating expenses, including but not limited to the reasonable value of the Park Owner's labor and any increased costs for services provided by a public agency, public utility, or quasi-public agency or utility, provided, however, that any increased costs in rent stabilization administration fees shall be subject to the provisions of Sections 3(b) and 13 herein.

(b) The substantial rehabilitation or the addition of capital improvements, including the reasonable value of the Park Owner's labor, as long as such rehabilitation or improvement has been completed and is:

- (1) Distinguished from ordinary repair or maintenance;
- (2) For the primary benefit, use, and enjoyment of the Tenants;
- (3) Permanently fixed in place or relatively immobile and appropriate to the use of the property;
- (4) Not coin-operated nor one for which a "use fee" or other charge is imposed on Tenants for its use; and
- (5) Cost-factored and amortized over the good faith estimate of the remaining useful life of the rehabilitation or improvement.

(c) Increased costs of debt service due to a sale or refinancing of the park within 12 months of the increase provided that:

(1) The sale or refinancing is found to have been an arm's length transaction;

(2) The Park Owner's rate of return on the investment is found to be fair; and

(3) The aggregate amount from which total debt service costs arise constitutes no more than 70 percent of the value of the property as established by the lender's appraisal, and no more than 80 percent of the total debt service costs are passed through.

(d) The rental history of the space or the park of which it is a part, including:

(1) The presence or absence of past increases;

(2) The frequency of past rent increases; and

(3) The occupancy rate of the park in comparison to comparable parks in the same general area.

(e) The physical condition of the mobilehome space or park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding 12 months.

(f) Any increase or reduction of housing services since the last rent increase.

(g) Existing space rents for comparable spaces in comparable parks.

(h) A decrease in net operating income as provided in Section 9.

(i) A fair return on the property prorated among the spaces of the park.

(j) Other financial information which the Park Owner is willing to provide.

(k) In any case where the Arbitrator determines that a reduction in services has effectively resulted in an increase of rent without notice thereof, the Arbitrator may either order the Park Owner to fix, repair, or otherwise cure the reduction in services, or reduce the rent owed to the Park Owner in an amount that will compensate the Tenant for such reduction in services.

SECTION 9. NET OPERATING INCOME.

In evaluating a space rent increase imposed by a Park Owner to maintain the Park Owner's net operating income from the park, the following definitions and provisions shall apply:

(a) "Net Operating Income" of a Mobilehome Park means the gross income of the park less the operating expenses of the park.

(b) "Gross Income" means the sum of the following:

(1) Gross space rents, computed as gross space rental income at 100 percent occupancy; plus

(2) Other income generated as a result of the operation of the park, including but not limited to fees for services actually rendered; plus

(3) Revenue received by the Park Owner from the sale of gas and electricity to park residents where such utilities are billed individually to the park residents by the Park Owner. This revenue shall equal the total cost of the utilities to the residents minus the amount paid by the Park Owner for such utilities to the utility provider; minus

(4) Uncollected space rents due to vacancy and bad debts to the extent that the same are beyond the Park Owner's control. Uncollected space rents in excess of 3 percent of gross space rents shall be presumed to be unreasonable unless established otherwise and shall not be included in computing gross income. Where uncollected space rents must be estimated, the average of the preceding three years experience shall be used.

(c) "Operating Expenses" means:

(1) Real property taxes and assessments.

(2) Utility costs to the extent that they are included in space rent.

(3) Management expenses including the compensation of administrative personnel, including the value of any mobilehome space offered as part of compensation for such services, reasonable and necessary advertising to ensure occupancy only, legal and accounting services as permitted herein, and other managerial expenses. Management expenses are presumed to be not more than 5 percent of gross income, unless established otherwise.

(4) Normal repair and maintenance expenses for the grounds and common facilities including but not limited to landscaping, cleaning, and repair of equipment

and facilities.

(5) Owner-performed labor in operating or maintaining the park. In addition to the management expenses listed above, where the Park Owner performs managerial or maintenance services which are uncompensated, the Park Owner may include the reasonable value of such services. Owner-performed labor shall be limited to 5 percent of gross income unless the Arbitrator finds that such a limitation would be substantially unfair in a given case. A Park Owner must devote substantially all of his or her time, that is, at least 40 hours per week, to performing such managerial or maintenance service services in order to warrant the full 5 percent credit of his or her labor as an operating expense. No credit for such services shall be authorized unless a Park Owner documents the hours utilized in performing such services and the nature of the services provided.

(6) Operating supplies such as janitorial supplies, stationary, and so forth.

(7) Insurance premiums prorated over the life of the policy.

(8) Other taxes, fees, and permits, except as provided in Section 13.

(9) Reserves for replacement of long term improvements or facilities, provided that accumulated reserves shall not exceed 5 percent of gross income.

(10) Necessary capital improvement costs exceeding existing reserves for replacement. A Park Owner may include the cost of necessary improvement expenditures which would exceed existing reserves for replacement. A necessary capital improvement shall be an improvement required to maintain the common facilities and areas of the park in a decent, safe, and sanitary condition or to maintain the existing level of park amenities and services.

Expenditures for capital improvements to upgrade existing facilities or increase amenities or services shall be an allowable operating expense only if the Park Owner has:

(i) Consulted with the park residents prior to initiating construction of the improvements regarding the nature and purpose of the improvements and the estimated cost of the improvements.

(ii) Obtained the prior written consent of at least one adult resident from a majority of the mobilehome spaces to include the cost of the improvement as an operating expense. Evidence of such consent must be presented at the time of filing the application seeking to include such a capital improvement expenditure as an operating expense. Any capital improvement expense shall be amortized over the reasonable life of the improvement or such other period as may be

deemed reasonable by the Arbitrator under the circumstances. In the event that the capital improvement expenditure is necessitated as a result of an accident, disaster, or other event for which the Park Owner receives insurance benefits, only those capital improvement costs otherwise allowable exceeding the insurance benefits may be calculated as operating expenses.

(11) Involuntary refinancing of mortgage or debt principal. A Park Owner may, under the provisions of this Subsection, be able to include certain debt service costs as an operating expense. Such costs are limited to increases in interest payments from those interest payments made during 1979 or the first year such payments were made if the Park Owner acquired the park after 1979 which result from one of the following situations or the equivalent thereof:

(i) Refinancing of the outstanding principal owed for the acquisition of a park where such refinancing is mandated by the terms of a financing transaction entered into prior to December 1, 1984, for instance, termination of a loan with a balloon payment; or

(ii) Increased interest costs incurred as a result of a variable interest rate loan used to finance the acquisition of the park and entered into prior December 1, 1984.

In refinancing, increased interest shall be permitted to be considered as an operating expense only where the Park Owner can show that the terms of the refinancing were reasonable and consistent with prudent business practices under the circumstances.

(d) Operating expenses shall not include the following:

(1) Debt service expenses, except as provided in Subsection (a)(ii), above.

(2) Depreciation.

(3) Any expense for which the Park Owner is reimbursed.

(4) Attorneys' fees and costs incurred in proceedings before an Arbitrator, or in connection with legal proceedings against an Arbitrator or with challenging this ordinance.

(e) All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the Park Owner shall bear the burden of proving the reasonableness of the expense. To the extent that an Arbitrator finds any such expense to be unreasonable, the Arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.

SECTION 10. OBLIGATIONS OF THE PARTIES.

(a) If a final decision by an Arbitrator finds that a proposed increase or any portion thereof that was previously inoperative is justified, the Tenant shall pay the amount found justified to the Park Owner in accordance with the decision of the Arbitrator including the effective date of the proposed space rent increase.

(b) If a final decision by an Arbitrator finds that an increase or any portion thereof is not justified, the Park Owner shall refund any amount found to be unjustified, but that had been paid by the Tenant, within 30 days after the arbitration decision becomes effective. If such refund is not made within such time period, the Tenant may withhold the amount from the next space rent(s) due until the full amount of the refund has been made, except that, in the event that the tenancy of Tenant is terminated for any reason prior to full credit against rent, the balance of the credit due the Tenant shall be paid by the Park Owner within 30 days from the date of the termination of the tenancy.

SECTION 11. TENANT'S RIGHT OF REFUSAL.

The failure of a Tenant to pay a space rent increase which is the subject of a Petition for Space Rent Arbitration as provided for under Section 5 of this ordinance shall not be a basis for the Park Owner to recover possession of a mobilehome space. Such refusal to pay may be a defense in any action brought to recover possession of a mobilehome space or collect the rent increase.

SECTION 12. RETALIATORY EVICTIONS; TENANTS' RIGHT TO ORGANIZE.

(a) No Park Owner may retaliate against a tenant for the Tenant's assertion or exercise of rights under this ordinance in any manner, including but not limited to: threatening to bring or bringing an action to recover possession of a mobilehome space; engaging in any form of harassment that causes a Tenant to quit the premises; decreasing housing services; increasing the space rent; or imposing or increasing a security deposit or any other charge payable by a Tenant.

(b) In an action by or against the Tenant, evidence of the assertion or exercise by the Tenant of his or her rights under this ordinance or other activity in furtherance of Tenants' rights and organizations within six months prior to the alleged act of retaliation shall create a presumption affecting the burden of producing evidence that the Park Owner's conduct was in retaliation for the Tenant's assertion or exercise of rights under this ordinance.

(c) It is unlawful for any Mobilehome Park Owner to discriminate against any Tenant or Prospective Tenant of a mobilehome because of the Tenant or Prospective Tenant's choice to enter into a rental agreement subject to the provisions of this ordinance.

SECTION 13. FEES.

The costs of administration of this ordinance shall be reimbursed in full to the General Fund by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the City. The Park Owner who pays these fees may pass through up to 50 percent of the fees assessed against a mobilehome space to the Tenant pursuant to the provisions of Section 3(b) herein. The remaining 50 percent of the fees assessed against a mobilehome space shall not be passed on in any way to Tenants.

The fees imposed by this Section shall be paid annually with the Park Owner's business license tax. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this Section shall be as provided in Article 1 of Chapter 8 of the Hayward Municipal Code. The City Manager and Rent Review Officer shall recommend to the City Council the amount of such fee and the City Council shall adopt such fee by resolution.

If the Park Owner elects to pass on a percentage of the fee, the Park Owner shall comply with the requirements of Subsection 3(b) and send a notice to the Tenant in substantially the following form:

"NOTICE TO TENANTS"

Pursuant to the provisions of Section 13 of the City of Hayward's Mobilehome Space Rent Stabilization Ordinance No. 92-29, Mobilehome Park Owners are required to pay an administration fee to the City on an annual basis to defray the costs of administering the ordinance. The fee is charged against each mobilehome space in the City. The ordinance further provides that the Park Owner may collect up to 50 percent of this fee from the mobilehome space rent Tenants by passing through this cost to the Tenants on a monthly or annual basis.

"The rent stabilization fee imposed for 20____ reflects costs incurred during the calendar year of 20____. The fee for this year is _____ per mobilehome space. The Park Owner has paid the full amount of the fee to the City and has decided to exercise the option to collect a portion of the fee from the mobilehome space rent Tenants. Your _____ percent share of this fee is _____ per mobilehome space. The amount of _____ will be added to your monthly bill for the next 12 months. Please remit the full amount of _____ to _____ by check payable to _____ within 30 days."

SECTION 14. NONWAIVERABILITY.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this ordinance is waived or modified, is against public policy and void.

SECTION 15. PENALTIES AND REMEDIES.

In addition to those remedies set forth elsewhere in this ordinance, the following penalties and remedies shall apply:

- (a) **Receipt of Rent to Which Park Owner is Not Entitled.** Any Park Owner who demands, accepts, receives or retains any money as rent from a Tenant to which the Park Owner is not entitled under the provisions of this ordinance shall be liable to the Tenant for any actual damages, attorney's fees, and costs incurred by the Tenant as a consequence thereof. In addition thereto, the Park Owner shall be liable for an additional penalty of \$500 upon the Arbitrator's finding that the Park Owner willfully violated the provisions of this ordinance, or \$1,000 upon the Arbitrator's finding that the Park Owner acted willfully and in bad faith. The Tenant shall bear the burden of proving entitlement to these penalties.
- (b) **Failure to Provide Required Notices.** Except as provided hereinafter, any Park Owner who fails to provide a Tenant with any information, documentation, or notice required by the provisions of this ordinance or who threatens, intimidates, or otherwise coerces any Tenant from circulating, signing, or remaining a signatory to a rent petition, shall be guilty of an infraction. The intent of this provision is not to prevent mere discussion between Park Owners and Tenants where the effect of such discussions is not to threaten, intimidate, or coerce the Tenants. The City Attorney or the City Attorney's designated representative shall have and hereby is vested with the authority to enforce the information, documentation, and notice provisions of this ordinance, in the manner provided by California Penal Code Section 836.5, against any person who violates the information, documentation or notice provisions.
- (c) **Infraction and Misdemeanor Penalties.** The first conviction of a Park Owner of any provision of this ordinance requiring provision of information, documentation, or notice to a Tenant, or requiring a refund of rents paid by a Tenant in trust and interest accrued thereon, shall be punishable by the imposition of a fine of not more than \$100, the second conviction by a fine of not more than \$200, and the third by a fine of not more than \$500. Any Park Owner who has been convicted of three or more infractions for violating any such provision of this ordinance shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000 or by six months imprisonment, or both, for each additional violation.

SECTION 16. [REPEALED].

SECTION 17. REVIEW BY THE CITY COUNCIL.

The City Council shall review the effectiveness of this ordinance in addressing the problems giving rise to its enactment on or before January 25, 2001, and take appropriate legislative action thereon.

SECTION 18. SEVERANCE.

Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of this ordinance, which shall continue in full force and effect, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

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LEGISLATIVE HISTORY

Ordinance Nos. 80-004 C.S., 80-013 C.S., 83-001 C.S., 85-006 C.S., 85-007 C.S., 89-057 C.S., 91-23, and 92-06. Resolution 92-097. Ordinance Nos. 92-29, 94-10, 94-20, 94-26, 95-23, 96-09, 04-05 and 05-02.

MOBILEHOME SPACE RENT STABILIZATION ORDINANCE LEGISLATIVE HISTORY AND TABLE OF AMENDMENTS

80-004 C.S.

Introduced February 11, 1980; Adopted February 19, 1980; Effective March 20, 1980.

80-013 C.S.

83-001 C.S.

85-006 C.S.

85-007 C.S.

Amended Section 1, Findings and Purpose; Section 2, Definitions. Introduced and Adopted March 5, 1985; Effective March 22, 1985.

89-057 C.S.

5, the Rent Dispute Resolution Process; Section 6, Subpena Power; Section 7, Consolidation of Petitions; Section 8, Standards of Review; Section 9, Net Operating Income; Section 10, Obligations of the Parties; Section 11, Tenant's Right of Refusal; Section 12, Retaliatory Evictions/Tenant's Rights to Organize; Section 13, Fees; Section 14, Nonwaiverability; Section 15, Penalties and Remedies; Section 16, Termination; Section 17, Review by the City Council; Section 18, Severability. Introduced October 3, 1989; Adopted October 24, 1989; Effective November 23, 1989.

Ord. 91-23

September 24, 1991; Effective October 24, 1991.

Ord. 92-06

Section 20, Excessive Interim Increases; Section 21, Notice of Transfer; Section 22, Adjusted Base

Rent; Section 23, Rebate of Excessive Interim Rent Increases; Section 24, Adjusted Monthly Rent; Section 25, Notification of Adjusted Rent; Section 26, Administrative Calculation of Rent; Section 27, Fair Return Hearing; Section 28, Fees; Section 29, Effective Date of Adjusted Monthly Rent; Section 30, General Interim Provisions; Section 31, Termination of Interim Regulation. Introduced February 18, 1992; Adopted March 10, 1992; Effective April 9, 1992.

Res. 92-097
1992.

Ord. 92-29
Resolution Process; Section 6, Subpena Power; Section 7, Consolidation of Petitions; Section 8, Standards of Review; Section 9, Net Operating Income; Section 10, Obligations of the Parties; Section 11, Tenant's Right of Refusal; Section 12, Retaliatory Evictions/Tenants' Right to Organize; Section 13, Fees; Section 14, Nonwaiverability; Section 15, Penalties and Remedies; Section 16, Termination; Section 17, Review by the City Council; Section 18, Severability. Introduced September 8, 1992; Adopted September 22, 1992; Effective October 22, 1992.

Ord. 94-10
Adopted April 5, 1994; Effective May 5, 1994.

Ord. 94-20

Ord. 94-26
Amended Section 11, Tenant's Right of Refusal; Section 15, Penalties and Remedies; Section 16, Termination; and Section 17, Review by the City Council. Introduced November 22, 1994; Adopted December 6, 1994; Effective January 30, 1995.

Ord. 95-23
pertaining to rent increase notice and 4(e) pertaining to improper collection of rents. Amended Subdivision 5(b) pertaining to service reduction claims, Subdivision 5(c) pertaining to arbitration petition and alternative dispute resolution procedures, Subdivision 5(d) pertaining to assignment of hearing officers and added Subdivision 5(e) pertaining to mediation and binding arbitration hearings. Amended Section 8 pertaining to standards of review in rent increase hearings for reasons other than cost of living increases permitted by Subdivision 3(b). Amended Section 13 to exclude costs of ADR proceedings from calculation of rent stabilization administration fee. Amended Section 16 to extend sunset date to January 25, 2001. Amended Section 17 to require review of the ordinance on or before October 25, 2000. Introduced November 21, 1995; Adopted November 28, 1995; Effective December 27, 1995.

Ord. 96-09
delete publication requirements for notice of such review. Introduced February 13, 1996; Adopted February 27, 1996; Effective March 28, 1996.

Ord. 04-05
Amended Section 5, Subdivision 5(c)(1) pertaining to Mandatory Meet and Confer Session, Subdivision 5(d), Assignment of Hearing Officer and Hearing Date, Subdivision 5(e)(4) Judicial Review of Arbitration Decision, Deleted Subdivision 5(c)(2), Renumbered Subdivision 5 (c)(3) to Subdivision 5(c)(2). Introduced March 23, 2004; Adopted March 30, 2004; Effective April 30,

2004.

Ord. 05-02

Amended Section 4(b)(2) by adding Subsection (v), amended Section 4(e), Section 5 (c) amended by removing language, amended Section 10(a), amended Sections 10(c)(1), (2), and (3) by removing in its entirety, amended Section 10(d) by removing in its entirety, amended Section 11, and amended Section 18-Severability. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption. Introduced February 8, 2005; Adopted February 15, 2005; Effective March 17, 2005.

Ord. 08-12

Amended Section 4(b)(2)(iv) by removing language, amended Section 5(b), (c) by removing ADR language, and (g) by removing in its entirety, amended Section 6, amended Section 13 by removing language, updated "Notice to Tenants", Section 18 by replacing Severability with Severance. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of this adoption. Introduced July 22, 2008; adopted July 29, 2008; Effective August 29, 2008.