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Staff Report for a Proposed City of San Leandro City Council Ordinance to Add Mobilehome Space Rent Stabilization to the City of San Leandro Municipal Code (An Ordinance that Would Regulate Space Rents in San Leandro Mobilehome Parks)

SUMMARY AND RECOMMENDATIONS

Mobilehome Parks represent an important stock of affordable housing in cities and counties throughout California. There are nine (9) Mobilehome Parks in San Leandro. In the last two years, there have been two Mobilehome Parks in the City that have changed ownership: Trailer Haven (September 2016) and Bayshore Commons, which was formerly Estudillo Trailer Park (October 2017). Subsequent to the changes in ownership, City staff received anecdotal reports of displacement and space rent increases. The Sandev Mobilehome Park is currently for sale.

On March 4, 2019, the City Council conducted a first reading of a proposed Mobilehome Rent Stabilization Ordinance (“Ordinance”). After receiving public comments, City Council instructed City staff to conduct further outreach to both Mobilehome Owners and Mobilehome Park Owners and return with a revised Ordinance for first reading.

After collecting comments and conducting further review of the ordinance, staff recommends that the City Council adopt the proposed Ordinance, which would add Chapter 4-39 “Mobilehome Space Rent Stabilization” to the San Leandro Municipal Code. In the following section, “Background & Analysis”, changes/additions to the March 4, 2019 proposed Ordinance are identified and explained further.

Attachment A is included with this staff report and contains the updated Ordinance in blue-lined track-changes format.

BACKGROUND & ANALYSIS

The proposed Ordinance will establish a method to review mobilehome park space rent increases, protect Mobilehome Owners from arbitrary, capricious, or unreasonable rent increases, and ensure that mobilehome park owners, operators and/or investors receive a fair and reasonable return on their investment. In response to the March 4, 2019 City Council Meeting, Staff held two meetings-- one with Mobilehome Owners on April 17 and one with Mobilehome Park Owners and industry representatives on April 25. See "Summary of Public Outreach" section below for more information on both of these meetings.

Given the feedback received from both of stakeholder meetings and public comments received to the first version of the Ordinance that was presented for first reading (see Attachment B), there were two significant changes to the Ordinance since the March 4 first reading.

The first change involves adding a section for "Just Cause for Evictions" to the Ordinance using the State of California Mobilehome Residency Law (MRL) Section 798.56 "Seven Authorized Reasons for Termination of Tenancy" as a basis. The MRL "just cause" eviction protections prohibit the owner of a mobilehome park from terminating or refusing to renew the tenancy of an individual who rents a mobilehome space except for specific reasons. Examples of such reasons include the nonpayment of rent, failure of a resident to comply with a rule in a rental agreement, and conduct by the resident that constitutes a substantial annoyance to other residents. The MRL also includes specific requirements regarding the opportunity to correct a violation that must be provided to the resident before an eviction can occur. The protections of the MRL apply throughout California.

The proposed ordinance will apply the just-cause eviction provisions of the MRL to all individuals renting a mobilehome space, regardless of the structure located thereon. For example, the provision will apply to individuals who locate certain types of recreational vehicles that fall under the proposed Ordinance on mobilehome spaces. The proposed Ordinance's just cause eviction provision applies to the rental of mobilehome spaces, but not the mobilehomes themselves. The rental of mobilehomes is governed by the City's Rent Review Ordinance (SLMC Chapter 4-32) and the Tenant Relocation Ordinance (SLMC Chapter 4-37) in addition to specific existing California laws regulating landlord-tenant contracts.

The second change replaces the Consumer Price Index (CPI), All Urban Consumers, West Region from the March 4th Ordinance with the CPI, All Urban Consumers, San Francisco-Oakland-Hayward as an annual rent increase threshold. Staff evaluated all suggested versions of the Consumer Price Index (CPI), accounting for public comments. Consequently, staff recommends that the CPI (SF-Oakland-Hayward) be used in the Ordinance because it is geographically specific. Attachment C provides a table and line graph that shows a comparison over time of the West Region vs. the San Francisco-Oakland-Hayward CPI Tables. Both CPI indices have changed annually at a similar average rate over the last 8 years, although the CPI (SF-Oakland-Hayward) rate is slightly higher (2.9% vs 2.2%) over this period.

Definitions

Base Rent - rent in effect for a Mobilehome Space on July 1, 2018.

Base Year - the 2018 calendar year or, if a Fair Return Application subsequently establishes a new Base Rent, the calendar year preceding the year the application is made.

Fair Return Application - an application to the City seeking to increase space rents above one hundred percent of the Consumer Price Index (CPI) to provide a fair return to the Mobilehome Park Owner.

Mobilehome - a structure designed for human habitation and for being moved on a street or highway including manufactured homes and trailers and all other recreational vehicles of all types defined in section 18010 of the California Health and Safety Code. Recreational vehicles defined in section 799.29 of the Civil Code and section 18010 of the Health and Safety Code and certain motor homes, truck campers, and camping trailers covered under California Civil Code Section 798.3(b) (the Mobilehome Residency Law or MRL) are not included in the Ordinance's definition of Mobilehome. The MRL is the State law regulating Mobilehome Parks.

Mobilehome Owner - a person who owns a Mobilehome and legally occupies the Mobilehome within a Mobilehome Park.

Mobilehome Park - an area of land within the City of San Leandro where two or more Mobilehome Spaces are rented, or held out for rent, to accommodate Mobilehomes.

Mobilehome Space - the spaces 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.

Mobilehome Park Owner - the owner or operator of a Mobilehome Park or an agent or representative authorized to act on said owner's or operator's behalf in connection with the maintenance or operation of the Mobilehome Park.

Eligibility

The following are eligible for Mobilehome Space rent stabilization under the proposed Ordinance:

Mobilehome Owners whose space is not covered by a valid lease meeting the requirements of section 798.17(b) of the MRL, or otherwise legally exempt from local rent stabilization regulations.

Under MRL, Mobilehomes which include trailers or other recreational vehicles that have occupied a Mobilehome Space on November 15, 1992 under a rental agreement with a term of one month or longer and Mobilehomes that have occupied a Mobilehome Space in a Mobilehome Park prior to January 1, 1991.

Under MRL, trailers or other recreational vehicles that occupy a Mobilehome Space in a Mobilehome Park for nine or more continuous months on or after November 15, 1992.

Base Rent

In general, the Ordinance establishes a base rent in an amount not exceeding the 90th percentile of

all rents in effect in the Mobilehome Park at the time the Mobilehome Space is rented.

Base rents under the Ordinance may change under other circumstances such as expiration of an exempt lease.

Space Rent Increase Cap

Establishes an annual rent increase, which is the lesser of the increase to the applicable Consumer Price Index (CPI) defined in the Ordinance or four percent (4%) once in a twelve (12) month period.

Requires that Mobilehome Park Owners provide written notice of rent increase or capital improvement/replacement pass-through charges to the City's Rent Review Officer and each affected Mobilehome Owner at least 90 days before the rent increase goes into effect or as required by the MRL.

Special Circumstances Households

The proposed Ordinance addresses Mobilehome Owners whose incomes and capacity to pay rent are limited based on objective factors. The Ordinance provides protections from capital improvement pass-throughs to "Special Circumstances Households" based on the following objective factors:

- One (1) resident that is sixty-two years of age or older; or
- One (1) resident qualified as disabled as defined by Title 42, United States Code section 423 or handicapped as defined by California Health and Safety Code Section 50072; and
- A total household income that is below fifty percent (50%) of the Alameda County area median household income as established annually by the U.S. Department of Housing and Urban Development, or closest equivalent if the HUD income limits no longer exist.

Exemptions

The proposed ordinance recognizes that California state law provides for certain exemptions that preempt local law including the following:

- Newly constructed Mobilehome Spaces initially held out for rent after January 1, 1990.
- A Mobilehome Space upon which there is a Mobilehome that is not the principal or primary residence of the Mobilehome Owner.
- Civil Code Section 798.17(b) allows an exemption from any city ordinance that establishes a maximum amount that a landlord may charge a tenant if there is a different rent amount allowed in a signed rental agreement. This is allowed only while the rental agreement is active and has not lapsed.
- Mobilehomes or Mobilehome Parks owned or operated by any governmental agency.
- Any Mobilehome that is also a rental unit where the rent is subsidized pursuant to a public

program that limits the rent that can be charged for the Mobilehome.

- Mobilehome Parks with fewer than 10 spaces.

Vacancy Decontrol

Under the Ordinance, it would be lawful for a Mobilehome Park Owner or operator to charge a new Mobilehome Space rent beyond the space rent thresholds established under the Ordinance pursuant to the following:

- Voluntary in place sale or transfer of a Mobilehome which remains in place on the space or pad.
- Voluntary removal of a Mobilehome by the Mobilehome Owner who will no longer reside in the park.
- Vacancy occurring after the park owner obtains a judgement of unlawful detainer or other legal termination of tenancy.
- Abandonment of the Mobilehome.

The Ordinance establishes the following circumstances where it would be unlawful for a Mobilehome Park Owner or operator to charge Mobilehome Space rent beyond the space rent thresholds under the Ordinance:

- Mobilehome Owner replaces his/her mobilehome unit on the existing space.
- Mobilehome owner legally transfers title to existing lawful residents of the Mobilehome, or the Mobilehome Owner legally transfers title to a parent or parents, siblings, children, grandchildren, nieces or nephews.

Fair Return Rent Increase

The Ordinance establishes a method to ensure a fair rate of return to park owners based on the concept of Maintenance of Net Operating Income (MNOI).

Provides a method to calculate Net Operating Income (NOI) based on Gross Rental Income and Operating Expenses (as both are defined in the Ordinance). NOI would be calculated by subtracting operating expenses from gross rental income.

Gross rental income would not include: utility charges for submetered gas and electricity; charges for water, refuse disposal, sewer service and/or other services provided by or charged to the Mobilehome Owner solely on a pass-through basis and/or are regulated by state or local law, laundry service charges, storage charges, and rental income spaces exempted from rent limits by state law or the Ordinance.

Operating expense exclusions would include: mortgage principal or interest payments or other debt service costs; penalties, fees or interest assessed or awarded for violations of the Ordinance or other

laws; depreciation; political contributions; and master-metered gas and electricity services.

Process to Consider Alternate or Settlement Proposals

The Ordinance allows an opportunity for - and a period where - either the Mobilehome Owner(s) or Mobilehome Park landowner may propose an alternative and mutually agreeable rent change.

If an offer for settlement is rejected and the rejecting party fails to obtain a more favorable decision or award, the rejecting party cannot recover his or her post-offer legal expenses and must pay for the offering party's legal costs from the time of the offer. When settlement offers have been submitted in a timely manner, but neither were accepted, the Rent Review or Hearing Officer may assign responsibility for legal costs based on which party failed to obtain a more favorable decision.

Procedures for Rent Review

The Ordinance allows Mobilehome Park Owners and affected Mobilehome Owners a request for review by the Rent Review Officer once within any 12-month period year for applications seeking:

- Rent increase based on a Fair Rate of Return;
- Temporary increase in rent based on a Capital Improvement Cost pass-through;
- Temporary increase in rent based on a Capital Replacement Cost pass-through;
- Rent reduction based on a reduction of services by the Mobilehome Park Owner.

Notification of the rent review application must be sent to the Mobilehome Owner, or the owner's representative. A copy of the rent review application must also be available for public review and copying in City Hall during normal business hours. The Rent Review Officer may determine the need for financial expertise (a certified public accountant, for example) to verify the accuracy of application-related financial documentation.

Applications for rent review will be decided by the Rent Review Officer, which will be the Community Development Director or his or her designee, based on substantial evidence and without a hearing or personal appearances by any of the involved parties or their representatives. The Rent Review Officer's determination will be mailed and emailed to the park owner and the Mobilehome Owners, and if applicable, to their representatives.

Appeal of the Rent Review Officer's Decision

The proposed ordinance provides procedures for appealing the Rent Review Officer's decision. There will be a 30 day deadline from the date the Rent Review Officer mailed his or her decision. For Mobilehome Owners to appeal a rent increase or pass-through, at least 25% of the affected Mobilehome Owners within the park must sign the appeal application.

A Hearing Officer would review and make a decision regarding the appeal. The Hearing Officer will be a licensed attorney and member of the California Bar. The Hearing Officer will be selected through the California Office of Administrative Hearings (OAH), or through the City Manager if the OAH is unable to provide hearing officers. The Hearing Officer must conduct a public hearing where both the

park owner and Mobilehome Owners can attend and present their cases.

Rights of Prospective Mobilehome Owners

The proposed ordinance requires that Mobilehome Park Owners offer to prospective Mobilehome Owners in the City's Mobilehome Parks the right to receive the benefits of the Ordinance, that they are offered an initial lease agreement of at least 12 months, and that they provide a copy of this Ordinance for the prospective Mobilehome Owner's information.

Annual Registration/Noticing

The proposed Ordinance requires that Mobilehome Park Owners register with the City annually. The City will track contact information and the name of the legal entity, if any, that has an ownership interest in the Mobilehome Park. Additionally, the annual registration will require information on the rents as well as any other charges by the Mobilehome Park Owner for a Mobilehome Owner's occupancy of a Mobilehome Space. In recent years, when Mobilehome Parks have changed ownership, the City has invested significant staff time to address problems and conflicts with these changes in ownership. The Ordinance proposes that the City and all Mobilehome Owners in a Mobilehome Park must be notified of any change in ownership, and that the prospective park owners will be informed of the Ordinance.

Prohibition of Retaliation

The following conduct by a Mobilehome Park Owner will be considered unlawful under the Ordinance:

- Eviction of a tenant as retaliation for organizing, petitioning, or exercising rights granted by the Ordinance.
- Any retaliatory conduct, including threats to bring an action to recover possession of a mobilehome park space, harassment, unlawful mobilehome park space rent increases, or unlawfully imposing requirements.

Miscellaneous

An affected Mobilehome Owner may refuse to pay any illegal rent in excess of the maximum rent increase amount authorized under the proposed Ordinance. Such unpaid rent in excess of the maximum rent increase permitted will be a defense in any action brought to recover possession of a Mobilehome Space for nonpayment of rent or to collect the illegal rent.

The following rent increases may be implemented anytime during the year: 1) government mandated expense pass-throughs, 2) utility pass-throughs, 3) capital improvement pass-throughs, and 4) in-place transfer rent increases (e.g., eligible change of ownership of the Mobilehome unit, which remains in its space).

All prospective tenants must be offered the option of a tenancy of 12 months or less upon terms consistent with the proposed Ordinance unless the Mobilehome Park Owner and the Mobilehome Owners mutually agree upon their own lease terms.

Previous Actions

On July 16, 2018, staff provided the City Council general information on the status of City Mobilehome Parks. City Council members requested that staff return to the City Council Rules Committee for further discussion and public input regarding mobilehome park space rent.

On January 14, 2019, the City Council held a work session regarding the elements of a proposed Ordinance. City staff summarized key components for an ordinance and presented comparable local ordinances. The City Council provided comments and direction to staff to prepare the Ordinance.

On March 4, 2019, the City Council conducted a first reading of a proposed Mobilehome Rent Stabilization Ordinance. After receiving public comments and asking questions, City staff was instructed to do further outreach and collect comments from both Mobilehome owners and Mobilehome park owners.

Committee Review and Actions

On October 22, 2018, the City Council Rules Committee held a meeting to receive public input regarding 1) mobilehome park space rents. The City Council Rules Committee directed staff bring the matter to a January 2019 City Council Work Session.

Applicable General Plan Policies

Housing Element Goal 56 Affordable Housing Conservation; Policy 56.08, Conservation of Mobile Home Parks - promote the conservation and rehabilitation of mobile home parks without displacing tenants or reducing the number of affordable units. Mobile home parks should be recognized as an important affordable housing resource for San Leandro's seniors and low-income households.

Housing Element Policy Action 56.08-A: Mobile Home Rent Stabilization - Consider adopting a mobile home rent stabilization ordinance similar to the agreement currently in effect for Mission Bay. (The agreement would apply more broadly to residents of all mobile home parks in the city and help protect the city's supply of mobile homes.)

Environmental Review

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

Summary of Public Outreach Efforts

A community meeting with mobilehome Owners was held on April 17, 2019 at the San Leandro Senior Center. There were 52 people in attendance. Of those attendees there were 42 tenants (or 80% of all meeting attendees) representing all nine San Leandro Mobilehome Parks, 2 former residents of Bayshore Commons who currently self-identify as being homeless, 7 tenant advocates, an attendee identifying themselves as a "SL Tenant," and a representative from Assembly Member Rob Bonta's office. Public comments highlighted concerns with the instability of future rent increases, evictions due to infeasible rent increases, and inadequate park conditions.

The meeting with Mobilehome Park Owners had in attendance owners from five of the nine San Leandro Mobilehome Parks in addition to representatives from two industry groups: staff from Western Manufactured Housing Communities Association and a board member from the Rental Housing Association of Southern Alameda County. The public comments from park owners and the industry representatives included opposition to a permanent space rent stabilization ordinance for a variety of reasons (e.g., cumbersome regulations, inadequate fair return) and support for a direct agreement between the City and park owners for space rent stabilization limits over a shorter term period with higher and wider floor/ceiling space rent thresholds.

For tonight's meeting and prior City Council public meetings regarding mobilehome park space rent stabilization, city staff contacted the owners and/or owners' representatives of all nine Mobilehome Parks. The City also sent notices to all park residents. Staff emailed copies of the notice to an ongoing interested parties email list. A notice for tonight's meeting was also posted online on Nextdoor.

All public comments received in writing as of the finalization of the agenda materials are included with the agenda (see Attachment B).

Legal Analysis

The proposed Ordinance was prepared by the City Attorney's Office and staff.

Fiscal Impacts

The projected annual cost to administer the Ordinance could range from approximately \$30,000 to \$75,000 depending on the volume of applications for review and appeals. Thus, Ordinance administration could impact the General Fund should fee revenue to offset the costs not be approved. The Ordinance, as proposed, does establish the options for an administrative fee based on a dollar amount per each Mobilehome Space in the City pending future approval by the City Council. The annual fee would cover the costs to administer the Ordinance, including city staff (e.g. a Senior Housing Specialist, Project Specialist, or City Attorney time), a Rent Review Officer, a Hearing Officer, and professional financial services (such as a certified public accountant). Mobilehome Park Owners may pass through up to 50% of any fee approved by the City to Mobilehome Owners in their parks.

Attachment to Staff Report

Attachment A: Proposed Mobilehome Rent Stabilization Ordinance (redline)

Attachment B: Public Written Comments after February 26, 2019

Attachment C: Consumer Price Index - Western Region vs. San Francisco-Oakland-Hayward

Attachment to Ordinance

Exhibit A: Proposed Mobilehome Rent Stabilization Ordinance (clean)

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