California
Fair Political
Practices Commission

October 27, 1987

Roger Picquet
City Attorney
City of San Luis Obispo
Post Office Box 8100
San Luis Obispo, CA 93403-8100

Re: Your Request for Advice
Our File No. A-87-233

Dear Mr. Picquet:

You have written on behalf of San Luis Obispo Mayor Ron Dunnin to request our advice regarding his duties and obligations under the Political Reform Act 1/ with regard to proposed changes in the city's mobile home rent control ordinance.

QUESTION

May Mayor Dunnin participate in the city council's deliberations regarding various proposed changes in the city's existing mobile home rent control ordinance?

CONCLUSION

Mayor Dunnin will be able to participate in most of the pending decisions on proposed modifications to the ordinance because his interests will not be affected in a manner which is distinguishable from the effect upon a significant segment of the public. However, some decisions might affect his long-term leasehold interest. If it is reasonably foreseeable that those decisions will have a material financial effect on his leasehold interest, then his disqualification would be required. The number of mobile home park residents similarly affected (i.e., on long-term leases) does not constitute a significant segment of the public.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

FACTS

In 1982, the city adopted a mobile home rent control ordinance limiting the amount by which mobile home space rents could be increased over a certain base rent level. In 1986, Mayor Dunnin purchased a mobile home and moved into a mobile home park in the city. He entered into a long-term (in excess of 12 months) lease. Specifically, he took over a 5-year lease which now has two years remaining on its current term.

Mayor Dunnin's space rent is $136.00 per month; his mobile home coach is worth $103,000.

The city has 13 mobile home parks, with a total of 1,515 spaces. Approximately 2,300 people reside in the mobile homes in these parks. The April 1987 population for the city is 38,500 persons residing in 15,939 dwelling units. The average vacancy rate for non-mobile home dwellings is 5.25% The vacancy rate for mobile home parks is almost zero.

There is one mobile home park in the city which has been converted to condominium-style space ownership. Consequently, it is not subject to the mobile home rent control ordinance. That park has 235 spaces and approximately 438 residences. In addition, spaces in the other 12 parks which are covered by long-term leases are also not directly subject to the rent control ordinance. These total approximately 460 spaces, with approximately 700 residents. However, once the leases expire, unless new long-term leases are entered into, the space would then come under the rent control ordinance's provisions.

The city's mobile home rent control ordinance established a five-member rent review board. That board has made a series of recommendations to the city council for modifications to the mobile home rent control ordinance. One of the changes considered, and acted upon by the council, was the substitution of the council for the rent review board. However, a number of other changes are pending before the council for its consideration. When several of these items were considered by the council, it was deadlocked 2 to 2, with Mayor Dunnin disqualifying himself pending this request for advice.

One of the major items before the council is adoption of a formula and methodology for calculating the "reasonable rate of return" to be allowed to park owners. This will affect the level of future rent increases for those spaces for which rents are controlled. Other major items include decontrol of rents in parks which have a certain percentage of tenants on long-term leases (so-called "safe harbor"); and vacancy

decontrol, with or without some limit on the amount of increase which can occur upon a change in ownership. Another lesser item is the issue of whether utilities should be transferred from rents (with an offsetting reduction) and billed separately; this relates primarily to water service.

ANALYSIS

The Act requires that public officials disqualify themselves from making, participating in making, or using their official positions to influence decisions in which they have a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

> (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.
>
> Section 87103(b).

Leasehold Interest in Real Property

Mayor Dunnin's long-term lease represents an interest in real property worth $1,000 or more. (Section 82033; Regulation 18233; and In re Overstreet (1981) 6 FPPC Ops. 12, copies enclosed.) Since two years remain on his lease, the monthly rental rate of $136 multiplied by the number of months remaining on the lease is greater than $1,000.

Hence, if it is reasonably foreseeable that decisions on the modifications to the mobile home rent control ordinance will have a material financial effect on the mayor's leasehold interest, disqualification will be required unless a substantial segment of the public will be affected in substantially the same manner. (Section 87103; Regulation 18703.) The standard for determining materiality of a foreseeable financial effect on an interest in real property is found in Regulation 18702(b)(2), as follows:

> (2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars ($1,000) or more held by a public official, the effect of the decision will be to increase or decrease:
>
> (A) The income producing potential of the property by the lesser of:

1. One thousand dollars ($1,000) per month; or

2. Five percent per month if the effect is fifty dollars ($50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars ($10,000); or

2. One half of one percent if the effect is one thousand dollars ($1,000) or more.

Regulation 18702(b)(2).

There are two possible effects upon Mayor Dunnin's real property interest. One would be on the rent he pays; however, because he has a lease, the proposed changes would not affect the amount which he pays during the balance of the lease. Hence, subdivision (A) of the quoted regulation would not apply.

The other effect would be on the value of the leasehold interest should he decide to transfer the balance of the term to a purchaser of his mobile home coach. It is at least conceivable that some of the proposed changes in the rent control ordinance might possibly affect the value of the residual in his leasehold interest by $1,000 or more. (See Advice Letter to David Benjamin, No. A-86-149, copy enclosed.) However, in order for a financial effect to be considered "reasonably foreseeable" it must be more than a mere possibility, although it need not be a certainty. (In re Thorner (1975) 1 FPPC Ops. 191, copy enclosed.) You and Mayor Dunnin are in a much better position to analyze the reasonably foreseeable effects on the value of his leasehold interest in his space. Whether or not he wishes or plans to transfer his interest is not what is important. It is the effect upon its fair market value which matters. (See In re Legan (1985) 9 FPPC Ops. 1, copy enclosed.)

Assuming that you conclude that the reasonably foreseeable effect upon his leasehold interest will be $1,000 or more from any one of the decisions involved, then disqualification would be required as to his participation in that particular decision (e.g. vacancy decontrol, etc.), unless his leasehold interest will be affected in a manner which is substantially similar to the effects upon a significant segment of the public.

In your letter and in our subsequent conversations on the telephone, you have stated that approximately 460 spaces in 12 mobile home parks are on long-term leases. Of these, 300 are in Mayor Dunnin's park, with only 160 being scattered among the remaining 11 parks. Furthermore, the long-term leases in his park were negotiated en masse; therefore, they all have the same provisions and have the same date of expiration. We assume that these terms are different from those of the other 160 long-term leases in at least some respects.

Consequently, it is our conclusion that any effects upon the value of Mayor Dunnin's leasehold will be distinguishable from the effects on the public generally or on a significant segment of the public. (See In re Overstreet, supra; and Regulation 18703, copy enclosed.) This conclusion would not be changed even if the terms of the other 160 long-term leases were the same as those in Mayor Dunnin's park. A total of 460 households within a city of 15,939 households does not constitute a significant segment of the general public.2/ (See In re Ferraro (1978) 4 FPPC Ops. 62, copy enclosed.)

Economic Interest in His Coach

In addition to the interest in real property represented by the Mayor's long-term lease, he has an economic interest in his coach; it is an asset of his. An issue has been raised as to whether the various decisions about rent control would foreseeably affect the value of his coach in a material manner. Again, it is possible that some of the decisions might have such an effect.

It is frequently argued that the existence of rent control with respect to a mobile home space will result in an

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2/ This is because, contrary to the conclusion in In re Overstreet, a month-to-month tenancy is no longer considered an interest in real property. (Regulation 18233.) Consequently, the approximately 820 mobile home households in San Luis Obispo which are in spaces that are neither condominium owned nor subject to long-term leases do not have an "interest in real property." Therefore, they cannot be considered part of the segment of the public which will be affected in substantially the same manner as Mayor Dunnin. As stated above, we have concluded that the segment of the public which is similarly affected is too small to be considered to be a significant segment within the meaning of Regulation 18703. (See generally, In re Legan, supra.)

appreciation in the value of the coach which sits on the space when it is transferred to a new owner. The theory is that the lower and more stable the space rent, the more the acquiring tenant can afford to pay for the coach which sits on that space. The converse of that theory is that the greater the rent or the more unstable the rent, because it is not in any way controlled, the less the acquiring tenant is going to be willing to pay. This is because, unlike an apartment renter, a mobile home tenant cannot just pick up and move out in order to avoid a rent increase. (See generally, Civil Code Sections 798, et seq.)

We take no position on the accuracy or inaccuracy of the theory or on its specific application in the community of San Luis Obispo. In the Coughlan letter No. A-82-036, copy enclosed, which preceded the amendment to the first paragraph of Section 87103, we concluded that an effect on the value of a mobile home could not form the basis for disqualification.3/ However, we now must conclude that if an effect on the value of Mayor Dunnin's coach of $250 or more is reasonably foreseeable as a result of any of the decisions on modifications to the mobile home rent control ordinance, then he must disqualify himself as to that decision, unless it also will have such an effect on a significant segment of the public generally. The coach is an asset of Mayor Dunnin. (See Regulation 18702.1(a)(4), copy enclosed.)

In this instance, it would appear that all of the owners of coaches which are located in the mobile home parks in San Luis Obispo which are not condominium owned would be affected in substantially the same manner. This would be approximately 1280 households in a total of 12 parks. This would seem to be a large enough and diverse enough segment of the public to be considered to be significant. (See In re Ferraro, supra; In re Overstreet supra; and Advice Letter to Paul Morgan, A-81-507.) Consequently, Mayor Dunnin's disqualification would not be required as to decisions affecting the value of the coaches of all of these households in a similar manner.

Because of his park's particular situation with respect to long-term leases, the "safe harbor" issue may affect his park's households in a manner which is distinguishable from the effect upon other parks' households. If that is determined to

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3/ We concluded that a mobile home did not constitute an interest in real property. The prior version of Section 87103 did not include effects upon assets or income of the official. As amended, effects upon an official are covered.

be the case, then Mayor Dunnin's disqualification would be required on that issue, provided that it is determined that the reasonably foreseeable effect would be material (i.e., at least $250). (See In re Overstreet, supra.)

Lastly, we must consider the potential long-term effect on Mayor Dunnin's space rent which may result from the proposed changes in the mobile home rent control ordinance. Even though his rent for the next two years will not be affected because he is on a lease, the changes in the rent control ordinance might affect his rent level in the future, once the lease term has expired. If you and Mayor Dunnin conclude that it is reasonably foreseeable that his future rent will be affected by at least $250 per year, up or down, by any of the decisions on the proposed modifications in the rent control ordinance, then disqualification would be required unless a similar effect will occur on a significant segment of the population. (Regulation 18702.1(a)(4).)

Unlike the effects upon his leasehold interest, these future effects upon rent levels will affect all mobile home park households in San Luis Obispo, with the exception of the one condominium park. Consequently, it appears to us that there would be a significant segment of the public which would be affected in substantially the same manner. (Regulation 18703.) Consequently, Mayor Dunnin would not likely be disqualified on the basis of possible future rent increases following the termination of his lease because these effects, if any, would be shared by all of the other mobile home park households in the city.

I trust that this letter adequately responds to your questions on behalf of Mayor Dunnin. Obviously, because you and he are much more familiar with the local situation and can determine the facts regarding certain of the arguments being made, you are in a better position than we are to resolve some of the remaining questions.[4/] However, if you determine the facts and wish further guidance or if you have questions regarding the advice contained in this letter, please do not hesitate to contact this office for further assistance. I understand that these questions will likely come before the

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4/ The Commission in its advice-giving role does not function as a fact-finder. See In re Oglesby (1975) 1 FPPC Ops. 71, fn. 6 at 77, copy enclosed.

city council again in late November. I may be reached by telephone at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosures

California
Fair Political
Practices Commission

September 10, 1987

Roger Picquet
City Attorney
P.O. Box 8100
San Luis Obispo, CA 93483-8100

Re: 87-233

Dear Mr. Picquet:

Your letter requesting advice under the Political Reform Act was received on September 9, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh
cc: Ron Dunin, Mayor

CITY OF SAN LUIS OBISPO

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

(805) 549-7140

September 4, 1987

John G. McLean
Counsel, Legal Division
California Fair Political Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Re: Request for Written Opinion and Advice Regarding Conflict of Interest on Behalf of Mayor Ron Dunin

Dear Mr. McLean:

I have been asked by the Mayor of San Luis Obispo, Ron Dunin, to obtain a formal written opinion and advice regarding a possible conflict of interest regarding mobilehome rent control. Mayor Dunin owns and lives in a mobilehome and in November or December of 1987 the Council will consider a series of recommendations from its former Mobilehome Rent Review Board regarding the existing mobilehome rent control regulations. Some of the recommendations concern relatively minor technical or procedural provisions, others address more substantive areas such as selection of a method for determining a "just and reasonable rate of return" on applications for rent increases. These recommendations were previously considered by Council earlier this year. No action was taken due to a 2-2 tie. Mayor Dunin had stepped down based on his determination that the appearance of a conflict of interest existed.

Background:
The City of San Luis Obispo adopted mobilehome rent control in 1982. A copy of the existing mobilehome rent control regulations is attached as Exhibit "A" (Chapter 5.44 of the San Luis Obispo Municipal Code). There have been minor amendments over the past 5 years. The original regulations provided for a 3-member Mobilehome Rent Review Board to hear applications for rent increases based on "hardship" (park owner unable to obtain a just and reasonable return on his property) and other matters. The first such application was heard in 1983, and there have been approximately four hardship requests since. In addition, one mobilehome park has undergone conversion to a condominium form of ownership and is not affected by rent control. In 1983 and 1984 several minor amendments (such as increasing the number of Review Board members from 3 to 5) were adopted by Council. The Council also directed the Review Board to study and recommend possible changes to the regulations. It is this package of

recommended amendments which came before the Council in 1987. A copy of the Council staff report listing the areas to be considered is attached as Exhibit "B". Prior to stepping down at that hearing, Mayor Dunin had always participated on mobilehome matters either because he had not yet moved or due to the fact he had concluded that it was not reasonably foreseeable that the particular decision would have a material financial effect.

Mayor Dunin purchased a mobilehome and moved into a mobilehome park in 1986. He entered into a long-term (in excess of 12 months) lease. Mayor Dunin's park has 100% of its spaces under long-term leases. The rent control regulations exempt spaces under long-term leases from rent control. The monthly space rent for Mayor Dunin is $136.00 and the value of his mobilehome coach is $103,000. The City has 13 mobilehome parks with a total of 1,515 spaces (with one dwelling unit per space). (The vacancy rate for mobilehome parks in the City is virtually nil). There are in effect 1,515 mobilehome dwelling units and 2,300 mobilehome residents in San Luis Obispo. As noted above, condominium parks are excluded from rent control and the only such park in San Luis Obispo has 235 spaces and approximately 438 residents. Of the remaining 12 parks, approximately 460 spaces (with approximately 700 residents) are on long-term leases and not under rent control (of course, upon expiration and failure to renew lease the space would be subject to rent control regulations). The April 1987 population for the City of San Luis Obispo is 38,500 and there are 15,939 dwelling units (households) in the city. The average vacancy rate (for non-mobilehome dwelling units) is 5.25%.

At the Council hearing in May of 1987 both proponents and opponents of rent control testified that a total repeal of mobilehome rent control would reduce the value of coaches by "several thousand dollars" (estimates varied considerably). Although it is difficult to ascertain exactly the financial impact on an individual coach owner and tenant if some of the specific Board recommendations were implemented, it is generally conceded that the different methods used to determine a "just and reasonable rate of return" for a hardship application can result in a substantial difference in allowable rent.

It would be appreciated if your review of this matter could be expedited. Mayor Dunin is familiar with FPPC file #I-87-181 (Shaw) and letter of December 2, 1981 (Peterson) dealing with conflict of interest inquiries in which the inquiring parties resided in mobilehome parks. Unfortunately,

the facts in those cases differ with those in the present matter and the complexity of the relevant law makes it difficult to come to a firm conclusion about the existence of a conflict of interest.

Feel free to call me if you desire clarification of any of the facts set forth in this letter or any additional information.

Very truly yours,

Roger Picquet
City Attorney

RP:ajr
Enclosures

c: Mayor Ron Dunin (without attachments)
John Dunn, City Administrative Officer (without attachments)
Pam Voges, City Clerk (without attachments)

Additional Facts

Roger Picquet

10/19/87

Mayor has long-term lease - 5 yr lease originally
his park is 100% L-T leases

Most long-term leases have 60% or 70% of CPI as annual escalator clause
Most leases also have provisions for pass-through of cost increases for utilities or major repairs, etc.

Some parks offer 10, 15 or 20 yr. leases w/ various pass-through escalations

Typically, provisions of long-term leases are very similar from space-to-space w/in the park

2 parks (his is one) negotiate leases as a package - 2 yrs to go on his park's leases, but now negotiating for the next 5 yr period

He bought existing coach in park & assumed the lease

Provision in the lease for increase upon transfer of ownership - he got raise & he knows how much it would be

Long-term leases tend to parallel the ordinance ~~the~~ if anything more favorable to LL

In his park, lease was in existence before rent control ordinance (actually previous lease)

If lease expires w/o renewal – then under rent control – rent increases would then have to be in accordance w/ rent control ordinance – base rent is as of there was no lease in effect

54060A (p. 136)

CC § 798.18 Requirements re rental agreement

Space rents ≃ $300/mon avg.

His park has is a larger one, landscaped. His park is approx 250 spaces. 1 other large park has almost everyone on leases – other long-term leases are scattered through the other parks.

37 min.

10/30/87 Spaces in major park = 300
160 others have long-term leases

FAIR POLITICAL PRACTICES COMMISSION
Transmittal of Correspondence
(Rev. 7/87)

Correspondent: Piquett, Roger

Advice #: 87-233

Agency/City: San Luis Obispo City Atty

Subject: Mayor Ron Dennison c/I

Date Received 9/9/87 Add'l Info Rqstd __/__/__ Due Date 10/8/87

Request SEI ☐ 21-day letter sent on __/__/__ CC to: _____

Assigned To

Bob L.	☒ has original attachments
Diane	☐
John Mc	☐
Jeanette	☐
Kathy	☐
Lilly	☐
TA&A	☐

10/5/87
Called for more info & ext. the 13 art until 10/8 - Secy said ext. O.K. no problem - he only one 13 who can answer the Q's re mobile home park issues — asst - who is not me then, doesn't know

Comments: _____

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September 4, 1987

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Very truly yours,

Roger Picquet
City Attorney

RP:ajr
Enclosures

c: Mayor Ron Dunin (without attachments)
John Dunn, City Administrative Officer (without attachments)
Pam Voges, City Clerk (without attachments)

assignation, prostitution, or obscene or harmful matter, nor shall the use of such language be interpreted to legalize those types of businesses which from time to time have been regarded "per se" moral public nuisances. (Ord. 925 § 1 (part), 1982: prior code § 4815)

5.40.170 Applicability of provisions to adult theaters and adult bookstores.

With respect to adult theaters and adult bookstores applying for a license and permit under the terms of this chapter, the council shall make no determination on such application without first considering a report of the city attorney concerning the appropriateness of applying the standards set out in this chapter. If so advised by the city attorney that any or all standards set out in this chapter may not properly be applied to the adult bookstore or adult theater application, the council shall not apply such standards. (Ord. 967 § 1, 1983: prior code § 4816)

Chapter 5.44

MOBILE HOME PARK RENT STABILIZATION

Sections:

5.44.010 Purpose and intent.

A. There is presently within the city and the surrounding areas a shortage of spaces for the location of mobile homes. Because of this shortage, there is a very low vacancy rate, and rents have been for several years, and are presently, rising rapidly and causing concern among a substantial number of San Luis Obispo residents.

B. Mobile home tenants, forced by the lack of suitable alternative housing, have had to pay the rent increases and thereby suffer a further reduction in their standard of living.

C. Because of the high cost and impracticability of moving mobile homes, the potential for damage resulting therefrom, the requirements relating to the installation of mobile homes, including permits, landscaping and site preparation, the lack of alternative homesites for mobile home residents, and the substantial investment of mobile home owners in such homes, this council finds and declares it necessary to protect the owners and occupiers of mobile homes from unreasonable rent increases, while at the same time recognizing the need of park owners to receive a suitable profit on their

EXHIBIT "A"

property with rental income sufficient to cover increases in costs of repair, maintenance, insurance, utilities, employee services, additional amenities, and other costs of operation, and to receive a fair return on their property.

D. This council finds that the present low vacancy rate and frequent rent increases are particularly hard upon and unfair to residents of mobile home parks within the city. Large numbers of these residents are senior citizens and others on fixed incomes who installed their mobile homes in the city when the present inflationary rent increases could not reasonably have been foreseen.

E. However, this council recognizes that a rent stabilization ordinance must be fair and equitable for all parties and must provide appropriate incentives for mobile home park operators to continue their parks profitably, as well as to attract additional investors for new parks. (Ord. 923 § 1 (part), 1982; prior code § 4800)

5.44.020 Definitions.

For the purpose of this chapter, certain words and phrases used herein are defined as follows:

A. "Capital improvements" means 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 life of the improvement in accordance with the Internal Revenue Code and regulations issued pursuant thereto; provided, that this definition shall be limited to capital improvements either approved by more than fifty percent of the tenants in the affected park or constructed to comply with the direction of a public agency.

B. "Mobile home park" means an area of land which rents spaces for mobile home dwelling units.

C. "Mobile home park owner" or "owner" means the owner, lessor, operator or manager of a mobile home park.

D. "Mobile home park rent review board" or "board" means the mobile home park rent review board established in Section 5.44.040.

E. "Mobile home tenant" or "tenant" means any person entitled to occupy a mobile home within a mobile home park pursuant to ownership of the mobile home or under a rental or lease agreement with the owner of the mobile home.

F. "Rehabilitation work" means any renovation or repair work completed on or in a mobile home park performed in order to comply with the direction or order of a public agency, or to repair damage resulting from fire, earthquake or other casualty.

G. "Space rent" means the consideration, including any security deposits, bonuses, benefits or gratuities, demanded or received in connection with the use and occupancy of a mobile home space in a mobile home park, or for housing services provided, but exclusive of any amount paid for the use of a mobile home dwelling unit. (Ord. 923 § 1 (part), 1982: prior code § 4801)

5.44.030 Exemptions.

The provisions of this chapter shall not apply to the following tenancies in mobile home parks:

A. Mobile home park spaces rented for nonresidential uses;

B. Mobile home parks managed or operated by the United States Government, the state of California, or the county of San Luis Obispo;

C. Tenancies which do not exceed an occupancy of twenty days and which do not contemplate an occupancy of more than twenty days;

D. Tenancies for which any federal or state law or regulation specifically prohibits rent regulation;

E. Tenancies covered by leases or contracts which provide for greater than a year's tenancy, but only for the duration of such lease or contract. Upon the expiration of or other termination of any such lease or contract, this chapter shall immediately be applicable to the tenancy;

F. Mobile home parks which sell lots for factory-built or manufactured housing, or which provide condominium ownership of such lots, even if one or more homes in the development

are rented or leased out. (Ord. 1077 § 1, 1986; Ord. 923 § 1 (part), 1982: prior code § 4802)

5.44.040 Mobile home rent review board—Established—Membership—Terms.

A. There is established a mobile home rent review board consisting of five members who shall be appointed by and serve at the pleasure of the council.

B. The board members shall not be tenants of or have any financial interest (as defined by state law) in any mobile home or mobile home park. The members shall file a declaration to this effect with the city clerk in a form approved by the city attorney.

C. Board members shall not be compensated for their services as such, but may receive reimbursements as provided by the council for traveling and other expenses incurred while on official duty.

D. Terms of office shall be two years. A board member may serve no more than four consecutive full terms (eight years). Terms shall be staggered and shall commence on April 1st. Appointment to a partial term of office following an unscheduled vacancy shall not preclude the appointee from serving four consecutive full terms following completion of the partial term, provided the partial term is less than one year. Vacancies shall be filled for unexpired terms. All of the procedures and requirements contained in the council adopted "Handbook for Advisory Bodies" shall be incorporated in this section by reference. (Ord. 1030 § 1, 1984: Ord. 1025 § 1, 1984: Ord. 923 § 1 (part), 1982: prior code § 4803)

5.44.050 Mobile home rent review board—Powers and duties.

Within the limitations provided by law, the board shall have the following powers and duties:

A. To meet from time to time as required by the council and to utilize the city offices, facilities and personnel as needed:

B. To receive, investigate, hold hearings on, and pass upon the issues relating to mobile home park rent stabilization as set forth in this chapter, or to any decreases in, or charges for, services or facilities;

C. To make or conduct such independent hearings or investigations as may be appropriate to obtain such information as is necessary to carry out its duties;

D. To increase or decrease maximum rents upon completion of its hearings and investigations;

E. To render following every rent review hearing a written report to the council concerning its activities, holdings, actions, results of hearings, and all other matters pertinent to this chapter which may be of interest to the council;

F. To adopt, promulgate, amend and rescind administrative rules, as it deems appropriate to effectuate the purposes and policies of this chapter. (Ord. 923 § 1 (part), 1982: prior code § 4804)

5.44.060 Base space rent—Determination—Allowable increases.

A. The "base space rent" for purposes of this chapter shall be the monthly space rent charged as of March 15, 1982. The maximum monthly space rent for any space under a lease, upon expiration of the lease, shall be no more than the base space rent on March 15, 1982 plus any increases otherwise allowed pursuant to the provisions of this chapter.

B. Except as otherwise provided in this chapter, the maximum monthly space rent may be increased no more than once a year by the lesser of the two following amounts:

1. Eight percent of the then existing space rent;

2. An increase over the then existing space rent equal to three-fourths (seventy-five percent) of the cost of living increase (Bureau of Labor Statistics, U.S. National Consumer Price Index, Los Angeles/Anaheim/Long Beach CPI-U) for the preceding twelve-month period.

C. Calculation of the one-year limitation on rental increases as provided in this section shall be from the date the last increase became effective at the park.

D. No owner shall either (1) demand, accept or retain a rent of or from a tenant in excess of the maximum rent permitted by this chapter, or (2) effect a prohibited rent increase by a reduction of general park facilities and services. (Ord. 1079 § 1, 1986; Ord. 1020 § 1, 1984: Ord. 923 § 1 (part), 1982: prior code § 4805)

5.44.070 Application for rent increase—Fee—Contents—Notice of request—Hearing.

A. An owner who has been required to make expenditures or has incurred costs of such amounts that he will be unable to make a just and reasonable return on his property given the maximum increase permitted by Section 5.44.060, may file with the board an application for a rent increase for one or more spaces or application to reduce, or charge for, certain services or facilities, in either event referred to hereinafter as "application" or "application for rent increase."

B. Any application for a rent adjustment pursuant to this section shall be accompanied by the payment of a fee as may be established from time to time by council resolution. The application shall specify, as applicable, the address of the mobile home park, the space number or numbers for which rent is requested to be adjusted, the amount of the requested rent adjustment, the proposed effective date of such adjustment, and the facts supporting the application. The applicant shall produce at the request of the board any records, receipts, reports or other documents that the board may deem necessary for the board to make a determination whether to approve the application.

C. The owner shall serve each affected tenant, in writing, either personally or by mail, with notice of the rent increase or change in services or facilities requested and with notice that application for approval of same is being filed with the board. Proof of such service shall be filed with the board concurrent with the filing of the application. Copies of the application shall be available free of charge to any affected tenants requesting same at the business office in the affected park.

D. The board shall set a hearing on the application complying with the requirements of this section no less than ten days and no more than thirty days after receipt of the application and proof of service. The board shall notify the owner and tenants, in writing, of the time, place and date set for the hearing. No hearing or any part thereof may be continued beyond thirty days after the initial hearing date, without the owner's consent. If the board approves an application as requested or as modified, the same shall take effect as noticed by the owner or as the board may otherwise direct. (Ord. 1077 § 2, 1986; Ord. 923 § 1 (part), 1982: prior code § 4806)

5.44.080 Application for rent increase—Conduct of hearing.

A. All review hearings conducted by the board shall be conducted in accordance with the Ralph M. Brown Act, at Section 54950 et seq. of the California Government Code.

B. All interested parties to a hearing may have assistance from an attorney or such other person as may be designated by the parties in presenting evidence or in setting forth by argument their position. All witnesses shall be sworn in and all testimony shall be under penalty of perjury.

C. In the event that either the owner or the tenant(s) should fail to appear at the hearing at the specified time and place, the board may hear and review such evidence as may be presented and make such decisions as if all parties had been present.

D. Applicant and affected tenants may offer any testimony, documents, written declarations or other relevant evidence.

E. Formal rules of evidence shall not apply.

F. Minutes shall be taken at all review hearings. (Ord. 923 § 1 (part), 1982: prior code § 4807)

5.44.090 Application for rent increase—Evaluation—Relevant factors.

In evaluating the application the board may consider, along with all other factors it considers relevant, changes in costs to the owner attributable to increases or decreases in master land and/

or facilities lease rent, utility rates, property taxes, insurance, advertising, variable mortgage interest rates, employee costs, normal repair and maintenance, and other considerations, including, but not limited to, rehabilitation work, capital improvements, upgrading and addition of amenities or services, net operating income, and the level of rent necessary to permit a just and reasonable return on the owner's property. (Ord. 923 § 1 (part), 1982: prior code § 4808)

5.44.100 Application for rent increase—Hearing—Determination.

A. The board shall make a final decision no later than twenty days after the conclusion of its hearing. The board's decision shall be based on the preponderance of the evidence submitted at the hearing. The decision shall be based on findings. All parties to the hearing shall be advised by mail of the board's decision and findings.

B. Pursuant to its findings, the board may:

1. Permit the requested rent increase to become effective, in whole or in part; or

2. Deny the requested rent increase; or

3. Permit or deny, in whole or in part, requested reductions, of or charges for, facilities or services.

C. Any decision of the board shall be final unless, within fifteen days after mailing of the decision and findings the owner or any affected tenant appeals the decision to the council. (Ord. 923 § 1 (part), 1982: prior code § 4809)

5.44.110 Application for rent increase—Hearing—Appeal.

A. Any appeal from a decision of the board shall be filed with the city clerk. The date for consideration of the appeal shall be set by the city clerk no less than ten days nor more than thirty days after the expiration date for filing of an appeal. Notice of the date, time and place shall be given by the city clerk to the owner and all affected tenants.

B. At the time set for consideration of the appeal the council shall review and consider the record of the board hearing and the decision and finding of the board. After review and consideration the council may either (1) determine that a further hearing shall be held, to be conducted before the council no later than the next regular meeting, or (2) ratify and adopt the decision and findings of the board. If a further hearing is conducted, the council may upon conclusion of that hearing, and in no event more than thirty days thereafter, modify or reverse the decision of the board, and shall make findings in support thereof. (Ord. 923 § 1 (part), 1982: prior code § 4810)

5.44.120 Rent increases not made in conformity with provisions—Tenant's right to refuse to pay.

A tenant may refuse to pay any increase in rent not made in conformity with this chapter. Such refusal to pay shall be a defense in any action brought to recover possession of a mobile home space or to collect the rent increase. (Ord. 923 § 1 (part), 1982: prior code § 4811)

5.44.130 Actions brought to recover possession of mobile home space—Retaliatory eviction grounds for denial.

Notwithstanding Section 5.44.120, in any action brought to recover possession of a mobile home space, the court may consider as grounds for denial any violation of any provision of this chapter. Further, the determination that the action was brought in retaliation for the exercise of any rights conferred by this chapter shall be grounds for denial. (Ord. 923 § 1 (part), 1982: prior code § 4812)

5.44.140 Owner to provide tenants with copy of this chapter.

Any tenant offered a lease or contract which if accepted and fully executed would be exempt from the provisions of this chapter (Section 5.44.030E) shall at the time of the offer also be provided with a copy of this chapter. (Ord. 923 § 1 (part), 1982: prior code § 4813)

city of san luis obispo
COUNCIL AGENDA REPORT

MEETING DATE: 6-16-87
ITEM NUMBER:

FROM: Steve Henderson, Assistant to the City Administrative Officer

SUBJECT: Consideration of modifications to Mobile Home Park Rent Stabilization Regulations.

CAO RECOMMENDATION:
Review the nine categories for potential modifications to the Rent Stabilization Ordinance and direct staff to develop specific language and return for council consideration.

BACKGROUND:

On June 2, Council introduced an amendment to the Rent Stabilization Regulations to replace the Mobilehome Rent Review Board with City Council. Council further directed staff to return with a complete package of recommendations regarding the seven listed categories for modifications to the existing rent stabilization regulations, and two additional categories - safe harbor and vacancy decontrol.

The City Council also took public testimony from representatives of park owners asking that any substantive Council action concerning rent stabilization be delayed for four to six months. During the "cooling-off" period, owners and residents would attempt to meet and confer in the hopes reaching an agreement on a long-term lease. The Council felt the proposal was worthy of some consideration. Owners and residents were encouraged to provide a progress report by June 16th.

On April 14, 1987, the City Council reviewed the recommendations by the Mobile Home Rent Review Board. Council agreed to substitute itself for the Board and staff was asked to further explore issues including: 1) Methods for determining a reasonable rate of return; 2) Water metering/utility allowance; 3) Consumer Price Index; 4) Recreational vehicles; 5) Rent Control based on economic need; 6) Mediation; and 7) Hearing Officer.

The City Council will find attached to the staff report an analysis of nine local jurisdictions with rent stabilization. This attachment is intended to assist the Council in further exploring matters of local concern by providing information regarding solutions used by other cities and counties. The entire text of each rent stabilization ordinance is in the Council's reading file.

METHODS FOR DETERMINING A REASONABLE RATE OF RETURN

There are five major fair return standards for determining a fair and reasonable rate of return. Each has advantages and disadvantages. The most commonly used fair return standards are: Return on Value, Return on Equity, Return on Gross Rent, Percentage Net Operating Income, Cash Flow, and Maintenance of Net Operating Income.

An article published in the Rutgers Law Review and authored by Mr. Ken Barr is attached in your packet of June 2, 1987. This article outlines in detail the major return standards. Please note, Mr. Barr is perceived to be "pro-tenant" by some.

EXHIBIT "B"

CASH FLOW STANDARD

Essentially, the Cash Flow standard maintains that a landlord is entitled to rents which are sufficient to cover operating expenses and mortgage payments. The formula would read as follows: gross rent equals operating expenses plus mortgage payments. The variables considered in the Cash Flow standard include operating expenses and mortgage interests.

Under the Cash Flow standard, fair rent is largely determined by the owners' financing arrangements, since mortgage payments are included as a variable. When such formulas are used, owners of parks of "equal value" who were charging comparable rents prior to the adoption of rent controls may be allowed to charge differing rents because of the differences in their mortgage payments.

Critics of the Cash Flow standard feel that if the purpose of rent control is to regulate rents, then the use of the formula opens the rent setting process to manipulation by those who are regulated. Formulas which include debt service as an expense in effect let sellers, purchasers, and lenders determine what rents shall be permitted. To this extent, Cash Flow standards defeat the regulatory purposes of rent control.

Despite shortcomings, the Cash Flow standard has had appeal to legislators and trial courts, because it guarantees that no landlord will be forced to operate at a loss.

RETURN ON EQUITY

When the Return on Equity standard is used, equity is usually defined as cash investment. The cash investment includes the initial down payment plus principal payments. The Return on Equity standard formula reads as follows: gross rent equals operating expenses plus mortgage payments plus return on cash investment. The variables considered in the Return on Equity included operating expenses, mortgage interest and cash investment.

Because the Return on Equity formula takes into consideration both the mortgage financed and cash investment portions of a property owner's investment, fair rents for landlords who pay the same price for a park will be comparable, even if the sizes of their down payments vary substantially.

By assuming that rents will be adequate to cover mortgage payments and provide for a return on equity, the Return on Equity standard in effect guarantees that any investment will be reasonable. Owners who pay the most and get the highest interest rate mortgages are permitted to charge the highest rents. This may be perceived as defeating the purpose of rent control regulation.

Despite its serious shortcomings, the Return on Equity formula has had widespread appeal. Both tenants and landlords often believe that the landlord is entitled to a fair return on cash invested, and investors tend to measure their rate of return in terms of return on cash investment.

RETURN ON VALUE

Under a Return on Value standard, an owner is entitled to rents which are adequate to cover operating expenses and yield a specified rate of return on "fairmarket value". Mortgage interest is not considered as an expense, since the rate of return is calculated on the full value of the property, rather than on the owner's equity.

The formula for the Return on Value is as follows: gross rent equals operating expenses plus return on value. The variables considered by the Return on Value standards are operating expenses and value.

The chief conceptual failing of the Return on Value standard lies in its circularity. The use of a Return on Value standard in a rent control context is circular because the value of a mobile home park is normally a fundtion of its projected income. Therefore, controls that govern rents also influence income and determine the value of the property.

Estimates of fair market value by appraisers, assessors, or other experts are highly subjective. Because such valuation problems exist, fair return hearings can become expensive debates over the value of the park.

There have been many court cases dealing with the question of whether a body of rent regulations must use the fairmarket value approach. All have rejected the position that such an approach is legally required and have noted that, although it is but one way to provide for a just and reasonable return, its effect is somewhat conflicting with the traditional goals and purposed of rent control.

PERCENTAGE NET OPERATING INCOME

Under the Percentage Net Operating Income standard, a rent increase is warranted if the net operating income from a property is less than a designated percentage of its gross rental income. The purpose of this standard is to provide landlords with a guaranteed minimum net-operating-income-to-gross-rent ratio which will provide adequate income for debt service and profit.

The formula reads as follows: gross rent equals operating expenses times a fixed factor representing an established rental income. The variables considered in the Percentage Net Operating Income standard include only operating expenses.

There are major advantages to the Percentage Net Operating Income standard in that it avoids the circularity associated with Return on Value standards and avoids the owner's particular purchase price and other financing arrangements.

The primary disadvantage of this standard is that it establishes a uniform net operating income to gross rental income ratio as fair, when, in fact, net operating income to gross rental income ratios vary widely among "classes" of properties such as mobilehome parks

MAINTENANCE OF NET OPERATING INCOME (MNOI)

Under the Maintenance of Net Operating Income standard, owners may obtain rent increases which are adequate to cover increases in operating expenses. Fair net operating income is defined as the net operating income that a property yields during a base period.

The MNOI standard formula reads as follows: gross rent equals base date gross rent plus current operating expenses minus base date operating expenses. Variables considered in this standard include operating expenses, base date gross income and base date operating expenses.

From a conceptual point of view the MNOI appears to be the only return standard which is consistent with the general policy of tying rent increases to landlords' increases in operating costs.

The MNOI avoids circularity associated with Return on Value standards and it does not base fair return levels on the particular purchase price, investment or financing arrangements of the owner. It also offers the most reasonable type of incentive for increased operating and maintenance expenditures, a dollar-for-dollar passthrough.

Indexing the Maintenance of Net Operating Income

The principal issue associated with the use of the MNOI standards has been the question of what types of adjustments, if any, should be made for inflation in defining fair net operating income. Some MNOI standards provide for maintenance of base period dollar net operating incomes, without any adjustment for inflation subsequent to the base period. Other jurisdictions have adopted MNOI to gross-income-ratio-standards, or have provided for full inflation adjustments to the base period net operating income.

An intermediate choice to the foregoing alternatives would be to adjust base date operating income by a fraction of the inflation rate. Despite the fact that a partial inflation adjustment may be the most reasonable approach consistent with the purposes of rent control, most jurisdictions which have used the MNOI standard have either made no adjustment for inflation or have provided for a 100% adjustment

Some mobile home rent control ordinances have adopted a fair return standard under which net operating income is permitted to increase at 40% of the inflation rate. Some allow up to two thirds of the inflation rate.

One criticism of the MNOI standard is that the presumption that base period rents yielded fair net operating incomes penalize owners who have been charging below market rents by establishing a low base-period-net-operating-income level. A common approach to dealing with the inequities caused by this presumption is to allow for exceptions for special circumstances.

Exceptions are typically made for situations in which capital improvements made in the year prior to the base period were not reflected in the base period rent. Other peculiar factors may also be considered as a basis for an exception/adjustment.

Summary

The Mobile Home Rent Review Board has recommended that the MNOI standard be adopted as the formula to determine a fair and reasonable rate of return. The Board has also recommended flexible use of the MNOI and allowance of adjustments to the base year computations and the addition of an inflation factor.

Under the present regulations, applicants have presented several or all of the fair return standards to the Board. This method was time consuming and often times confusing. The Council will need to review the five major fair return standards and determine which formula they would like to see utilized when hearing applications for a rent increase.

Options

1. Council may choose to include MNOI as the method for determining fair rate of return. If MNOI is chosen, Council will need to determine what, if any, adjustments to the base year computations should be allowed and whether or not an inflation factor should be included.

2. Council may choose to include one of the other fair standards as the method for determing fair rate of return.

3. Council may choose not to specify what standard is to be used in determining fair rate of return.

Recommendation

Staff recommends Council adopt MNOI as the method for determining just and reasonable rate of return, including provisions for base year adjustments and an inflation factor of 100%.

CONSUMER PRICE INDEX

Section 5.44.060, B.2 of the SLOMC permits an allowable increase over the existing base space rents equal to three fourths (75%) of the CPI.

The Mobile Home Rent Review Board has recommended to the Council the following "sliding scale" increase based on the current CPI figure:

A 0% - 5% CPI allows for a 100% of the CPI increase;
A 5% or higher CPI allows for 5% plus 75% of the CPI over 5%.

The Board feels this sliding scale is equitable to both residents and owners and represents a balance between what the park owners and residents wanted.

Local jurisdictions throughout the state and the country apply the CPI in many varied fashions. Many allow for a 75% computation and a few have language which incorporates a 100% CPI calculation. A few have replaced use of a 75% CPI with either a sliding scale or 100% of CPI.

Section 5.44.060, B2 also states the CPI adjustments will depend upon the preceding twelve month period. This language does not clearly address whether or not a park owner must pass on the CPI increast every twelve months, (use it or lose it).

The Board has recommended that the CPI increase be allowed annually only and based upon the preceding twelve month period.

Options

1. Council may choose a sliding scale for CPI computations and specify frequency of application of CPI.

2. Council may choose to use 100% of CPI.

3. Council may choose not to modify the CPI allowable increases from 75%.

Recommendation

Staff recommends Council adopt the sliding scale recommended by the Mobilehome Rent Review Board and limit application of the CPI to once per year "use it or lose it".

HEARING OFFICER

The Council has directed staff to investigate the concept of a hearing officer as one potential method of reviewing matters concerning mobile home rent stabilization regulations.

A hearing officer approach has proved effective in cities and counties throughout the state. Essentially, the hearing officer acts as the "body" in place of a rent control board or the legislative authority such as the City Council.

The hearing officer assumes all of the powers and duties once delegated to the rent review board. The hearing officer would receive, investigate, hold hearings and make determinations upon the issues relating to mobile home park rent stabilization.

The hearing officer may be selected by the Council or the City Administrative Officer and should not be a staff member, but would be hired on a contract basis and be responsible to the City Administrative Officer. His decision would be appealable to the City Council. The hearing officer must be knowledgeable and may have demonstrated experience in rent disputes, conflict resolution or mediation. The hearing officer may, in fact, be a "pool" of individuals who conduct reviews of applications. This system of analysis on rent disputes allows for a variety of hearing personnel and avoids any perception of bias.

Costs Associated with a Hearing Officer Concept

The financial considerations and impacts are substantially varied. Most local governments are responsible for the entire costs of rent control disputes managed by a hearing officer.

Few jurisdictions share the costs with park owners and residents. There are rare circumstances in which owners and residents pool funding based on a per mobile home space basis to assist in the hearing officer's costs.

Costs of hearings may also be borne by each party to the hearing in such amounts as determined by the City, or the hearing officer, exclusive of individual expenses and attorneys' fees incurred by either or both the tenants and management.

Nevertheless, costs for professional hearing officers are expensive and can range from $60.00 per hour to $125.00 per hour. The actual amount of time spent hearing rent stabilization matters depends on the number of applications before the hearing officer or pending.

One major advantage of a hearing officer approach to matters of rent stabilization is that of time. The hearing officer may be directed to hear pending applications within a relatively short period of time. A decision may come as soon as ten days after the actual hearings.

Summary

At some point in the future, the Council may decide to use a hearing officer to review such matters as rent disputes and applications. If a hearing officer approach seems a possibility, staff should be directed to explore additional specific information for Council consideration.

Options

1. Council may choose to instruct staff to return to Council with specific recommendations for implementation of a "hearing officer" after a trial period during which Council will act as the review body.

2. Council may choose to implement a hearing officer immediately.

3. Council may choose not to consider implementation of a hearing officer.

Recommendation

Staff recommends Council instruct staff to return with specific recommendations for implementation of a "hearing officer" after a trial period during which Council will act as the review body.

DEFINITION OF "RECREATIONAL VEHICLE"

For more than a year, the rent review board heard testimony concerning increases applied to recreational vehicles or recreational vehicle spaces inconsistent with the rent stabilization regulations. The Board concluded that it was the original and current purpose and intent of the regulations to protect recreational vehicles located in mobile home parks. Staff has administered the regulations since 1982 to include recreational vehicles, but clarification of the regulation would be appropriate.

Recreational vehicles in most local jurisdictions are protected by rent stabilization regulations

Summary

The Council's intention is to protect recreational vehicles and all spaces in mobile home parks, staff should be directed to return with specific language for consideration. This language may be included in 5.44.020 of the SLOMC and be similar to the following examples.

5.44.020(D) "Mobilehome tenant", "recreational vehicle tenant", or "tenant" means any person entitled to occupy a mobilehome or recreational vehicle within a mobilehome park..

5.44.020(G) "Mobilehome" shall be as defined by Civil Code 798.3.

5.44.020(H) "Recreational Vehicle" shall be as defined by Civil Code 799.24

5.44.020(F) "Space rent" means ... in connection with the use and occupancy of a mobilehome space, including the use by a recreational vehicle in such a space.

Options

1. Council should direct staff to return with specific language to provide protection for recreational vehicles being used as permanent residences.

Recommendation

Staff recommends Council formally provide protection for recreational vehicles being used as permanent residences.

RENT CONTROL BASED ON ECONOMIC NEED

One of the primary arguments for mobilehome rent stabilization is the need to maintain mobilehome parks as partial solutions to the shortage of affordable housing. Since many mobilehome park residents are on a fixed income and at a low level of income, a dilemma has developed between the necessity of avoiding displacement of low income residents and that of providing a fair and reasonable return for park owners.

Rent control based on economic need is actually a subsidy program for park tenants and, as such, appears to go well beyond the initial intent and provisions of the

stabilization ordinances. In a letter dated April 14, 1987, Mr. George J. Moylen, Executive Director of the Housing Authority of San Luis Obispo made the following proposal for the City's Mobilehome Park Owners. The program, if implemented, would be administered by the Housing Authority.

1. Parkowners are assessed an initial amount equal to $10 per space. This assessment would be used to augment the Housing Authority's Section 8 housing assistance payments program. It would also provide assistance for very low income families/elderly who do not qualify for the Section 8 program. For instance a 59-year-old who is alone and not handicapped or disabled does not qualify for the Section 8 program, but may well meet the income guidelines cited below.

2. The fund would be administered by the Housing Authority and decisions as to who would receive assistance would be made by the Authority. When the fund is depleted parkowners would agree to provide additional funds in the $10 per space increments.

3. Very low income residents would apply for assistance to the Housing Authority upon receipt of their rent increase. The Housing Authority would determine income and program eligibility as well as amount of subsidy. Income limits to be used are as follows:

Household Size	Maximum Income
1	$11,550
2	13,200
3	14,850
4	16,500
5	17,800

The above income limits are published annually by the U.S. Dept. of Housing and Urban Development. They are gross amounts and it is assumed new limits will be used by the program as published. The limits are at 50% of the median income for San Luis Obispo County.

4. The Housing Authority would notify the parkowner when a resident has qualified for the program. Such notification would include the amount of rent to be paid by the resident and the amount of subsidy. Any Housing Authority payment would be made on a monthly basis to the parkowner or appropriate agent.

5. Resident's must requalify for the program annually. Should a resident not qualify at this time his/her rent would be the rent due as if there had been no assistance.

Parkowners believe the program would be successful on a voluntary basis, however if parkowner participation were low, Council could then establish an ordinance making participation mandatory.

The MHRRB agreed by consensus not to recommend a rent stabilization ordinance based on economic need. The Board felt it could become an administrative nightmare and would not uphold the intent and purpose of the existing rent stabilization ordinance.

If an ordinance were adopted on the basis of economic need alone, those of very low income would be protected from space rent raises, but the majority of tenants would be left with no protection. This type of control is appealing to parkowners who would be more able to make desired rent increases under it than under other types of regulation.

If no ordinance were adopted, and no program established, all tenants would be equally protected under the existing regulations. This might be appealing to tenants, since one of the most effective arguments against rent increases is based on the hardship it creates for low, fixed income tenants. If a voluntary program were implemented under the existing regulations, low income tenants could benefit, while other tenants would continue to be protected from unreasonable space rent increases.

Options

1. Council may choose not to make "rent control on the basis of economic need" part of the mobilehome regulations, but may encourage voluntary participation by parkowners and may support administration of such a program by the Housing Authority.

2. Council may choose not to make "rent control on the basis of economic need" part of the mobilehome regulations.

3. Council may choose to include "rent control on the basis of economic need" as a part of the mobilehome regulations.

4. Council may choose to substitute "rent control on the basis of economic need" for the present regulations.

Recommendation

Staff recommends Council encourage voluntary participation by parkowners and support administration of such a program by the Housing Authority, but not include "rent control on the basis of economic need" as part of the mobilehome rent stabilization regulations.

MEDIATION

Mediation may be included as a necessary step in the legal process for resolving owner-tenant rent increase disputes, where an increase above the amount allowed by the regulations is requested. Mediation can take different forms, from a simple requirement that parkowners and tenants (or tenant representatives) meet and confer prior to appealing to the stabilization board to a more formal mediation process with a non-binding arbitration component. There are advantages and disadvantages to each method.

Meet and Confer

A requirement that landlords requesting rent increases over the allowed rate meet and negotiate with tenants prior to application to the rent review authority may be included in the regulation. The advantage of this method is that it provides an opportunity for all parties to meet in a non adversary atmosphere to work out a solution that is satisfactory, while avoiding the lengthy appeals process. The disadvantage is that there is no intrinsic incentive for the parties to negotiate in good faith in an attempt to avoid the process.

Meet and Confer with a Facilitator

This type of mediation requires the parties to meet and confer on disputed issues, but a neutral third party is included. The mediator is paid for services, so cost distribution between involved parties becomes an issue. Various jurisdictions throughout the state use some form of mediation with a facilitator or required non-binding arbitration as part of their rent stabilization ordinances. The costs of the mediation may be born by the parkowner requesting the rent increase, shared by the owner and tenants, or shared by the owner, tenants and the jurisdiction involved, in this case the City of San Luis Obispo.

The parties meet and confer over disputed issues in the presence of an unbiased facilitator who acts to guide them to a mutually satisfactory resolution of differences. While similar to the meet and confer method, the addition of a third party is often effective in assisting parties to overcome their emotions and in leading them to effective solutions. Unless all parties are willing to work toward a compromise, this method may not be more effective than the meet and confer process, and it does involve additional costs

Mediation with a Non-Binding Arbitration Component

This method is a culmination of the first two with an additional role for the facilitator. If, after discussion and mediation has taken place, the parties are still unable to agree on a solution, the mediator considers the facts that have been presented and proposed a solution that is as fair a compromise as possible for all concerned. This step is effectively arbitration, but it is non-binding in that either or both parties may appeal the decision to the rent reveiw body.

Mediation with a non-binding arbitration component is also costly, but can be effective if the results are made available to the regulatory authority in those cases where agreement is not reached. Generally, a mediation process includes much evidence from both sides of a dispute. The mediator is unbaised and professionally trained to analyze information and propose a fair, if not totally satisfactory, compromise solution. If the findings of the mediator were considered by the appeal authority, the costs of mediation might be justified.

By making the mediation findings evidence in the eventual hearing, the results could be twofold. First, there would be an incentive for all parties to accept the decision of the mediator, unless strong evidence existed for appealing the determination. This could result in a reduced number of hearings. Second, the report of the mediator could facilitate the stabilization authority's investigation of the case when it comes before it.

If a hearing officer were to be used by the City of San Luis Obispo, it might be considered redundant and costly to include both a mediation with non-binding arbitration requirement and consideration by a hearing officer with the right to appeal to Council. It might, however, be desirable to include mediation with a non binding arbitration component in the rent stabilization ordinance with the understanding that if and when a hearing officer approach is implemented, the hearing officer would become the mediator. This would provide an opportunity for all parties to mutually agree to a solution to their problems with the assistance of an unbiased mediator, and in those cases where agreement cannot be reached, would reduce the number of hearings required for the hearing officer to make his recommendation for a settlement. Council would still retain its position as the appeals board.

It was the consensus of the MHRRB that mediation could provide a useful method for solving disputes without the need for a hearing. The recommendation made was for some form of mediation to be included in the stabilization regulations.

Options

1. Council may choose to include the "meet and confer" approach to mediation as a required step in the application process. If this approach is chosen staff should be directed to return with recommendations as to specific procedural regulations.

2. Council may choose to include the "meet and confer with a facilitator" approach to mediation as a required step in the application. If this approach is chosen, staff should be directed to return with specific language and recommendations for cost distribution.

3. Council may choose to include the "mediation with a non-binding arbitration component" as a required step in the application. If this approach is chosen, staff should be directed to return with specific language and recommendations for cost distribution.

4. Council may choose not to include mediation as a requirement for application to the process.

Recommendation

Staff recommends that Council include the "meet and confer" approach to mediation as a required step in the application process and direct staff to return with recommendations as to specific procedural regulations, unless Council feels implementation of a hearing officer is imminent, in which case Council may wish to consider the "mediation with a non binding arbitration component" as an interim measure.

WATER/UTILITY ALLOWANCE

The issue of utility allowances has focused primarily on water in the City of San Luis Obispo, but could conceivably include electricity, gas, cable television, etc at some later date. The question is whether or not a parkowner, that has previously included utilities as part of the "services" paid for in a space rental, should be allowed to install meters for those utilities, make a commensurate rent reduction, and then bill the tenants separately for individual usage.

To require a tenant to pay for a service previously included in the rent is an increase under our regulations. The issue is whether or not a parkowner should be allowed to separate a utility from the rent, and if so, how the corresponding reduction in rent (to correspond to the reduction in service) should be determined.

Tenants argue that where utilities have initially been included in the space rental, this means unlimited use of utilities. Therefore, any method of breaking out the utility will result in an increase in space rental above that allowed by the regulations and should not be allowed.

Parkowners argue that as utility costs rise, allowing tenants to continue unrestrained use of utilities constitutes a burdensom increase in operating expenses. Further, there is no incentive for tenants to conserve valuable resources such as water, which often leads to waste and unnecessarily high utility bills.

It is noteworthy that in a number of city ordinances throughout the state, the issue of utility allowance is not specifically addressed, but is decided on a case by case basis, covered loosely under a "reduction of services shall be accompanied by a corresponding reduction of rent" clause.

If it is determined that owners should be allowed to install meters to separately bill tenants for utility usage, some formula for determining how much of a rent reduction should accompany the change must be determined. Often, a base use or amount of water, electricity, and so on is determined to be the average use for the size of the mobilehome. The cost of that amount of a utility is then deducted from the base space rent. In effect, the parkowner pays for the base allowance of the utility and the tenant pays for any usage above that amount.

The MHRRB recommends that parkowners be allowed to separate utilities and has calculated a formula for determining this base allowance. It is important to note that in the recent Silver City appeal, the Board's decision to allow water to be billed separately and its use of the formula for determining the base allowance was acceptable to the tenants.

Options

1. Council may choose to provide for water utility allowance in the stabilization regulations and may adopt the formula determined by the MHRRB. (Refer to Creekside attachment for details on formula)

2. Council may choose to provide for water/utility allowance in the stabilization regulations and may direct staff to return with other methods of determining the base allowance or may substitute a method of its own choosing.

3. Council may choose not to provide for utility allowance in the regulations.

Recommendation

Staff recommends Council provide for water/utility allowance in the stabilization regulations and adopt the formula determined by the MHRRB.

SAFE HARBOR

The Safe Harbor concept holds that if a certain percentage of park residents have signed long term leases, then the park is exempt from the provisions of rent stabilization. (SLOMC 5.44.030E)

Presently, our ordinance requires a mobilehome park to have 100% of the residents on long-term leases in order to be exempt from rent stabilization, and there is no safe harbor provision. As you'll recall, Rancho San Luis was forced to apply for an exemption to the regulations, even though 98 of 100 tenants had signed long term leases. A requirement for 100% participation does not give parkowners any incentive to offer long-term leases, since the goal is difficult, if not impossible, to reach.

Many local governments throughout California have implemented a safe harbor concept within their existing ordinance. Many jurisdictions have enacted new rent control ordinances including a safe harbor provision. This has been done as a mechanism for encouraging long-term leases. Tenants not covered under the long-term lease are provided with an opportunity, for up to twelve months, to sign a lease with the same conditions as those tenants who do have a lease. (See City of Rocklin/Council Reading File)

Many residents feel if a majority of residents of a mobilehome park wish to sign long-term leases, other residents of the park should not be penalized for not doing so. Some residents believe a safe harbor provision will eventually lead to higher base space rents.

If a safe harbor is provided, two thirds seems to be the most appropriate because it has been tested successfully in the courts (City of Oceanside) and parallels the super majority requirement in other government contexts.

The MHRRB voted 3-2 to recommend that the safe harbor concept be included in the ordinance for San Luis Obispo, and that 66 2/3% of residents be on long term leases before a park is exempted from rent stabilization. The Board felt safe harbor was an incentive for the tenants to sign long term leases.

Options

1. Council may choose to include a safe harbor concept within our existing regulations. If Council chooses to do this, a percentage should be established as the necessary portion of residents for a park to be exempt from the ordinance.

2. The Council may choose not to support a safe harbor concept within our existing regulations.

Recommendation

Staff recommends a safe harbor component be included in the Rent Stabilization regulations and that a two-thirds limit be utilized. This modification to the existing ordinance should encourage the signing of long term leases.

VACANCY DECONTROL

Vacancy decontrol or change in occupancy allows the park owner to increase the space rent after a coach sells. This does not allow the existing tenant to transfer his/her base space rent rate to the new purchaser. Park owners argue that the "space rent rights" belong to them. Two methods of achieving this involve a "limited vacancy decontrol" standard or a "market value" increase.

The limited vacancy decontrol standard sets or limits the amount of increse a park owner may charge the new resident(s). The market value method allows the parkowner to charge the new resident(s) whatever the market will bear. Many cities throughout California have implemented some form of vacancy decontrol/change of occupancy. Some cities allow the parkowners and residents to establish a new monthly rent for such spaces as a private matter of negotiation. (See Santa Barbara County Park Owners Association ordinance in Council Reading file).

The City of Morro Bay recently enacted rent stabilization and allowed a $10.00 "cap" to vacancy decontrol. The City of Oxnard and the City of Rocklin have limited decontrol standards at $15.00 and $20.00 respectively.

Some residents are opposed to a vacancy decontrol concept because it would only increase the amount of profit for the park owners and make it more difficult for home owners to sell their mobile homes.

The Board voted 3 2 favoring Vancancy Decontrol/Change of Occupancy as a component of the rent stabilization regulations. The Board believed vacancy decontrol and change in occupancy are incentives for tenants to sign long term leases. The Board agreed that a cap of 15% should be part of the provision. In addition, the Board found that situations in which a coach changes ownership because of the death of a spouse should be excluded. This would apply to transfer from one spouse to the surviving spouse only. The Board felt implementing a vacancy decontrol/change of occupancy provision was consistant with the purpose and intent of the regulations, specifically, protecting existing residents from unreasonable rent increases and reductions in services.

OPTIONS

1. The Council may wish to consider adopting a vacancy decontol/change of occupancy concept. If the Council desires this as a component of the ordinance, a decision must be reached whether or not the vacancy decontrol/change of status provision should be limited or market value based. If the provision is to be a limited vacancy decontrol standard, the amounts of increase a park owner may charge a new resident needs to be established. This may be accomplished by a set "cap" such as the City of Morro Bay does, or by basing it upon a percentage figure determined by the base space rents.

2. The Council may choose not to include in the rent stabilization regulations a provision for vacancy decontrol/change of occupancy.

Recommendation

Staff recommends Council include a vacancy decontrol/change of occupancy standard in the ordinance and limit the amount the owner may increase the base space rents charges between tenancies to $15.00.

ALTERNATIVES

1. Council may choose to determine which of the nine types of modifications are to be incorporated into the city's rent stabilization regulations and which are not to be considered. Those that are to be included may be referred to staff for return with specific language and with direction as to which specific method of application is desired.

2. Council may choose to implement some of the types of modifications and may direct staff to return with specific language for so doing. Council may, at the same time, desire not to reject the other modifications, but to initiate a trial period for further investigation into their necessity and desirability.

3. Council may choose to implement some modifications, reject others, and initiate a trial period for further study of the rest.

4. Council may choose not to further modify the Mobilehome Rent Stabilization Regulations.

SUMMARY

The nine categories explored as potential modifications to the present mobilehome rent stabilization ordinance are separate and distinct issues. The recommendations of the Mobilehome Rent Review Board were made as a package. The concept was to provide an ordinance which would strike a balance between parkowner and tenant interests and encourage the signing of long term leases. Council may, however, choose to implement specific concepts and/or recommendations in any combination it feels will provide an effective regulation package.

If Council determines that major modifications should be made to the present rent stabilization regulations, it may wish to place a moratorium on accepting applications to the rent review process until the modifications can be completed. In many instances, adoption of a particular standard may affect what other standards are to be used in order to create a balanced and fair ordinance. For example, if Council decides to include a decontrol or change of occupancy clause, it might wish to also require that in order to receive the benefits of such a clause, a park must fall offer a model lease. In this way, owners and tenants would be encouraged to establish long-term leases.

Staff recommendations for modifications are summarized as follows:

The revised ordinance would establish the MNOI as the standard for determining a fair rate of return and would include some allowance for adjustment of base year computations to include an inflation factor. A sliding scale computation would be applied to the allowed CPI based increase on an annual (use it or lose it) basis. Druing the trial-period, parkowners and tenants could be required to meet and confer prior to the submission of an application for rent review. Following the trial period, if an assessment of the established process indicates the need for a Hearing Officer, the Hearing Officer could act as: 1) mediator, facilitating agreement between the parties; 2) fact-finder, soliciting and evaluating information relating to each case; and 3) non binding arbitrator when the parties are unable to reach a satisfactory resolution to their dispute.

The Hearing Officer would draw upon the available evidence and the mediation sessions to make a decision regarding the case. That decision could be appealed to the Council, and the hearing Officer's decision would be a portion of the evidence Council would consider in rendering its decision.

Recreational vehicles would be protected under the stabilization regulations. Parkowners would be encouraged to participate in a subsidy program administered by the San Luis Obispo Housing Authority, but participation would be voluntary. A water utility allowance would be included in the ordinance, with an established formula for determining the amount of rent reduction required as a base allowance. Parkowners would be allowed a safe harbor exemption from the ordinance, provided two thirds of the park residents are on long term leases, and those residents not on long-term leases are allowed a twelve month period to sign the same lease as those tenants already leasing. Vacancy decontrol, change of occupancy rent increases would be allowed, except in transferance to a spouse as the result of the death of a spouse, but would be limited to $15.00 per transfer.

RECOMMENDATION

Staff recommends Council review the nine categories for potential modifications to the Rent Stabilization Ordinance and direct staff to develop specific language and return for Council consideration.

Attachments: Analysis of 10 Local Governments' Ordinances
Council Reading File
Ken Barr Article: "Fair Return Standards"
10 Local Governments' Ordinances
Creekside Water Summary (Formula)
Model Lease