



File #: 2017-302, Version: 1

Report to Mayor and City Council

Tuesday, May 02, 2017

Discussion

SUBJECT:

(1) RECEIVE AND FILE THIS STATUS REPORT & (2) CONSIDER INTRODUCTION AND FIRST READING OF ORDINANCE NO. 17-1622 ESTABLISHING A CPI RENT INCREASE METHODOLOGY (CITY COUNCIL)

I. SUMMARY

In December, 2015, the City Council adopted Ordinance No. 15-1573U, now extended through December 2017, a moratorium on accepting or processing any applications for mobilehome park closures. The City Council directed staff and the City Attorney to consider possible updates to its ordinance which has not been reviewed or updated since 1992.

During the pendency of that review, the City Attorney's office also conducted a review of the City's rent control ordinance, noting that this related ordinance expressly commands periodic review, which has not been reviewed or updated in nearly a dozen years.

Staff and the City Attorney's office now report on the status of their careful review of various provisions of existing mobilehome park ordinances, and included in this report is a recommendation to introduce for first reading an amendment to the rent control provisions of those ordinances applicable to mobilehome parks, which will result in approximately \$500,000 in savings to the City annually.

II. RECOMMENDATION

1. RECEIVE and FILE this status report; and
2. WAIVE further reading and INTRODUCE for first reading ORDINANCE NO. 17-1622, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA AMENDING ARTICLE IV, CHAPTER 7, OF THE CARSON MUNICIPAL CODE RELATING TO MOBILEHOME SPACE RENT CONTROL."

III. ALTERNATIVES

1. DIRECT staff and the City Attorney to further review and revise the attached ordinance.

2. TAKE such other and further actions as the City Council deems appropriate consistent with the requirements of law.

IV. **BACKGROUND**

A. **Mobilehome Park Closure Moratorium Status Report.**

The City's mobilehome park closure ordinance, Section 9128.21 of the Carson Municipal Code, has not been updated since 1992. Since adoption (and extension) of the moratorium, the City Attorney's office has been carefully reviewing the ordinance and is in the process of preparing updates to the same.

The California Supreme Court has concluded that, "unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances--typically a greater investment in his or her space than the mobilehome park owner." (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1009.) Likewise, the Federal courts have reached the same conclusion, "[T]he park owners are business people who understand that the operation of a mobilehome park involves an economic relationship in which both park owner and the home owner must make a substantial investment. Indeed, they have encouraged the tenants to make the investment and to expect a return on it." (*Adamson Companies v. City of Malibu*, 854 F.Supp. 1476, 1489 (C.D. Cal. 1994.)) Given that the courts have acknowledged the co-investor status of mobilehome owners, mobilehome owners are entitled to the unique protections that they are afforded by the controlling state statutes and case law and by the provisions of the city's park closure ordinance to receive appropriate relocation benefits that will enable them to obtain adequate housing in other manufactured home parks in order to equitably compensate them for the involuntary loss of their substantial investments.

1. **Update & Revisions to Section 9128.21 Are Nearly Completed.** Government Code §§ 66427.4 and 65863.7 govern the City's review of mobilehome park closures. Since almost all mobilehome park closures are undertaken so the mobilehome parks can be converted into higher-end subdivisions, they are governed by Section 66427.4, which requires the preparation of a report on the "impact of the conversion" (a "Conversion Impact Report" or "CIR") to be prepared as part of its required tentative map approval under the provisions of that section.

That subdivision of the City's ordinance warrants updating to be modernized and consistent with the current state of the law. Conversions governed by Section 66427.4 will ordinarily be accompanied by other land use entitlements (such as a conditional use permit) that seek a permit to construct new housing on the property once operated as a mobilehome park. Accordingly, the City's land use regulations (such as zoning and general plan designations) need to be harmonized with any updates to the park closure ordinance. The remainder of mobilehome park conversions and closures are governed by Section 65863.7, which requires that a CIR is to be considered and acted upon regardless of whether or not any land use application or entitlement request, which may accompany a mobile home park closure, has been filed with the City for review. Hence, in revising the park closure ordinance, these important Government Code sections need to become an integral part of any revised ordinance.

Any update to the park closure ordinance will need to articulate the specific findings which will need to be made by the City. Any such ordinance language need to adhere to recent

court decisions such as *Keh v. Walters*, (1997) 55 Cal.App.4th 1522, 1534. In that case the court ruled: “A statement that the use of the property will be changed to accommodate some other form of development to be determined at a future date does not comply with the statutory requirements (of Civil Code § 798.56(g)) for a specific plan.” *Keh* further held: “As explained by the author of the bill [i.e., SB 316 which added closures to Government Code § 65863.7], “some park owners have gotten around the law by simply closing the park, forcing long-term residents to move out, and letting the land sit idle until it can be developed into another commercial or lucrative venture.” (*Id.* at 1539.) “SB 316 was therefore intended “to close a loophole in the law that would permit a mobile home park to close, move out its tenants and later convert to another use.” (*Id.*)

Since Government Code § 66427.4 will apply to almost all conversions and since Section 66427.4 makes it clear that it establishes only minimum statewide standards and that cities can enact more stringent measures, which would include measures to protect the city’s affordable housing supply and to protect the general good of the public health and welfare, the update to the park closure ordinance will also need to expressly articulate the “more stringent measures” the City Council will want to include in an updated ordinance. Those conditions of approval are currently under study, review, and drafting.

2. A Concurrent Update to the Housing Element of the General Plan is the Second Task to be Completed. Government Code § 65583(b)(1) requires that a city’s Housing Element contain goals, quantified objectives and policies to preserve the city’s current affordable housing stock. Section 65583(b)(2) specifies that quantified objectives within the Housing Element must include the preservation of the city’s housing stock that is affordable to extremely low income households. Section 65583(c)(4) further requires a city to establish programs to conserve the existing affordable housing stock, which has been interpreted by the courts to require programs that will preserve the continued availability and affordability of the affordable housing stock located in mobilehome parks. (*Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 303.) Accordingly, the update to the City’s mobilehome park closure ordinance needs to be accompanied by amendments to the Housing Element of the City’s General Plan. This task will be undertaken in tandem with the park closure ordinance update.

3. A Concurrent Amendment to the City’s Zoning Ordinance is the Third Task to be Completed. While concurrently updating the City’s General Plan Housing Element, the City Attorney’s office is of the considered opinion that the City’s zoning code warrants amending to protect the affordable housing in mobilehome parks through the possible creation of mobilehome park zones. The text amendment(s) needed to establish such zone(s) are currently being studied and an ordinance amendment will be drafted to be consistent with the General Plan update.

4. Staff & City Attorney Review, Presentation to the Planning Commission & Recommendation to the City Council.

Review and update of the park closure ordinance, updates to the City’s General Plan, and any changes to the City’s zoning code will begin with staff and the City Attorney’s Office and then be presented to the Planning Commission for consideration and recommendation to the City Council. These tasks should be completed in tandem. Accordingly, while revisions and amendments to the park closure ordinance are largely complete, the revised park closure ordinance, amendment(s) to the zoning code, and the General Plan update

need to be processed concurrently.

B. An Update to the City's Rent Control Ordinance; Ordinance No. 17-1622.

The City currently has 21 mobilehome parks containing approximately 2,324 units (commonly called “coaches”). The majority of these mobilehome parks are located near the Carson Street corridor, which runs East--West through the City. The size and composition of each mobilehome park varies greatly. Carson Harbor Village and Colony Cove Mobile Estates (with common ownership) are the largest parks in the City and contain 420 and 404 units, respectively. Conversely, Park Granada Mobile Home Park, Ocean Villa, and E&L Trailer Haven are the smallest mobilehome parks in the City and contain 26, 21, and 10 units, respectively. Of the 2,324 mobile home spaces within the City, 2,274 are currently covered by the City's Mobile Home Space Rent Control Ordinance.

On May 23, 1979, the City enacted its ordinance to protect mobilehome park residents from “excessive space rent increases” while still allowing the park owners to earn a “fair return” on their investment (as required by law). Guidelines for Implementation of the Mobile Home Space Rent Control Ordinance (“Guidelines”) were also adopted by the City to provide methodological guidance to staff in its administration of the Ordinance and to assist the MRRB in its review of rent increase applications.

This ordinance has been amended several times since its adoption in 1979. In 1998, City Council Resolution 98-010 adopted revisions to the Guidelines to further assist the MRRB in implementing the ordinance. In 2006, City Council Resolution 06-149 amended the Guidelines further to add provisions that expanded and clarified the various methodologies the MRRB should consider and could employ in determining an eligible rent increase.

Municipal Code § 4709 requires that the “City Council shall review the provisions of [the rent control ordinance] . . . in order to consider the following: (c) Whether the provisions of this Chapter should be amended to provide more effective regulations or to avoid unnecessary hardship.” With the pendency of the park closure moratorium, this hiatus has afforded staff and the City Attorney’s office a unique opportunity to undertake an evaluation of this related ordinance setting forth regulations for raising rents on regulated mobilehome spaces.

Based upon this review, staff and the City Attorney’s office recommend that the City Council introduce for first reading the attached ordinance which would tie rent increases (with two exceptions) to changes in the Consumer Price Index (“CPI”). Rent increases tied to changes year-over-year in the CPI are a widely utilized methodology among jurisdictions with mobilehome park rent control. Of the 96 jurisdictions GSMOL surveyed with rent control regulations, 68 employ either a CPI methodology or establish a fixed percentage (typically in the 5% to 8% range) in calculating annual rent increases (or a combination of the two methodologies limiting the adjustment to the lesser of the two adjustments). In the City Attorney’s review, they have concluded there are several advantages to a CPI rent increase methodology.

First, a CPI methodology will increase “predictability” and provide “certainty” to residents in knowing whether and what rent adjustment to expect. The cities surveyed administratively approve CPI rent adjustments based upon some percentage of the change in the CPI - typically in a percentage range between 65% and 75% (although

some jurisdictions surveyed allow adjustment of up to 100%) of the CPI. Historically, implementation of the City's rent control ordinance has resulted in an average increases of between 65% and 75% of the annual increase in the CPI in the City's mobilehome parks (but has involved a much more complicated and expensive process to the City, the residents, and park owners).

Second, a CPI methodology provides an easy method for residents to "double check" the rent increase being sought by their park owner (given that it is a relatively simple mathematical computation to determine current rent, the annual change in the CPI, and then calculate the percentage of that change that will be allowed as a rent increase). Gone would be boxes of documents and receipts to review, a lengthy and complicated staff report to digest, and a late evening MRRB meeting. A CPI methodology would also substantially reduce the amount of staff time required to review and process applications.

Third, a CPI methodology would reduce the number of lengthy MRRB hearings because this methodology is largely administrative (meaning, no hearing would be required before the MRRB to calculate a CPI rent adjustment).

Fourth, jurisdictions which have employed the CPI methodology have a greatly reduced litigation exposure because of the simplicity of what is largely an administrative process.

There would remain two (2) exceptions to the primacy of rent increases tied to 75% of the increase in CPI year-over-year. Temporary "capital improvement" rent increases would continue to follow the current procedures set forth in the City's rent control ordinance. And, so-called "fair return" applications, required by court decisions, would continue to be processed under the current procedures set forth in the City's ordinance.

C. Community Outreach & Up-Date

At the direction of the City Council, Staff and the City Attorney's Office engaged in community outreach, briefing the residents on both the efforts to up-date and strengthen the existing park closure ordinance and the efforts to up-date and strengthen the existing rent control ordinance. We conducted two community workshops, with capacity attendance at both meetings, and responded to questions and conducted other briefings about the foregoing activities related to mobilehome park regulations.

As a result of community feedback, we have included in Ordinance No. 17-1622 a "cap" of 8% on any annual rent increase. As now written, the ordinance allows an increase of the **lesser** of 75% of the increase of the CPI year-over-year or 8% (to address the unlikely circumstance of run-away inflation).

In light of this foregoing analysis, Staff recommends that the City Council discuss the attached ordinance, ask such questions as it deems necessary or appropriate, and introduce the same for first reading.

V. FISCAL IMPACT

There is the potential for a substantial financial savings of approximately \$500,000 annually to the City from adopting of the attached CPI rent increase ordinance.

First, the CPI rent increase methodology is largely an administrative process. The City could likely provide most of the staff support for this process without directly replacing the

staff position that was previously occupied by Ms. Mann/Mr. Freschauf. Rosenow Spevacek Group, Inc. (now referred to simply as “RSG”) estimated that, on a five year average, the fully loaded cost for City staff to administer the rent control ordinance was \$247,000 annually, all of which was paid by the General Fund.

Second, the CPI rent increase methodology will greatly reduce the need for lengthy hearings before the MRRB, the staff and legal time needed to prepare for such hearings, the cost of staff overtime and MRRB stipends to conduct such hearings, and the cost of City Attorney time to attend such hearings. RSG has not estimated a “per hearing” cost to the City for rent increase hearings (there are typically 10 general rent increase hearings annually, with 1 to 2 temporary capital improvement rent increase hearings annually, and 1 “fair return” rent increase hearing annually).

Third, RSG estimated that, on a five year average, the total legal costs to the City to administer its rent ordinance averaged \$326,000 annually (this number would need to be reduced because this average included costs for temporary capital improvement rent increase hearings, fair return rent increase hearing, condominium conversion applications, and lobbying for legislative amendments to the state laws related to mobilehome parks).

Fourth, RSG estimated that, on a five year average, the total direct and induced staff costs and legal fees to the City to administer the rent control ordinance at \$586,000 annually. While some of that cost is associated with temporary capital improvement rent increase hearings and fair return hearings (and other activities noted above), it is anticipated that the City will achieve savings in the range of \$525,000 annually by adopting a CPI rent increase methodology.

As was noted above, jurisdictions which utilize a CPI rent increase methodology have experienced little or no litigation arising from use of this methodology. While it is not possible to estimate the cost of reduced litigation from adoption of a CPI rent increase methodology, experience of other jurisdictions indicates that such a reduction is substantially likely to occur.

VI. EXHIBITS

1. Ordinance No. 17-1622 (pages 7-12)

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