

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MHC FINANCING, LTD, et al,

No C-00-03785 VRW

Plaintiffs,

FINDINGS OF FACTS,
CONCLUSIONS OF LAW
AND ORDER THEREON

v

CITY OF SAN RAFAEL,

Defendant,

CONTEMPO MARIN HOMEOWNERS
ASSOCIATION,

Defendant-Intervenor.

_____ /
MHC Financing Limited Partnership and Grapeland Vistas, Inc (collectively "MHC"), challenge the constitutionality of the City of San Rafael's mobilehome rent and vacancy control ordinance ("the Ordinance"). MHC owns the Contempo Marin Mobilehome Park ("Contempo Marin") in San Rafael. In its original complaint, MHC claimed the Ordinance violated the Takings Clause for failing substantially to advance a legitimate state interest. Doc #1. Such an attack was then expressly allowed by the law of this circuit. See Richardson v City and County of Honolulu, 124 F3d 1150, 1164 (9th Cir 1997). In Lingle v Chevron USA, Inc, 544 US

1 528 (2005), the Supreme Court disallowed this ground of attack
2 under the Takings Clause. In the meantime, there were substantial
3 developments both in this litigation and in the applicable legal
4 standards.

5 In July 2001, the parties entered a settlement agreement
6 in light of the Richardson standard. In this settlement, the City
7 agreed to "initiate" amendments to the Ordinance that would
8 eliminate vacancy control. Doc #23, Ex 1, § 2. In return, MHC
9 agreed to dismiss the present suit and not challenge the
10 constitutionality of the City's Ordinance. *Id.* The settlement
11 unraveled, however, when the residents of Contempo Marin prevailed
12 on the City council to back out of the settlement, leading MHC to
13 amend its complaint to allege that the City had breached the
14 settlement agreement. Doc #78. The ensuing trial centered around
15 the meaning of "initiate" in the parties' settlement agreement: MHC
16 contended this meant to begin repeal while the City argued this
17 meant only to consider repeal. In November 2002, a jury ruled in
18 favor of the City on these claims (Doc #350), and the court has
19 since declined to disturb that verdict (Doc #468).

20 The court also tried MHC's takings claim at the November
21 2002, trial but delayed its findings of fact and conclusions of law
22 pending the Supreme Court's decision in Lingle, Doc #412, which
23 ended up eviscerating the "substantially advances" theory on which
24 MHC's takings claim rested. Lingle, 544 US at 528. After Lingle
25 was decided, defendant-intervenor Contempo Marin Homeowners
26 Association ("CMHA") renewed its motion to dismiss the remaining
27 claims (Doc #446), and MHC moved to amend its complaint (Doc #450).
28 On January 27, 2006, the court dismissed certain declaratory relief

1 claims while permitting MHC to amend its complaint to allege other
2 theories by which the Ordinance violates the Fifth Amendment and to
3 add a Fourteenth Amendment substantive due process claim. Doc
4 #468.

5 In its second amended complaint, MHC seeks injunctive and
6 declaratory relief under 42 USC § 1983, asserting that San Rafael's
7 mobilehome rent regulation violates MHC's substantive due process
8 rights, constitutes a regulatory taking under Penn Central
9 Transportation Co v New York City, 438 US 104 (1978), and runs
10 afoul of the "public use" requirement of the Fifth Amendment under
11 the standards articulated in Kelo v City of New London, 545 US 469
12 (2005). Doc #471 (SAC).

13 These claims were tried to the court without a jury on
14 April 9, 11, 24 and 30, and May 1, 2007. Based on the testimony
15 and evidence presented at the 2002 and 2007 trial, the court makes
16 the following findings of fact and conclusions of law:

17
18 FINDINGS OF FACT

19 1. Plaintiffs are MHC Financing Limited Partnership (now known as
20 Equity LifeStyle Properties, Inc) and Grapeland Vistas, Inc.
21 For ease of exposition, the court refers to plaintiffs
22 collectively as "MHC" unless otherwise noted. MHC operates as
23 a real estate investment trust, or REIT, and is publicly
24 traded on the New York Stock Exchange. 10/30/02 Tr at 69:1-2.
25 The REIT provides a structure for investors to pool their
26 resources in real estate or rental properties similar to that
27 which mutual funds provide for investment in stocks and bonds.
28 10/30/02 Tr at 69:3-7.

- 1 2. Defendant is the City of San Rafael ("City" or "San Rafael").
2 Located approximately 15 miles north of San Francisco, San
3 Rafael is the county seat of Marin County, California.
4 10/30/02 Tr at 74:9-11.
- 5 3. Contempo Marin Homeowners Association ("CMHA"), an
6 unincorporated association, is a defendant-intervenor in this
7 action. CMHA seeks to uphold the legality of the Ordinance.
- 8 4. A "mobilehome" or "manufactured home" is a dwelling
9 constructed at a factory and then moved and installed at
10 another site. 11/25/02 Tr at 38:22-39:6.
- 11 5. Contempo Marin Mobilehome Park ("Contempo Marin") is a
12 mobilehome park located in San Rafael. There are 396
13 mobilehome spaces at Contempo Marin, and approximately 1000
14 people live at the park. 4/24/07 Tr at 467:25-468:10.
- 15 6. Contempo Marin is one of two facilities to which San Rafael
16 applies the Ordinance. The other facility is known as RV Park
17 of San Rafael, a 30-site park populated with "campers, RV's
18 [and] trailers" rather than mobilehomes. 11/5/02 at 67:16-24;
19 4/11/07 Tr at 391:18-392:17. The units at the RV Park have
20 wheels, are attached to wheeled vehicles or are capable of
21 having wheels mounted. The RV Park has limited amenities.
22 Due to the mobility of most of its units and its limited
23 amenities, the RV Park is not comparable to Contempo Marin.
24 Consequently, Contempo Marin is the sole location of its type
25 in San Rafael and thus offers a unique form of housing in San
26 Rafael.
- 27 7. At Contempo Marin, MHC leases plots of land, called "pads" or
28 "spaces" for the purpose of installing a mobilehome on the

1 plot. At its own expense, MHC furnishes and maintains, for
2 the use of pad lessees, their families and guests, private
3 roads within the park and various community facilities
4 including a clubhouse, walking trails, tennis courts, a
5 lagoon, swimming pool, sauna, library and other recreational
6 amenities. 10/30/02 Tr at 70:8-15.

- 7 8. Pad lessees at Contempo Marin who wish to relocate have
8 usually sold their mobilehomes in place rather than pulling
9 them from the park and moving them to another location. In
10 the case of in-place transfers of mobilehomes at Contempo
11 Marin, purchasers, in addition to acquiring the mobilehome,
12 take over the pad leasehold on which the mobilehome is located
13 and the right of access to and use of the various community
14 facilities. California law entitles in-place transferees to
15 assume the prior lessees' lease with its attendant rights.
- 16 9. Pad lessees at Contempo Marin are subject to rules created by
17 MHC and its predecessor. Those rules allow only new
18 mobilehomes to be placed on vacant pads. In addition, these
19 rules require the removal of the mobilehome's axel once
20 situated on a pad and provide that the cost of installing
21 utility connections, a garage, steps, porches, decks and
22 landscaping must be borne by the pad lessee. The cost of
23 maintaining these improvements, as well as fencing, driveways
24 and walkways, is also borne by the pad lessee.
- 25 10. Pad lessees at Contempo Marin own and maintain their
26 individual mobilehomes. Pad lessees pay monthly rent to MHC
27 for use of their respective pads and the community facilities
28 and services that MHC provides. MHC holds legal title to the

1 pads at Contempo Marin, as well as the community facilities.
2 Pad lessees have no legal interest in the land at Contempo
3 Marin except the possessory interest and other rights set
4 forth in their pad leases. These leases do not grant any
5 property rights to Contempo Marin. Paragraph 19 of the
6 standard lease states that:

7 all plants, shrubs and trees planted on the
8 premises, as well as structures, including fences
9 permanently imbedded in the ground if allowed in
10 the park pursuant to the rules and regulations,
11 blacktop or concrete, or any structures permanently
12 attached to the ground shall become the property of
13 the park as soon as they are installed and may not
14 be removed by the resident without the prior
15 written consent of the park. Residents shall
16 maintain, repair, and when necessary at the park's
17 sole discretion, remove and/or replace all of the
18 above at resident's sole expense and responsibility
19 and shall be completely responsible for each of
20 them although they are the property of the park,
21 which may remove them at its option." MHC Trial Ex
22 227, at Tab H.

11. As of 2002, the average tenure of Contempo Marin
16 residents is about ten years. 10/30/02 Tr at 83:6-10;
17 City Trial Ex EX.
12. Housing costs in the San Francisco Bay area are among the
19 highest in the United States. Mobilehomes at Contempo Marin
20 offer certain cost advantages over traditional or "stick
21 built" housing: (a) mobilehomes at Contempo Marin are largely
22 assembled in a factory employing mass production techniques;
23 and (b) a mobilehome pad lessee at Contempo Marin avoids the
24 capital outlay required to own the ground upon which the
25 mobilehome sits. Offsetting these advantages, however,
26 interest rates for the purchase of a mobilehome are generally
27 higher than for stick built housing due to the lower residual
28

- 1 value and shorter useful life of mobilehomes. MHC Trial Ex
2 105 at 15-17; 11/19/02 Tr at 76.
- 3 13. In 1977, the Department of Housing and Urban Development
4 ("HUD") established certain guidelines for mobilehomes. As a
5 general rule, mobilehomes produced before implementation of
6 these guidelines command less value than mobilehomes produced
7 in accordance with these guidelines. Availability of
8 financing for the purchase of pre-HUD guideline mobilehomes is
9 essentially non-existent from conventional lenders in the San
10 Francisco Bay area. 10/30/02 Tr at 77:15-17, 79:6-21.
- 11 14. Post-HUD guideline mobilehomes are more comparable to "stick
12 built" homes than pre-HUD guideline homes. Post-HUD
13 mobilehomes average more than 1400 square feet and have
14 features such as peaked roofs, porches, bay windows,
15 fireplaces, designer kitchens and fully appointed baths.
16 Post-HUD guideline mobilehomes sell on average for
17 approximately \$60,000. City Trial Ex BV; 11/21/02 Tr at
18 88:12-89:15.
- 19 15. Formerly, most of the mobilehomes at Contempo Marin were
20 manufactured before 1976 and thus were not subject to the HUD
21 guidelines. In order to upgrade the park, MHC has purchased
22 some of these older mobilehomes, obtained their offsite
23 salvage values and replaced them with newer, post-HUD
24 mobilehomes. This effort increased the desirability of
25 Contempo Marin as a residential location and benefitted the
26 remaining Contempo Marin pad lessees.
- 27 16. Contempo Marin contains less than 2 percent of the housing
28 units in San Rafael and less than 4/10ths of 1 percent of the

1 housing stock in Marin County. MHC Trial Ex 104 at 9. The
2 housing markets in San Rafael and Marin County are part of the
3 much larger housing market in the San Francisco Bay area.
4 This market offers consumers a wide variety of housing
5 alternatives. The resale prices that Contempo Marin residents
6 can realize for their mobilehomes and the rentals that MHC can
7 charge for pad leaseholds compete with and are limited by
8 these housing alternatives.

9
10 *Regulation of Mobilehome Parks*

- 11 17. In 1978, California enacted the California Mobilehome
12 Residency Law, Cal Civ Code §§ 798 et seq. The legislature
13 found that "because of the high cost of moving mobilehomes,
14 the potential for damage resulting therefrom, the requirements
15 relating to the installation of mobilehomes, and the cost of
16 landscaping or lot preparation, it is necessary that the
17 owners of mobilehomes occupied within mobilehome parks [i e,
18 pad lessees] be provided with the unique protection from
19 actual or constructive eviction afforded by the provisions of
20 this chapter." Cal Civ Code § 798.55(a).
- 21 18. The California Mobilehome Residency Law provides pad lessees
22 an ongoing tenancy that can be terminated only at the option
23 of the pad lessee. A park owner may terminate a leasehold
24 only for cause, as defined by the statute, such as the
25 nonpayment of rent or the failure to abide by park rules. Id
26 § 798.56. The law also permits pad lessees to sell their
27 coaches in-place to purchasers who must be offered a tenancy
28 for the pad. Id §§ 798.17, 798.18, 798.73, 798.75. This

1 restriction on mobilehome park owners stands in contrast to
2 California's property tax regime, under which municipalities
3 that provide comparable services, such as roads, parks,
4 walking trails, libraries and other recreational amenities,
5 obtain a stepped-up tax upon the resale of property. See
6 section 2 of article XIIIIA of the California Constitution
7 (enacted by Proposition 13) (establishing an acquisition-value
8 assessment system).

9 19. The California Mobilehome Residency Law permits mobilehome
10 landowners to negotiate rental agreements of longer than
11 twelve months duration that are exempt from rent control. See
12 Cal Civ Code § 798.17. But the statute grants tenants a right
13 to refuse a long-term lease and be offered a rent controlled
14 lease with "the same rental charges, terms, and conditions
15 * * * during the first 12 months." Id § 798.17(c).

16 20. In 1989, the City enacted the Mobilehome Rent Stabilization
17 Ordinance, San Rafael Municipal Code Chapter 20.04 (the 1989
18 Ordinance). The 1989 Ordinance limited annual rent increases
19 that mobilehome park owners could charge pad lessees to a
20 graduated percentage of the California, All Urban Consumers,
21 San Francisco-Oakland-San Jose index ("CPI-C"). Id, §
22 20.04.040(B). If the change in CPI-C was 5 percent or less,
23 the park owner was entitled to increase pad rents by a
24 percentage equal to the change in CPI-C. Id. If the CPI-C
25 increased between 5 percent and 10 percent, the park owner
26 could raise pad rents by a percentage equal to 75 percent of
27 the overall change in CPI-C. Id. If the CPI-C increase was
28 greater than 10 percent, the park owner could increase pad

1 rents by a percentage equal to 66 percent of the overall
2 change in CPI-C. Id. Under the 1989 Ordinance, park owners
3 could seek a greater increase through a defined process. Id,
4 § 20.10.180.

5 21. The purpose of the 1989 Ordinance was to "establish a speedy
6 and efficient method of reviewing rent increases in mobilehome
7 parks to protect homeowners [i e, pad lessees] from arbitrary,
8 capricious or unreasonable rent increases while insuring
9 owners and/or operators and investors a fair and reasonable
10 return and encouraging competition in the provision of
11 mobilehome lots." Id, § 20.04.010(J). The 1989 Ordinance
12 contained a finding that mobilehomes "constitute an important
13 source of housing for persons of low and moderate income."
14 Id, § 20.04.010(B). The 1989 Ordinance described many pad
15 lessees as "elderly, some of whom live on small fixed incomes"
16 and who "may expend a substantial portion of their income on
17 rent and may not be able to afford other housing within the
18 city." Id, § 20.04.010.

19 22. The 1989 Ordinance did not contain "vacancy control"
20 provisions. The park owner was thus able to raise the pad
21 rent, irrespective of rent control, charged to a new pad
22 lessee who took over the prior pad lessee's lease. See MHC Ex
23 104 (Quigley report) at 5 (explaining that under vacancy
24 control, the right to rent the pad at the regulated price is
25 transferred to a new lessee at the then current pad rental
26 value).

27 23. In 1993, the City amended the 1989 Ordinance to include
28 vacancy control provisions (1993 Amendments). In so doing,

- 1 the City made additional findings, including the following:
- 2 a. "Establishment of rent regulations on spaces where
- 3 ownership of the mobilehome is transferred but the
- 4 mobilehome remains, sometimes referred to as 'vacancy
- 5 control,' is an important part of rent control policy as
- 6 it protects mobilehome owners from excessive space rent
- 7 increases and permits sales of mobilehomes without
- 8 'unconscionable' rent increases to the new owner";
- 9 b. "Rent control regulations, including vacancy control, can
- 10 assist in providing affordable housing in combination
- 11 with city programs and actions to help provide a variety
- 12 of housing types within a range of costs affordable to
- 13 low and very low income households";
- 14 c. "A significant number of residents have become residents
- 15 following the effective date of [the 1989 Ordinance] and
- 16 were required to pay a rental rate substantially higher
- 17 than comparable spaces"; and
- 18 d. "Many residents of such spaces are senior citizens on
- 19 fixed incomes and have been forced to pay unnecessarily
- 20 high rents and/or have been constrained in their ability
- 21 to sell their mobilehomes."
- 22 24. Prior to enactment of the 1993 Amendments, when a tenant
- 23 terminated tenancy at Contempo Marin and either sold his
- 24 mobilehome to an incoming tenant or removed the mobilehome,
- 25 MHC was able to negotiate a new rent with an incoming tenant.
- 26 This allowed MHC to realize the fair market rental of the
- 27 mobilehome pad.
- 28 25. Prior to enactment of the 1993 Amendments, the City did not

1 conduct an investigation or other inquiry to determine any of
2 the facts stated as grounds for enactment of the 1993
3 Amendments. The City did not have a factual basis to make any
4 finding that MHC charged or attempted to charge "excessive" or
5 "unconscionable" space rent increases upon in-place transfers
6 of mobilehomes at Contempo Marin, Contempo Marin residents
7 "were required to pay a rental rate substantially higher than
8 comparable spaces" or Contempo Marin residents "have been
9 forced to pay unnecessarily high rents and/or have been
10 constrained in their ability to sell their mobilehomes."
11 There was in fact no basis for any of the stated grounds for
12 the enactment of the 1993 Amendments.

- 13 26. At the time the 1993 Amendments were enacted, Contempo Marin
14 was owned by De Anza Assets, Inc ("De Anza").
- 15 27. On April 19, 1993, De Anza filed suit in Marin County superior
16 court, De Anza Assets, Inc v City of San Rafael, Case No
17 AO63017.
- 18 28. There, De Anza alleged that the 1993 Amendments amounted to a
19 regulatory taking in violation of the Takings Clause of the
20 Fifth Amendment to the United States Constitution.
- 21 29. The superior court sustained a demurrer to the De Anza first
22 amended complaint without leave to amend on the basis that De
23 Anza had not stated and could not state a cause of action.
- 24 30. While an appeal of the superior court's demurrer was pending,
25 in August 1994, MHC purchased Contempo Marin and has continued
26 to operate the park to the present.
- 27 31. On October 6, 1994, the state court of appeal affirmed in part
28 and reversed in part the superior court's grant of a demurrer

1 and remanded the case to the superior court. While the court
2 of appeal concluded that "the Amendments do not constitute a
3 regulatory taking," it nonetheless reversed and remanded on
4 other grounds. City Trial Ex BR at 15.

5 32. The parties in the De Anza litigation took no further action.
6 On November 5, 2002, the superior court dismissed the De Anza
7 litigation for failure to prosecute.

8 33. MHC is not affiliated with the plaintiffs in the De Anza
9 litigation.

10 34. On November 1, 1999, the City further amended its mobilehome
11 rent control ordinance by enacting the regulation here at
12 issue (the 1999 Amendments).^{*} The City replaced the sliding
13 scale formula of the 1993 Amendments that provided for
14 graduated annual rent increases depending on the magnitude of
15 inflation, with a single formula that limited increases to 75
16 percent of any increase in the CPI-C. City Trial Ex AI. In
17 addition, the 1999 Amendments modified the manner in which the
18 cost of capital improvements could be recovered by park
19 owners. Id.

20 35. San Rafael's mobilehome rent regulation provides an
21 administrative procedure by which park owners such as MHC may
22 seek rent increases beyond that which the regulation's formula
23 provides in order to obtain "a just and reasonable return."
24 City Trial Ex AB § 20.12.050.

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26 _____
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27 The Ordinance as amended in 1999 is set out in the Appendix
28 showing the deletions and additions made by the 1999 Amendments.

1 36. On October 13, 2000, MHC commenced the instant suit
2 challenging the constitutionality of the City's regulations on
3 the ground that they violate the Takings Clause of the Fifth
4 Amendment as made applicable to the states by the Fourteenth
5 Amendment. See Doc #1.

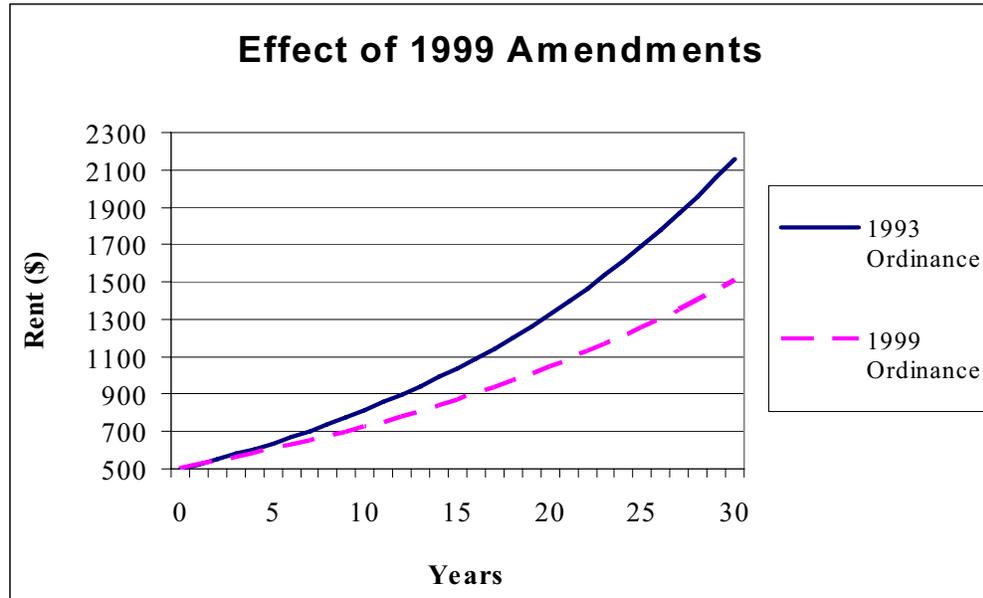
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7 *Economic Impact of the Ordinance on MHC*

8 37. Coupled with the earlier enactments, the 1999 Amendments
9 changed the operation of San Rafael's mobilehome rent
10 regulation to render it certain that mobilehome pad rents
11 would fall progressively further behind market rents.

12 38. Prior to the 1999 Amendments, the automatic rent increase
13 formula provided that rent increases could essentially keep
14 pace with the prevailing rates of inflation. Under the prior
15 regime, park owners were automatically entitled to increase
16 rents by 100 percent of the change in the CPI-C if the annual
17 increase was 5 percent or less in a given year. In no year
18 from 1993 to 1999 did the CPI-C increase at an annual rate
19 greater than 5 percent. See Bureau of Labor Statistics,
20 United States Dep't of Labor website, at
21 [http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA422SA0,CUUSA422SA0)
22 [dropmap&series_id=CUURA422SA0,CUUSA422SA0](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA422SA0,CUUSA422SA0) ("change output
23 options") (last visited January 26, 2008).

24 39. The 1999 Amendments, coupled with the vacancy control
25 provision of the 1993 Amendments, impose a continually growing
26 gap between the fair market rental value of a mobilehome pad
27 leasehold and the rental rate MHC is permitted to charge at
28 Contempo Marin. During its first year of operation, the

1 formula limited the rent increase to 75 percent of the
 2 increase in the CPI-C. The following chart depicts this gap
 3 assuming a constant rate of inflation of 5 percent and a base
 4 rent of \$500 per month.



16 40. After ten years, the increase in the fair market value of the
 17 leasehold would be approximately 30 percent greater than the
 18 increase in the amount paid by pad lessees under the 1999
 19 Amendments. Because the formula prior to the 1999 Amendments
 20 provided for rent increases to rise at 100 percent of
 21 inflation if the local CPI-C increased by 5 percent or less,
 22 the increase in the amount paid by pad lessees under the
 23 previous formula would also be 30 percent greater than the
 24 cumulative increase allowed under the 1999 Amendments. After
 25 thirty years, the gap between the rent under the pre-1999
 26 formula and the rent permitted under the 1999 Amendments rises
 27 to 40 percent. See also 11/6/02 Tr at 197:5-198:3.

28 41. The 1999 Amendments created a premium in the resale prices of

1 mobilehomes located in Contempo Marin. This premium
2 corresponds to and is equal to the capitalized value of the
3 difference between the fair market rental value of mobilehome
4 pads at Contempo Marin and the rental permitted to be charged
5 under the 1999 Amendments. MHC Trial Ex 104 (Quigley report)
6 at 6-8; MHC Trial Ex 137 at 3.

7 42. Under operation of the 1999 Amendments, the economic value of
8 the below fair market rent for the mobilehome pad is simply
9 capitalized into the selling price of the mobile home in the
10 event of an in-place transfer. Indeed, the amendments reduced
11 MHC's revenue streams from Contempo Marin and the value of its
12 property by \$10,609,136. See MHC Trial Ex 103 (Fischel
13 report) at 30; 11/6/02 Tr at 196:5-197:3.

14 43. In making in-place transfers of mobilehomes at Contempo Marin,
15 purchasers and sellers negotiate one sales price. This sales
16 price is composed of the replacement value of the mobilehome
17 itself and the premium attributable to San Rafael's regulation
18 of mobilehome pad rentals. Parties do not separately
19 negotiate these two components of value. Estimates must be
20 made to determine these components of value. The most
21 reliable and widely used source of estimates of the
22 replacement value of mobilehomes at Contempo Marin are found
23 in the data compiled by the National Automobile Dealers
24 Association (NADA). Estimates of replacement value in the
25 NADA guides make adjustments for transportation and setup
26 costs and tenant improvements such as carports, porches,
27 awnings, additions and the like. Insurance rates for
28 mobilehomes at Contempo Marin are based on replacement values.

1 44. The average replacement value of the mobilehomes sold at
2 Contempo Marin between January 1999 and July 2002 was
3 approximately \$27,000. Most of these sales (fifty-nine out of
4 sixty-nine) occurred after enactment of the 1999 Amendments.
5 45. Since the 1999 Amendments, including the several years that
6 elapsed from the commencement of this action to the start of
7 trial, San Rafael's scheme of mobilehome rent regulation
8 created a premium in the price of mobilehomes sold in place at
9 Contempo Marin. Purchasers of mobilehomes in Contempo Marin
10 after the 1999 Amendments have paid a premium reflecting the
11 present value of expected rent savings due to San Rafael rent
12 regulation. This premium averages \$67,000 for the right to
13 enjoy the below market regulated rent.
14 46. The premium paid by new pad lessees in Contempo Marin who
15 purchased existing mobilehomes following enactment of the 1999
16 Amendments reflected nearly full monetization of the expected
17 rent benefits of the 1999 Amendments. See MHC Ex 137 (Quigley
18 supp) at 3 (estimating the premium plus associated financing
19 costs to represent nearly 100 percent of the economic benefits
20 under the 1999 Amendments). Commencing in 2000, MHC provided
21 a notice to all incoming pad lessees of the pendency of this
22 lawsuit and the possibility that rent control and/or vacancy
23 control for mobilehome pad rentals in San Rafael may be
24 eliminated. On July 13, 2001, San Rafael through its city
25 attorney's office notified Contempo Marin residents that it
26 had entered into a settlement agreement with MHC to eliminate
27 the City's mobilehome vacancy control regulations. The
28 difference between full capitalization of expected rent

1 control benefits to existing pad lessees of the 1999
2 Amendments is the product of incoming tenants' uncertainty
3 concerning the continued viability of rent and vacancy control
4 at Contempo Marin. If the 1999 Amendments are determined to
5 be constitutional, full capitalization (100 percent) of the
6 below-market rentals produced by the 1999 Amendments will be
7 realized by existing pad lessees at Contempo Marin. See
8 11/27/02 Tr at 70:12-19.

9 47. The evidence presented in 2007 corroborates the court's
10 capitalization analysis. In 2007, MHC's expert, Dr Quigley,
11 used a data source for real estate sale prices different from
12 the NADA valuation he relied on in 2002. Quigley's findings
13 and regression analysis nonetheless yield consistent results,
14 namely, that the benefits that arise from the Ordinance were
15 capitalized into higher selling prices of mobilehome coaches
16 in Contempo Marin. 4/24/2007 Tr at 482:14-483:21; 502:11-19;
17 MHC Trial Ex 392.

18 48. The level of capitalization would be even greater but for the
19 uncertainty about the future of the rent regulation due to
20 this litigation. 4/24/2007 Tr at 502:11-503:9, 502:22-503:9.

21 49. Since the 2002 trial, the average sales price for mobilehomes
22 sold have risen to \$119,606, City Trial Ex EV; Ex 392,
23 yielding an average premium in excess of \$98,000 and
24 representing about 82 percent of the value of the
25 transaction. 4/24/07 Tr at 612:25-613:3; MHC Trial Ex 392 at
26 9913. In 2007, 21 mobilehomes sold in Contempo Marin at a
27 mean price of \$154,000, MHC Trial Ex 400. Most of these units
28 were pre-HUD mobilehomes. 4/30/07 Tr at 782:13-20; 783:11-21.

1 50. According to the annual letters sent by MHC to the City for
2 the purpose of calculating the annual automatic rent pursuant
3 to the Ordinance, the average monthly space rents at Contempo
4 Marin for 1999 through 2006 were as follows:

5	1999:	\$613.73
6	2000:	\$630.43
7	2001:	\$654.24
8	2002:	\$663.65
9	2003:	\$652.81
	2004:	\$659.31
	2005:	\$664.85
	2006:	\$675.32

10 City Trial Ex AJ, CQ.

11 51. As a result of the capitalization of below market mobilehome
12 pad rentals into the resale price of mobilehomes at Contempo
13 Marin, the City's mobilehome rent control regulations do not
14 contribute to the availability of low-cost (i e, below market
15 rate) housing in San Rafael. Nor do the regulations foster
16 the availability of housing to senior citizens as the value of
17 the below market pad rentals available at Contempo Marin is
18 greater, other factors being the same, to a prospective
19 purchaser having a longer rather than shorter life expectancy.

20 52. For new or prospective mobilehome residents at Contempo Marin,
21 their cost of housing includes both cash outlays or finance
22 payments for the mobilehome as well as the pad rental. The
23 total economic cost of housing at Contempo Marin remains at
24 market levels because of the increased cost of the mobilehome
25 necessary to impound the capitalized value of below market pad
26 rentals. The 1999 Amendments transfer the capitalized value
27 of the difference between market pad rentals at Contempo Marin
28

1 from plaintiffs to pad lessees in possession of Contempo Marin
2 pads at the time of the effectiveness of the 1999 Amendments.

3 53. The City presented evidence purporting to show that the
4 difference between the selling prices of mobilehomes after
5 enactment of the 1999 Amendments and the "book values" for
6 those homes, as published in the NADA Mobile/Manufacture
7 Housing Appraisal Guide, were not the result of the Ordinance.
8 The City introduced a study of mobilehome parks located in
9 other cities that are not subject to rent control. See City
10 Ex 106 (Brabant report) at 21-25. The study concluded that
11 the recent sale prices of mobilehomes in those parks were
12 comparable to recent sale prices in Contempo Marin, as
13 measured on a per-square-foot basis. Id at 25. This evidence
14 is not credible due to the failure of this presentation to
15 control for variation in the quality of the mobilehome parks
16 used for comparison.

17 54. The City's expert also opined that the higher sales prices of
18 mobilehomes in Contempo Marin, compared to their NADA book
19 values, were attributable not to the capitalization of the
20 benefits of below-market rent but rather the desirability of
21 Contempo Marin's location. See Brabant Report (City Ex 106),
22 at 20. The locational value of a mobilehome in Contempo Marin
23 is not the product of any investment of a Contempo Marin
24 mobilehome owner, by situating a mobilehome on a pad at
25 Contempo Marin and connecting utilities to the mobilehome or
26 otherwise. 11/25/02 Tr at 141:4-142:6.

27 55. The premium by which Contempo Marin-located mobilehomes exceed
28 their NADA book values is six to eight times larger than the

1 location value claimed by the City. Id at 132:10-133:2. The
2 City's argument pertaining to location value simply does not
3 account for the magnitude of the premium observed; nor does it
4 undermine the evidence that the economic benefits of the
5 Ordinance will be monetized and transferred to mobilehome
6 owners who had leases in Contempo Marin at the time of its
7 amendment.

8 56. Finally, the City also objects to MHC's expert report on the
9 ground that its reliance on NADA book values is erroneous.
10 While the City contends that MHC's experts lacked the
11 necessary background and training to apply the information
12 contained in the NADA book, the City fails to point to any
13 logical or foundational deficiencies in those experts'
14 testimony.

15
16 *Impact on MHC's Fifth Amendment Rights*

17 57. The Takings Clause of the Fifth Amendment of the United States
18 Constitution states, in relevant part, "[N]or shall private
19 property be taken for public use, without just compensation."
20 US Const amend V. The Takings Clause applies to the states
21 through the Fourteenth Amendment. See, e g, Dolan v City of
22 Tigard, 512 US 374, 383-84 (1984).

23 58. "[W]hile property may be regulated to a certain extent, if
24 regulation goes too far it will be recognized as a taking."
25 Pennsylvania Coal Co v Mahon, 260 US 393, 415 (1922).

26 59. The Takings Clause's proper role is to "[bar] government from
27 forcing some people alone to bear public burdens which, in all
28 fairness and justice, should be borne by the public as a

1 whole." Lingle v Chevron USA, Inc, 544 US 528, 537 (2005),
2 quoting Armstrong v United States, 364 US 40, 49 (1960)
3 (internal quotations omitted). Nevertheless, states retain
4 "broad power to regulate * * * the landlord-tenant
5 relationship * * * without paying compensation for all
6 economic injuries that such regulation entails." Loretto v
7 Teleprompter Manhattan CATV Corp, 458 US 419, 440 (1982).
8 60. "[W]here the government merely regulates the use of property,
9 compensation is required only if considerations such as the
10 purpose of the regulation or the extent to which it deprives
11 the owner of the economic use of the property suggest that the
12 regulation has unfairly singled out the property owner to bear
13 a burden that should be borne by the public as a whole." Yee
14 v City of Escondido, 503 US 519, 522-23 (1992).
15 61. "The Penn Central factors -- though each has given rise to
16 vexing subsidiary questions -- have served as the principal
17 guidelines for resolving regulatory takings claims * * *."
18 Lingle, 544 US at 538-39.
19 62. Regulatory takings jurisprudence "aims to identify regulatory
20 actions that are functionally equivalent to the classic taking
21 in which the government directly appropriates private property
22 or ousts the owner from his domain. * * * [T]he Penn Central
23 inquiry turns in large part, albeit not exclusively, upon the
24 magnitude of a regulation's economic impact and the degree to
25 which it interferes with legitimate property interests."
26 Lingle, 544 US at 539-40, quoting Penn Central Transp Co v
27 City of New York, 438 US 104, 124 (1978) (internal quotations
28 omitted).

1 63. "In addition, the character of the governmental action -- for
2 instance whether it amounts to a physical invasion or instead
3 merely affects property interests through some public program
4 adjusting the benefits and burdens of economic life to promote
5 the common good -- may be relevant in discerning whether a
6 taking has occurred." Id, quoting Penn Central, 438 US at 124
7 (internal quotations omitted). The court addresses each Penn
8 Central factor in turn.

9
10 (1) Magnitude of the Ordinance's economic impact on MHC
11 64. The Supreme Court has measured economic impact in several
12 different ways, including assessing the market value of the
13 property, see Hodel v Irving, 481 US 704, 714 (1987),
14 determining whether the regulation makes the property owner's
15 business operation "commercially impracticable," Keystone, 480
16 US at 493-96 (1987), and evaluating the possibility of other
17 economic uses of the land besides sale, see Andrus v Allard,
18 444 US 51, 66 (1979).

19 65. "The court should consider, along with other relevant matters,
20 the relationship of the owner's basis or investment, and the
21 fair market value before the alleged taking to the fair market
22 value after the alleged taking. In determining the severity
23 of the economic impact, the owner's opportunity to recoup its
24 investment or better, subject to the regulation, cannot be
25 ignored." Florida Rock Indus v United States, 18 F3d 1560,
26 1566-67 (Fed Cir 1994) (Florida Rock IV), quoting Florida Rock
27 Indus v United States, 791 F2d 893, 905 (Fed Cir 1986)
28 (Florida Rock II).

- 1 66. "Since loss of economic use and value is the issue in this
2 regulatory taking case, it is not possible, absent a valid
3 determination in the record of the 'after imposition' value of
4 the land, to know if a taking occurred, much less what the
5 Government must pay for it." Florida Rock IV, 18 F3d at 1573.
- 6 67. The Ninth Circuit defined "economic impact" in the context of
7 a regulatory takings claim in Garneau v City of Seattle,
8 holding that "plaintiffs must show that the value of their
9 property diminished as a consequence of the [ordinance at
10 issue]. Further, plaintiffs must show that the diminution in
11 value is so severe that the [ordinance at issue] has
12 essentially appropriated their property for public use." 147
13 F3d 802, 808 (9th Cir 1998).
- 14 68. As explained, absent the Ordinance, MHC could obtain average
15 rents in 2006 of approximately \$1700 (and \$1800 in 2007).
16 4/11/07 Tr at 418:13-18; 409:14-411:4. This estimation
17 reflects a compound annual increase in rents of approximately
18 6 percent from 2001 to 2006. 5/1/07 Tr at 972:4-13. Lending
19 support to these figures, the compounded annual increase from
20 1998 to 2006 for neighboring Captains Cove property is
21 approximately 13 percent per year. 4/30/07 Tr at 972:14-
22 973:23.
- 23 69. Rents under the Ordinance, however, were limited to under
24 \$700, City Trial Ex EX, depriving MHC of approximately \$5.2
25 million in annual net operating income ("NOI") (\$1100 x 396
26 sites x 12 months). The Ordinance thus has the effect of
27 eliminating at least 75 percent of the NOI that MHC would
28 realize under market conditions. 5/1/07 Tr at 981:18-983:15;

1 4/30/07 Tr at 834:25-835:11 (City's expert, Dr Ken Baar,
2 acknowledging that MHC is worth less than 25 percent of the
3 value that it would have if MHC could collect market rents of
4 \$1800 a site). Consider Florida Rock Indus v United States,
5 45 Fed Cl 21, 33-38 (Fed Cl 1999) (Florida Rock V) (finding
6 that the economic impact was severe because the property value
7 diminished by 75 percent without offsetting benefits).

8 70. Compounding these losses, MHC remains responsible for
9 maintaining and repairing an aging infrastructure and for
10 incurring other capital expenditures without a reasonable
11 means to recoup the capital, recover its costs of financing
12 the same or obtaining a return on the same. 5/1/07 Tr 983:3-
13 15; 4/11/07 Tr at 292:19-21. This state of affairs has led
14 MHC to spend millions of dollars in legal fees simply to
15 protect its property rights. 5/1/07 Tr at 979:20-980:20.

16 71. Based on the City's own expert analysis, MHC's net operating
17 income has declined over the last seven years - even if legal
18 expenses related to capital expenditures are not included as
19 expenses. City Ex EO. Even if both legal expenses and
20 expenses incurred by MHC's corporate office related to the
21 park are excluded, its NOI has been completely frozen. Id.
22 4/30/07 Tr at 821:8-822:3.

23 72. Without the Ordinance, the park would be worth approximately
24 \$120 million. 5/1/07 Tr at 971:11-19. This valuation
25 comports with the estimation of MHC's expert of the per parcel
26 land value of \$360,000, which amounts to a value of \$140
27 million for the park. Further corroboration is found in the
28 value of market rents for the park (\$1800 a month in 2007),

1 under which the NOI in 2007 would exceed \$7 million. 4/11/07
2 Tr at 418:13-18; 409:14-411:4. Such an NOI level translates
3 into a \$118 million value for the park under a 6 percent
4 capitalization rate, the rate suggested by the City's expert.
5 See 4/30/07 Tr at 743:9-13.

6 73. The Ordinance, however, deprives MHC of most of the park's
7 value. The City's expert valued the park at less than \$23
8 million in 1999, MHC Trial Ex 13, and MHC's Chief Executive
9 Officer asserts that the park is worth even less today.
10 5/1/07 Tr at 982:10-983:15.

11 74. The City's regulatory regime also prevents MHC from seeking
12 investment alternatives for the park. The City intends to
13 retain Contempo Marin as a mobilehome community. MHC Trial Ex
14 300; 4/9/07 Tr at 167:13-24 and 169:17-24. In accordance with
15 its "general plan," the City adopted a special zoning
16 ordinance (no 1626), which designates Contempo Marin as a
17 mobilehome park and proscribes any other use of the land. MHC
18 Trial Ex 301.

19 75. Because the City is obligated to follow its general plan,
20 4/11/07 Tr at 421:6-8, if MHC seeks to change the use of the
21 park, it must convince the City to modify or repeal ordinance
22 1626. MHC Trial Ex 301; 4/11/07 Tr at 435:22-436:6 and 295:8-
23 24. Any change in zoning would require approval from the City
24 council - the same council that adopted ordinance 1626 and has
25 committed in its general plan to retain Contempo Marin as a
26 mobilehome park. 4/11/07 Tr at 436:7-24.

27 76. To change the use of the park, MHC would need to obtain
28 various permits, many of which would require approval by the

1 City council. 4/11/07 Tr at 296:3-297:7 and 437:15-20. Even
2 if MHC sought to subdivide the land, rather than change the
3 use of each space, it would be required to obtain permits that
4 require the City council's approval. 4/11/07 Tr at 296:3-12.

5 77. The City's aims with respect to Contempo Marin are further
6 evidenced by its reversal concerning the settlement the
7 parties agreed to in July 2001, see Doc #23, Ex 1, § 2, under
8 which the City agreed to "initiate" amendments to the
9 ordinance that would eliminate vacancy control. The City
10 reversed course in order to save the premiums obtained by
11 Contempo Marin residents through operation of the Ordinance.
12 This establishes that the City will not accept a change of use
13 that displaced those residents. 4/11/07 Tr at 297:8-298:4.

14 78. Owing to the political and litigation risks MHC would face in
15 seeking a change of use and the costs, as demonstrated by
16 MHC's efforts to obtain a discretionary rent increase, it
17 would be commercially impracticable and wholly futile for MHC
18 to seek a change of use. 4/11/07 Tr at 297:8-14.

19 79. Nor does the prospect of selling the park alleviate the burden
20 imposed on MHC. 5/1/07 Tr at 982:10-16. Inasmuch as the
21 City's conduct undermines MHC's investment it likewise
22 diminishes the value of the park to prospective investors.
23 MHC's ability to attract capital is similarly frustrated by
24 the City's regulations. 5/1/07 Tr at 983:3-984:1.

25 80. Accordingly, the court concludes that the Ordinance imposed by
26 the City is functionally equivalent to a physical taking of
27 all or an overwhelming percentage of the value of MHC's land.
28

1 (2) Interference with MHC's reasonable investment-backed
2 expectations

3 81. "Evaluation of the degree of interference with investment-
4 backed expectations instead is one factor that points toward
5 the answer to the question whether the application of a
6 particular regulation to particular property 'goes too far.'" Palazzolo v Rhode Island, 533 US 606, 634 (2001) (O'Connor
7 concurring) (emphasis in original).

8
9 82. "The Penn Central opinion suggested it is important whether or
10 not the expected use of the property was the primary
11 expectation for the property." Florida Rock Indus v United
12 States, 45 Fed Cl 21, 38 (Fed Cl 1999) (Florida Rock V),
13 citing Penn Central, 438 US at 136 ("So the law does not
14 interfere with what must be regarded as Penn Central's primary
15 expectation concerning the use of the parcel.")

16 83. "Although there is no right to recoup one's investment, the
17 inability to do so weighs in plaintiff's favor, since the
18 regulation consequently places a greater burden on plaintiff."
19 Florida Rock V, 45 Fed Cl at 39.

20 84. "Marketplace decisions should be made under the working
21 assumption that the Government will neither prejudice private
22 citizens, unfairly shifting the burden of a public good onto a
23 few people, nor act arbitrarily or capriciously, that is, will
24 not act to disappoint reasonable investment-backed
25 expectations. The Government, in a word, must act fairly and
26 reasonably, so that private parties can pursue their
27 interests." Florida Rock Indus v United States, 18 F3d 1560,
28 1571 (Fed Cir 1994) (Florida Rock IV).

- 1 85. A Penn Central claim is "not barred by the mere fact that
2 title was acquired after the effective date of the state-
3 imposed restriction." Palazzolo, 533 US at 630. Nonetheless,
4 the timing of the regulation's enactment relative to the
5 acquisition of title is not immaterial to the Penn Central
6 analysis. "Indeed, it would be just as much error to expunge
7 this consideration from the takings inquiry as it would be to
8 accord it exclusive significance." Palazzolo, 533 US at 633
9 (O'Connor concurring).
- 10 86. Before purchasing the park, MHC's business objectives were to
11 acquire manufactured housing community properties "that have
12 strong cash flow growth potential" and "hold such properties
13 for long-term investment and capital appreciation." 4/9/07 Tr
14 at 20:15-24.
- 15 87. Pursuant to this business plan, MHC purchased the Contempo
16 Marin park as part of a portfolio transaction in which the
17 company acquired approximately eleven properties ("DeAnza
18 Portfolio"), 4/11/07 Tr at 309:14-310:4, which included rent
19 controlled and non-rent controlled properties. MHC's
20 expectations in purchasing the park were to achieve market
21 appreciation over time. 4/9/07 Tr at 23:6-12.
- 22 88. When MHC purchased the park in 1994, it had a reasonable
23 expectation that it would be provided a reasonable return on
24 its property value.
- 25 89. The City's amendments to the Ordinance in 1999 frustrated
26 MHC's expectations by increasing dramatically the burden of
27 the Ordinance on MHC. 4/11/07 Tr at 329:14-20; 5/1/07 Tr at
28 974:8-975:10 and 981:18-982:3. As set forth below, much of

1 the economic injury suffered by MHC has been incurred after
2 the enactment of the 1999 Ordinance, which MHC could not
3 reasonably anticipate in 1994. According to the calculations
4 of MHC's expert, the amendments immediately transferred
5 \$10 million from MHC to park tenants. Id; MHC Trial Ex 103.
6 5/1/07 Tr at 976:8-977:8.

7 90. Absent the Ordinance, MHC could obtain average rents in 2006
8 of approximately \$1700 (and \$1800 in 2007), as opposed to the
9 \$700 it presently receives. 4/11/07 Tr at 418:13-18; 409:14-
10 411:4. Starting from MHC's base rent from 1998, if MHC had
11 been permitted to increase rent at a rate consistent with the
12 rate of increase in housing costs in the immediate area, then
13 MHC would have been able to increase its rents by
14 approximately \$900 a month during that period. Hence,
15 approximately 90 percent (\$900 out of \$1000) of the economic
16 impact of the Ordinance on MHC's rents is a function of the
17 application of the Ordinance after 1999.

18 91. Not only did the 1999 Amendments reduce the rent increases,
19 but they changed the "fair return" standard in a way that
20 impedes MHC's ability to obtain a return on capital
21 expenditures.

22 92. MHC had no reason to expect that the City would amend the
23 Ordinance, transferring much of the park's value to third
24 parties, 4/11/07 Tr at 329:19-20; 330:1-7, and denying MHC
25 return on its capital in an escalating real estate market.
26 4/11/07 Tr at 292:19-21.

27
28

1 93. Accordingly, the City's enforcement of the Ordinance has
2 interfered with MHC's reasonable and investor-backed
3 expectations.
4

5 (3) Character of the City's Ordinance

6 94. The character of the government action being complained of is
7 central to determining whether a regulatory taking has in fact
8 occurred under Penn Central. To make this determination,
9 courts look to "balance the liberty interest of the private
10 property owner against the Government's need to protect the
11 public interest through imposition of the restraint." Cienega
12 Gardens v United States, 331 F3d 1319, 1338 (Fed Cir 2003).

13 95. Courts must also assess whether the relevant regulation
14 "forc[es] some people alone to bear public burdens which, in
15 all fairness and justice, should be borne by the public as a
16 whole." Armstrong v United States, 364 US 40, 49 (1960); see
17 also Florida Rock Indus Inc v United States, 45 Fed Cl 21, 22
18 (Ct Cl 1999) (Florida Rock V) (stating that compensation is
19 due under the Fifth Amendment where consideration of the Penn
20 Central factors indicates that a plaintiff "was singled out to
21 bear a burden which ought to be paid for by the society as a
22 whole"); Nollan v California Coastal Commission, 483 US 825,
23 836 n4 ("If the Nollans were being singled out to bear the
24 burden of California's attempt to remedy these problems,
25 although they had not contributed to it more than other
26 coastal landowners, the state's action, even if otherwise
27 valid, might violate * * * the Takings Clause.").
28

- 1 96. Through the Ordinance, the City has singled out MHC to bear a
2 public burden that, in all fairness and justice, should be
3 borne by the public as a whole. Contempo Marin and the RV
4 Park are the only landowners in all of San Rafael that are
5 unable to obtain market value for any part of their property.
- 6 97. Moreover, the RV Park has few, if any, mobilehomes – only
7 recreational type vehicles, which may be moved in and out of
8 the park easily. 11/5/02 at 67:16-24; 4/11/07 Tr at 391:18-
9 392:17. The RV Park also provides many fewer amenities than
10 those available at Contempo Marin. 4/11/07 Tr at 391:18-
11 393:2. Consequently, MHC is uniquely affected by the City's
12 Ordinance. No other landowner in San Rafael suffers a burden
13 that is remotely comparable.
- 14 98. Nor has the City proffered a basis for singling out MHC to
15 bear this burden. The affordability of housing is a market-
16 wide problem; it is not attributable to Contempo Marin, the
17 sole property made to bear the burden of low cost housing in
18 San Rafael. Housing prices are set by market-wide forces, not
19 the unilateral decisions of real estate providers. 4/24/07 Tr
20 at 467:21-468:10. None of the City's affordable housing
21 policies – other than the Ordinance here – imposes a similar
22 burden on other San Rafael property owners. 4/24/2007 Tr at
23 520:19-521:24.
- 24 99. The City's expert Ken Baar conceded that Contempo Marin has
25 not contributed disproportionately to the problem of
26 affordable housing in San Rafael. 4/24/07 Tr at 516:19-517:3.
27 To the contrary, absent rent regulations, mobilehomes
28 constitute an affordable housing choice because they reduce

1 the capital required to acquire a single family home. 4/24/07
2 Tr at 516:19-517:3. Mobilehomes are produced at roughly half
3 the cost per square foot of stick built homes and do not
4 require tenants to purchase the land upon which the mobilehome
5 sits. City Trial Ex BC at 112; 11/21/02 Tr at 95:12-96:18.

6 100. The City has placed a disproportionate burden on MHC not only
7 by imposing the Ordinance but also by enacting a special
8 zoning ordinance that designates Contempo Marin as a
9 mobilehome park, rendering it commercially impracticable for
10 MHC to change the use of its land. 4/11/07 Tr at 294:14-
11 298:4.

12 101. The City's "General Plan 2000" established a specific goal of
13 implementing the mobilehome rent control ordinance and
14 developing a specialized zoning district "to ensure
15 preservation of the Contempo Marin Mobilehome Park." 4/9/07
16 Tr at 169:14-170:5, 229:7-12.

17 102. It is immaterial that the Ordinance technically applies to two
18 landowners. MHC has nonetheless been "singled out." "The
19 relevant class for comparing treatment or allocation of any
20 burden in a takings analysis is that of the class of persons
21 disturbed by the lack of affordable housing - presumably all
22 of society - and the group of people available to remedy that
23 problem." Cienega Gardens, 331 F3d at 1339.

24 103. MHC's operation within a regulated industry does not alter
25 this fact. See Wash Legal Foundation v Legal Found of Wash,
26 271 F3d 835, 861 (9th Cir 2001) (remarking that "the character
27 of the government action is best viewed in the context of the
28 industry it regulates" in concluding that statutes taking

1 interest from lawyer client trust accounts was constitutional
2 in part because lawyers constitute a heavily regulated
3 industry). The Ordinance at issue here is atypical; it
4 imposes a virtually unique burden on MHC.

5 104. The magnitude of the Ordinance's economic impact on MHC, the
6 degree to which the Ordinance interferes with MHC's reasonable
7 investment-backed expectations and the character of the City's
8 conduct all support a finding that the Ordinance is
9 functionally equivalent to an unconstitutional taking that
10 singles out MHC to bear a public burden that, in all fairness
11 and justice, should be borne by the public as a whole. See
12 Penn Central Transp Co v City of New York, 438 US 104, 124
13 (1978) (internal quotations omitted).

14 105. Accordingly, the application of the Ordinance to Contempo
15 Marin gives rise to a regulatory taking under the standards
16 set forth in Penn Central.

17
18 *San Rafael's Private Taking*

19 106. The Takings Clause of the Fifth Amendment of the United States
20 Constitution states, in relevant part, "Nor shall private
21 property be taken for public use, without just compensation."
22 US Const Amend V. The Takings Clause applies to the states
23 through the Fourteenth Amendment. See, for example, Dolan v
24 City of Tigard, 512 US 374, 383-84 (1984).

25 107. "[I]t is only the taking's purpose, and not its mechanics,'
26 * * * that matters in determining public use." Kelo v City of
27 New London, 545 US 469, 482 (2005), quoting Hawaii Housing
28 Authority v Midkiff, 467 US 229, 244 (1984).

- 1 108. "For more than a century, [Supreme Court] public use
2 jurisprudence has wisely eschewed rigid formulas and intrusive
3 scrutiny in favor of affording legislatures broad latitude in
4 determining what public needs justify the use of the takings
5 power." Kelo, 545 US at 483.
- 6 109. "Without exception," the Supreme Court has "defined ['public
7 purpose'] broadly" reflecting a "longstanding policy of
8 deference to legislative judgments in this field." Kelo, 545
9 US at 480.
- 10 110. "[I]f a legislature, state or federal, determines there are
11 substantial reasons for an exercise of the taking power,
12 courts must defer to its determination that the taking will
13 serve a public use." Midkiff, 467 US at 244.
- 14 111. "Viewed as a whole, [Supreme Court] jurisprudence has
15 recognized that the needs of society have varied between
16 different parts of the Nation, just as they have evolved over
17 time in response to changed circumstances. Our earliest cases
18 in particular embodied a strong theme of federalism,
19 emphasizing the 'great respect' that we owe to state
20 legislatures and state courts in discerning local public
21 needs." Kelo, 545 US at 482, citing Hairston v Danville &
22 Western R Co, 208 US 598, 606-07 (1908).
- 23 112. "When the legislature's purpose is legitimate and its means
24 are not irrational, our cases make clear that empirical
25 debates over the wisdom of takings - no less than debates over
26 the wisdom of other kinds of socioeconomic legislation - are
27 not to be carried out in the federal courts." Kelo, 545 US at
28

1 488, quoting Midkiff, 467 US at 242 (internal quotations
2 omitted).

3 113. The Ninth Circuit has held that mobile home rent control
4 ordinances are legitimate if their stated legislative purposes
5 are "to alleviate hardship created by rapidly escalating
6 rents; to protect owners' investments in their mobile homes;
7 to equalize the bargaining position of park owners and
8 tenants; and to protect residents from unconscionable and
9 coercive changes in rental rates." Levald, Inc v City of Palm
10 Desert, 998 F2d 680, 690 (9th Cir 1993).

11 114. While the Supreme Court has "not elaborated on the standards
12 for determining what constitutes a 'legitimate state
13 interest[,] * * * [it has] made clear * * * that a broad
14 range of governmental purposes" are legitimate. Nollan, 483
15 US at 834.

16 115. "An attempt to define [the police power's] reach or trace its
17 outer limits is fruitless, for each case must turn on its own
18 facts. The definition is essentially the product of
19 legislative determinations addressed to the purposes of
20 government, purposes neither abstractly nor historically
21 capable of complete definition. Subject to specific
22 constitutional limitations, when the legislature has spoken,
23 the public interest has been declared in terms well-nigh
24 conclusive. In such cases the legislature, not the judiciary,
25 is the main guardian of the public needs to be served by
26 social legislation * * *. This principle admits of no
27 exception merely because the power of eminent domain is
28 involved." Berman, 348 US at 32 (internal citations omitted).

1 116. A city, however, "would no doubt be forbidden from taking
2 * * * land for the purpose of conferring a private benefit on
3 a particular private party." Kelo, 545 US at 477, citing
4 Midkiff, 467 US 229 at 245 ("A purely private taking could not
5 withstand the scrutiny of the public use requirement; it would
6 serve no legitimate purpose of government and would thus be
7 void.").

8 117. The Supreme Court has further explained that "it has long been
9 accepted that the sovereign may not take the property of A for
10 the sole purpose of transferring it to another private party
11 B, even though A is paid just compensation. On the other
12 hand, it is equally clear that a State may transfer property
13 from one private party to another if future 'use by the
14 public' is the purpose of the taking * * *." Kelo, 545 US at
15 477.

16 118. Nor may a city "be allowed to take property under the mere
17 pretext of a public purpose, when its actual purpose was to
18 bestow a private benefit." Kelo, 545 US at 477.

19 119. The Supreme Court, however, has "rejected the contention that
20 the mere fact that the State immediately transferred the
21 properties to private individuals upon condemnation somehow
22 diminished the public character of the taking." Kelo, 545 US
23 at 482.

24 120. Justice Kennedy, who joined the Kelo majority opinion in its
25 entirety, issued a concurrence in which he wrote that "[a]
26 court applying rational-basis review under the Public Use
27 Clause should strike down a taking that, by a clear showing,
28 is intended to favor a particular private party, with only

- 1 incidental or pretextual public benefits." Id at 491.
- 2 Justice Kennedy derived this rule from two Equal Protection
- 3 cases in which the Court proclaimed that "[a] legitimate state
- 4 interest must encompass the interests of members of the
- 5 disadvantaged class and the community at large, as well as the
- 6 direct interests of the members of the favored class. It must
- 7 have a purpose or goal independent of the direct effect of the
- 8 legislation * * *." Cleburne v Cleburne Living Center, Inc,
- 9 473 US 432, 452 n4 (1985) (Stevens concurring).
- 10 121. "A court confronted with a plausible accusation of
- 11 impermissible favoritism to private parties should treat the
- 12 objection as a serious one and review the record to see if it
- 13 has merit, though with the presumption that the government's
- 14 actions were reasonable and intended to serve a public
- 15 purpose." Kelo, 545 US at 491 (Kennedy concurring).
- 16 122. The Kelo court found that the taking at issue in the case
- 17 satisfied the public use requirement because it involved a
- 18 "carefully considered" development plan that lacked evidence
- 19 of an illegitimate purpose (such as a purpose to benefit
- 20 Pfizer or another private entity). Id at 478 & n6. Indeed,
- 21 the majority noted, the identities of the private entities who
- 22 would benefit were not known when the plan was adopted. "It
- 23 is, of course, difficult to accuse the government of having
- 24 taken A's property to benefit the private interests of B when
- 25 the identity of B was unknown." Id at 478 n6.
- 26 123. Justice Kennedy noted approvingly that the trial court's
- 27 conclusion was based on extensive fact-finding:
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The trial court considered testimony from government officials and corporate officers; documentary evidence of communications between these parties; respondents' awareness of New London's depressed economic condition and evidence corroborating the validity of this concern; the substantial commitment of public funds by the State to the development project before most of the private beneficiaries were known; evidence that respondents reviewed a variety of development plans and chose a private developer from a group of applicants rather than picking out a particular transferee beforehand; and the fact that the other private beneficiaries of the project are still unknown because the office space proposed to be built has not yet been rented.

Id at 491-92 (citations omitted).

124. To succeed on this claim, MHC must prove by a preponderance of the evidence that the circumstances surrounding the Ordinance's enactment make clear that the proffered public purposes asserted as justification for the Ordinance are palpably without reasonable foundation, see Midkiff, 467 US at 240, or that the City imposed the Ordinance under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit, see Kelo, 545 US at 478.
125. As explained, the court finds that the Ordinance creates a premium in subsequent sales of mobilehomes in parks subject to its regulation. This premium reflects the capitalized value of the expected privilege of paying increasingly below-market rents and the ability to sell that benefit to future buyers. See Yee, 503 US at 526 (stating that due to the "unusual economic relationship between park owners and mobile home owners[,]" * * * any reduction in the rent for a mobile home pad causes a corresponding increase in the value of a mobile

1 home, because the mobile home owner now owns, in addition to a
2 mobile home, the right to occupy a pad at a rent below the
3 value that would be set by the free market").

4 126. The payment of this premium is no different from the transfer
5 of rental rights along with "key money" in regulation of
6 apartment rents, as both are mechanisms by which current
7 residents may capture the economic value of the regulation and
8 thereby deprive the intended beneficiaries of any advantage.
9 See MHC Trial Ex 103, 104, 341; 11/19/02 Tr at 33-35, 52-55;
10 Yee, 503 US at 530 (explaining that because apartment tenants
11 "do not sell anything to their successors and are often
12 prohibited from charging 'key money', * * * a typical rent
13 control statute will transfer wealth from the landlord to the
14 incumbent tenant and all future tenants").

15 127. The premium created by the Ordinance, on the other hand,
16 allowing current mobilehome owners to capture the monetized
17 value of below-market rent ultimately vitiates the connection
18 between the Ordinance and the goals it was intended to
19 further.

20 128. As part of its inquiry into whether the City imposed the
21 Ordinance under the mere pretext of a public purpose, the
22 court must examine whether there is any connection between the
23 operative provisions and the asserted purposes of the
24 Ordinance. Nollan v Calif Coastal Comm'n, 483 US 825, 837
25 (1987); Yee, 503 US at 530.

26 129. In this case, the creation and transfer of the premium weighs
27 against a finding that the operative provisions of the
28 Ordinance bear relation to the public goals it is meant to

1 further. See Yee, 503 US at 526, citing Hirsch & Hirsch,
2 Legal-Economic Analysis of Rent Controls in a Mobile Home
3 Context: Placement Values and Vacancy Decontrol, 35 UCLA L Rev
4 399, 430-31 (1988).

5 130. The City advances three purportedly legitimate governmental
6 interests furthered by the Ordinance: (1) protection of
7 mobilehome owner equity; (2) protection of fixed-income
8 residents and (3) creation of more affordable housing.
9 Assuming without deciding that all three interests, as a
10 general matter, are legitimate state interests, see City of
11 Monterey, 526 US at 732 (Scalia concurring), the court
12 discusses each in turn.

13
14 (1) Protection of existing mobilehome owners' equity

15 131. The City contends that without the Ordinance and in particular
16 vacancy control mobilehome park owners like MHC would be able
17 to extract a portion of the mobilehome owners' equity in their
18 homes upon sale of the mobilehome. An increased rental rate
19 upon transfer of ownership makes it more difficult for current
20 owners to sell their homes combined with the general
21 impracticality of moving mobilehomes and the scarcity of
22 available pads in surrounding areas mean that "the park owner
23 could force existing tenants to sell the coach-in-place at
24 'distress-sale prices.'" Adamson, 854 F Supp at 1493.

25 132. The City bases this argument on the reasoning in Adamson. The
26 Adamson court noted that the price at which a mobilehome owner
27 can sell her mobilehome is related to the lease that will be
28 charged to a new owner. Id ("From the standpoint of a

1 prospective buyer with a set amount of money to pay for a
2 coach, the lower the rent he must pay, the more money he will
3 have left over to dedicate to the mortgage on the coach.”).

4 133. The Adamson court then noted that the price a new owner would
5 be willing to pay is based in part on the “placement value” of
6 the mobilehome. Id at 1488-89. The court then noted that
7 even though mobilehomes depreciate, prices obtained by
8 mobilehome owners upon sale of their mobilehomes have
9 increased. Id. The court reasoned from this that the
10 “placement value makes up a substantial, if not the dominant,
11 element of the purchase price of a coach upon a change in
12 tenancy.” Id. This results in the mobilehome owners and the
13 park owners “sharing” in the placement value upon a sale of
14 the mobilehome. Id.

15 134. The Adamson court then concluded that the historical
16 arrangement whereby mobilehome owners seemed to capture a
17 portion of the placement value created an “expectation that
18 they will be able to substantially recoup that investment upon
19 the sale of the coach.” Id. This expectation in turn created
20 a property right to a portion of the placement value. Id.

21 135. Notwithstanding the district court’s considered ruling in
22 Adamson, this court concludes that the City’s argument fails
23 for two reasons. First, the mobilehome owners’ equity in
24 their mobilehomes is limited to the salvage value of the
25 mobilehome. There is simply no legal authority for the
26 proposition that a tenant has any interest in the placement
27 value of the mobilehome. It is axiomatic that “[t]he effect
28 of [a] lease is to carve an estate for years out of [the

1 lessor's ownership of an estate in fee simple in the premises]
2 and to leave in the lessor a reversion in fee simple."

3 Cornelius J Moynihan, Introduction to the Law of Real Property
4 § 8 at 91 (2d ed 1988). While a lessee may possess an
5 interest in the increased value of his leasehold as a result
6 of an increase in the value of the estate during his tenancy,
7 the court is unaware of any authority that permits a tenant to
8 transform any part of the lessor's reversionary interests into
9 his own upon the termination of the leasehold.

10 136. Given the nature of an interest in fee simple, the opposite is
11 true. See Hirsch & Hirsch, 35 UCLA L Rev at 429 (emphasizing
12 that "placement value is not equity" belonging to the tenant;
13 "the mobile home coach owner's equity would be the value of
14 the coach less encumbrances on the coach"). The coach is
15 considered to be the tenant's personal property; as the City's
16 own expert testified, the coach's attachment to the site does
17 not constitute any "investment" in the location value of the
18 lessor's reversionary fee simple interest. See 11/25/02 Tr at
19 141:4-142:6; 2 Nichols on Eminent Domain § 5.03[5][a] at 5-151
20 (rev 3d ed 2000).

21 137. Accordingly, the mobilehome owners' only equity in their
22 mobilehomes is the salvage value of their units, which is the
23 replacement value minus the pull-out costs. The mobilehome
24 owners' leasehold interest is analogous to the leasehold
25 interest of an apartment dweller. An apartment dweller who
26 confronts a raise in rent beyond his capability or willingness
27 to pay can relocate apartments. Such relocation will involve
28 the "pull-out costs" of moving his or her belongings.

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Likewise, a mobilehome owner seeking to sell the coach in-place but unable to do so because of the park owner's intent to increase the pad rental beyond any prospective mobilehome purchaser's willingness to pay confronts pull-out costs. The mobilehome owner may have significantly greater pull-out costs than apartment dwellers. But the magnitude of these costs does not alter the legal relationship created by the lease.

138. Because existing pad lessees do not have any legally recognized property interest in the location value of their mobilehomes, the Ordinance does not serve to protect an interest legitimately owned by a pad lessee in the location value of the pad.

139. Second, mobilehome park owners have no mechanism nor any incentive to extract equity from the mobilehome owners. The City contends that the existence of pull-out costs gives MHC (and other mobilehome park owners) leverage that can be used to appropriate the equity that mobilehome owners possess in their mobilehomes. As described above, the mobilehome owners' only equity is the salvage value of their mobilehomes, which is the replacement value less the pull-out cost. The City envisions a situation in which a park owner attempts to charge such a high rent that a mobilehome owner would be required to sell his mobilehome at below its salvage value. In such a situation, the mobilehome owner would merely refuse to sell the mobilehome at that price. The mobilehome owner could move from the park and recover from MHC the salvage value, thus avoiding the pull-out costs. Because the mobilehome owners' equity interest does not include any locational value in the

1 pad except as a pad lease provides, that interest needs no
2 protection and the Ordinance cannot find constitutional rescue
3 on this purported public interest.

4 140. In fact, as evidenced by the analysis in Adamson, park owners
5 have an incentive to provide a benefit to outgoing mobilehome
6 owners rather than extract equity from them. Without vacancy
7 control, the park owner may charge a new tenant more than the
8 previous tenant. Discounting transactional costs associated
9 with setting up a new lease, a park owner would, therefore,
10 prefer new tenants to old tenants because new tenants will pay
11 more. Additionally, a new tenant who must provide a
12 mobilehome will have to pay transportation costs. These costs
13 take away money that could otherwise be used to pay a higher
14 pad rent. Accordingly, in order to induce old tenants to move
15 and to leave their mobilehomes in place, a park owner may
16 choose to share some of the placement value with the outgoing
17 tenant.

18
19 (2) Creation of more affordable housing

20 141. The Ordinance fails to create more affordable housing for
21 incoming tenants. The court has found that the Ordinance
22 creates a premium representing the capitalized value of
23 transferable below-market rent. This means that incoming
24 tenants will not receive any benefit from the rent control
25 provisions. The benefit of a lower rent will be entirely
26 offset by the need to pay a higher capital outlay upfront.
27 Rather than create more affordable housing, the Ordinance
28 creates less affordable housing.

1 142. Vacancy control also fails to create more affordable housing
2 for incumbent tenants. The vacancy control ordinance of 1989
3 does not influence the current rent that a tenant must pay.
4 This rate is regulated by the 1999 Amendments, which set the
5 rent at a base rate plus 75 percent of the CPI-C.
6 Accordingly, vacancy control does not influence the rent that
7 the current tenant must pay.

8 143. As explained, vacancy control provides a one-time wealth
9 transfer from the park owners to the mobilehome owners. This
10 transfer occurs upon the enactment of the vacancy control
11 provision, but the cash value of the transfer is usually not
12 realized until the mobilehome is sold to a new tenant.

13 144. To be sure, the premium transfer makes housing more affordable
14 for the incumbent mobilehome owner, but only when he sells his
15 mobilehome, not during his ownership. The Ordinance fails to
16 fulfill the City's broader objective of making housing more
17 affordable. The incumbent mobilehome owner is under no
18 obligation to reinvest any part of the wealth transfer into
19 housing; rather, the vacancy control provision has merely
20 given the incumbent tenant a corpus of money that can be used
21 for any purpose. The City made no showing whatsoever that the
22 premium realized by the mobilehome owner is re-invested to
23 create new housing in San Rafael.

24 145. Vacancy control tends to make housing less affordable for
25 another reason. Adding vacancy control to the existing rent
26 control provisions makes creating mobilehome parks less
27 profitable. All other things remaining equal, fewer investors
28 will create mobilehome parks. This will increase scarcity and

1 drive up the cost of existing plots, a conclusion borne out by
2 the evidence here. See 4/24/07 Tr at 506:6-507:5; MHC Trial
3 Ex 392, 393.

4 146. Vacancy control also reduces the benefits and increases the
5 costs of mobilehome ownership. The distinctive advantage of
6 mobilehome ownership is that the pad lessee avoids the initial
7 capital outlay required to own the ground upon which the
8 mobilehome sits, notwithstanding the higher interest rates
9 required for mobilehome financing as compared to "stick built"
10 housing. See MHC Trial Ex 105 at 15-17 (finding that interest
11 rates range from 10.44 percent to 15.24 percent). Vacancy
12 control nullifies this advantage. A new mobilehome owner
13 under vacancy control pays a much more substantial initial
14 capital outlay (in return for lower lease payments), and must
15 do so at a high interest rate. 4/24/07 Tr at 468:11-469:17.
16 As described above, the premium obtained by the incumbent
17 mobilehome owner exactly cancels out the value of the future
18 decreased rent payments. It does, however, change the risks
19 and investment associated with mobilehome ownership, requiring
20 a greater capital investment, with its attendant risks of
21 default to the incoming tenant.

22
23 (3) Protection of fixed-income residents

24 147. The Ordinance fails to protect fixed-income residents,
25 including senior citizens. As noted above, the court finds
26 that the Ordinance does not make housing more affordable. The
27 creation of a premium cancels out the expected pecuniary
28 benefits of below-market rent that incoming tenants would

1 receive. To the extent that housing is not made more
2 affordable, low and fixed-income individuals cannot be
3 benefitted.

4 148. As noted above, by requiring incoming tenants to make a much
5 more substantial capital outlay, vacancy control erases the
6 benefits and increases the costs of mobilehome ownership.
7 This problem is particularly pronounced for fixed-income
8 individuals. Mobilehome ownership is attractive to fixed-
9 income individuals because it only requires a lower initial
10 cash outlay. Because vacancy control requires incoming
11 tenants to trade a larger initial capital outlay for reduced
12 rents later, it reduces this benefit. Accordingly, vacancy
13 control frustrates rather than furthers the interests of
14 fixed-income individuals.

15
16 (4) Other justifications by the City

17 149. The City puts forward numerous cases that purportedly compel
18 the conclusion that the Ordinance passes constitutional
19 muster. The City argues that because its Ordinance "serves
20 the same policies as many similar ordinances that have been
21 found constitutional," the Ordinance must be upheld. But a
22 legislative enactment cannot find refuge in its purported
23 purposes, no matter how noble or valid, if it also effects a
24 constitutional injury. The court must look to the
25 regulation's operation, not just its aim, to ascertain its
26 true nature.

27 150. The City further argues that because the Ordinance's
28 administrative petition process allows for actual rent

1 increases to be any amount greater than the increase
2 automatically provided for under the base formula, the
3 existence of a premium would depend on how the Ordinance is
4 applied. According to the City, the Ordinance's
5 administrative petition process creates the possibility that
6 actual rent increases will keep up with inflation so that no
7 premium in fact is created.

8 151. Although the Ordinance at issue here provides a mechanism, on
9 its face, through which park owners may petition for rent
10 increases beyond the base formula, the pertinent question is
11 not whether rent increases under the Ordinance may
12 theoretically keep pace with inflation by way of the
13 administrative petition process. Rather the question is
14 whether the mere enactment of the Ordinance has created a
15 premium that effects a transfer of wealth to existing
16 mobilehome owners at the time of amendment for which MHC has
17 not been compensated and which fails to serve a public
18 purpose. The court finds that the Ordinance does so.

19 152. The court finds that the proffered public purposes asserted as
20 justifications for the Ordinance are palpably without
21 reasonable foundation, in spite of the "longstanding policy of
22 deference to legislative judgments in this field." Kelo, 545
23 US at 480. MHC's collection of economic evidence raises a
24 strong inference that the City imposed the Ordinance under the
25 mere pretext of a public purpose. This inference is confirmed
26 by the evidence with respect to Contempo Marin.

27 153. The City has persistently supported the tenants' desire to
28 convert the Contempo Marin to a tenant-owned community. In

1 1991, City of San Rafael Mayor Al Boro sent a letter to the
2 tenants of Contempo Marin in which he sought the tenants'
3 support in an upcoming election and specifically promised the
4 tenants that he would "continue working with [the residents]
5 in [their] efforts to acquire ownership of the park." A Boro
6 Dep Tr at 31:8-32:18.

7 154. Soon after, on March 18, 1991, the City passed a resolution
8 "[s]upporting preservation of the Contempo Marin Mobile Home
9 Park and supporting purchase of the Park by residents," in
10 which the City specifically resolved that it "strongly
11 supports the preservation of the Contempo Marin Mobile Home
12 Park as a low and moderate income housing project and supports
13 its purchase by Park tenants * * *." A Boro Dep Tr at 33:11-
14 34:9.

15 155. To assess the feasibility of these plans, the City requested a
16 study to determine whether or not it would be financially
17 feasible to purchase the park or to use the City's powers of
18 eminent domain to acquire the park. 4/9/07 Tr at 185:14-
19 186:8; 11/1/02 Tr at 15:22-16:21; 4/9/07 Tr at 192:18-24
20 (concerning appraisal of Richard Brabant); 4/9/07 Tr at
21 195:21-197:4 (City council members urge the pursuit of
22 purchase for residents).

23 156. More significantly, the very idea of reducing the CPI-C and
24 modifying the capital expenditure recoupment provisions in
25 1999 originated with the tenants, not the City or City staff.
26 4/9/07 Tr at 193:16-194:3.

27 157. The City's revocation of the settlement agreement in this case
28 at the behest of the tenants, 4/11/07 Tr at 297:8-298:4, is

1 yet another instance of the City's blatant efforts to confer a
2 private benefit to "particular, favored private entities,"
3 Kelo, 545 US at 490, namely the Contempo Marin tenants.

4 158. Because the assertion of a public purpose is pretextual and
5 without reasonable basis and because the Ordinance has been
6 amended and enforced for the singular purpose of transferring
7 the value of land from one private party to another, the
8 City's enforcement of the Ordinance constitutes a taking not
9 for public use and, therefore, constitutes a "private taking."
10

11 *Impact on MHC's Substantive Due Process Rights*

12 159. The Due Process Clause of the Fourteenth Amendment provides
13 that no state shall deprive "any person of life, liberty, or
14 property, without due process of law." US Const Amend XIV.
15 Substantive due process protects individuals from arbitrary
16 and unreasonable government action that deprives any person of
17 life, liberty or property. Kawaoka v City of Arroyo Grande,
18 17 F3d 1227, 1234 (9th Cir 1994).

19 160. To establish a substantive due process violation, the
20 government's action must have been "clearly arbitrary and
21 unreasonable, having no substantial relation to the public
22 health, safety, morals, or general welfare." Sinaloa Lake
23 Owners v City of Simi Valley, 882 F2d 1398, 1407 (9th Cir
24 1989), quoting Village of Euclid v Ambler Realty Co, 272 US
25 365, 395 (1926).

26 161. "The challengers' burden to show that a statute is arbitrary
27 and irrational is extremely high." Kawaoka, 17 F3d at 1234,
28

1 citing Del Monte Dunes v Monterey, 920 F2d 1496, 1508 (9th Cir
2 1990).

3 162. "In a substantive due process challenge, [courts] do not
4 require that the City's legislative acts actually advance its
5 stated purposes, but instead look to whether the governmental
6 body could have had no legitimate reason for its decision."
7 Kawaoka, 17 F3d at 1234 (9th Cir 1994), quoting Levald, 998
8 F2d at 690 (internal quotations omitted).

9 163. Before Lingle, 544 US at 548, the Ninth Circuit concluded that
10 a deprivation of property cannot be challenged via substantive
11 due process. Armendariz v Penman, 75 F3d 1311 (9th Cir 1996);
12 Ventura, 371 F3d at 1054; see also Crown Point Development v
13 City of Sun Valley, 2006 WL 288392 at *2 (D Idaho Feb 6,
14 2006), revd, 506 F3d 851 (9th Cir 2007) ("[T]his Court applies
15 the current Ninth Circuit law and finds the complaint should
16 be dismissed as the law of this circuit does not allow
17 substantive due process claims * * * when the interest at
18 stake is real property.").

19 164. Yet Lingle plainly suggests the availability of a substantive
20 due process challenge to a regulatory taking. See Lingle, 544
21 US at 540 ("We conclude that [the substantially advances]
22 formula prescribes an inquiry in the nature of a due process,
23 not a takings, test * * *"). See also *id* (noting that
24 "prob[ing] the regulation's underlying validity" is "logically
25 prior to and distinct from the question whether a regulation
26 effects a taking, for the Takings Clause presupposes that the
27 government has acted in pursuit of a valid public purpose").
28

1 165. More significantly, Lingle undercuts the Ninth Circuit's basis
2 for barring substantive due process challenges to deprivations
3 of property. The rationale for this bar was that claims
4 should rely on the explicit textual sources of constitutional
5 protection, if available, such as the takings clause, rather
6 than "the more generalized notion of substantive due process."
7 Armendariz, 75 F3d at 1324. But Lingle held that challenges
8 concerning the means-ends relationship of a statute do not
9 implicate the Takings Clause. 544 US at 542. Hence, after
10 Lingle, there is no explicit text for assessing whether a
11 regulation is effective in achieving a legitimate public
12 purpose; only the Due Process Clause remains. See also
13 Blaesser & Weinstein, Federal Land Use Law & Litigation § 2:11
14 (noting that, after Lingle, "[i]f a land use regulation
15 furthers no public purpose whatsoever then, although just
16 compensation is no longer available under the Fifth Amendment,
17 the failure of the regulation to substantially advance any
18 legitimate public purpose in violation of due process * * *
19 would give rise to a cause of action for damages under 42 USC
20 § 1983").

21 166. Accordingly, the court concludes that after Lingle, Armendariz
22 and its progeny no longer preclude a substantive due process
23 challenge to deprivations of property. This reading of the
24 law has been confirmed by a panel of the Ninth Circuit
25 subsequent to the trial herein. Crown Point Development, Inc
26 v City of Sun Valley, 506 F3d 851, 856 (9th Cir 2007).

27 167. For judicial scrutiny of price-control regulation under the
28 Due Process Clause, the "standard * * * is well established:

1 'Price control is unconstitutional * * * if arbitrary,
2 discriminatory, or demonstrably irrelevant to the policy the
3 legislature is free to adopt * * *.' " Pennell v San Jose, 485
4 US 1, 11 (1988), citing Permian Basin Area Rate Cases, 390 US
5 747, 769-70 (1968), quoting Nebbia v New York, 291 US 502, 539
6 (1934).

7 168. In Pennell v San Jose, plaintiffs challenged a rent control
8 statute that required a hearing in the event that a tenant
9 challenged a raise in rent in excess of 8 percent per year.
10 485 US 1, 5 (1988). The statute required the hearing officer
11 to take into account the hardship that the proposed rental
12 increase would impose on the tenant. Id. The Court rejected
13 a substantive due process challenge, finding that "a
14 legitimate and rational goal of price or rate regulation is
15 the protection of consumer welfare." Id at 13, citing Permian
16 Basin, 390 US at 770; FPC v Hope Natural Gas Co, 320 US 591,
17 610-12 (1944). Because the rent control statute in Pennell
18 provided a hearing that "balanced" a number of factors,
19 including the history of the premises, the landlord's costs
20 and the market for comparable housing, the Court concluded
21 that the scheme represented "a rational attempt to accommodate
22 the conflicting interests of protecting tenants from
23 burdensome rent increases while at the same time ensuring that
24 landlords are guaranteed a fair return on their investment."
25 Id.

26 169. The Ninth Circuit in Levald, Inc v City of Palm Desert, 998
27 F2d 680 (9th Cir 1993), held that "[o]rdinances survive a
28 substantive due process challenge if they [are] designed to

1 accomplish an objective within the government's police power,
2 and if a rational relationship exist[s] between the provisions
3 and purpose of the ordinances." 998 F2d at 690, citing Boone
4 v Redevelopment Agency of City of San Jose, 841 F2d 886, 892
5 (9th Cir 1988) (emphasis in original). The plaintiff in
6 Levald, a mobilehome landowner, challenged the
7 constitutionality of a vacancy and rent control ordinance
8 similar to the one at issue here. The Levald court rejected
9 the owner's substantive due process challenge, concluding that
10 "a rational legislator could have believed that the rent
11 control ordinance would further the stated goals, at least
12 insofar as the purpose is to protect existing tenants." Id at
13 690. The Levald court specifically rejected the owner's
14 argument that the ordinance failed rational basis review
15 because it transferred rent premiums from landlords to
16 tenants:

17 It may be true that in operation the ordinance does
18 nothing more than take "money from the landlord and
19 put[] it into the pocket of a tenant who no longer
20 resides at the park." However, while one might
21 believe that the ordinance is an ineffective - and
22 indeed draconian - means by which to effect its
23 goals, "how well the ordinance serves [its]
24 purpose[s] is a legislative question, one the court
25 will not consider" in the context of a substantive
26 due process challenge.

27 Id (citation omitted) (alterations in original).

28 170. The Ninth Circuit reached a similar conclusion in Richardson v
City and County of Honolulu, 124 F3d 1150, 1164 (9th Cir
1997), which did not involve mobilehomes, but otherwise deals
with the same economic "premium" theory advanced by MHC here.
"In a substantive due process challenge, we do not require

1 that the City's legislative acts actually advance its stated
2 purposes, but instead look to whether 'the governmental body
3 could have had no legitimate reason for its decision.' * * *
4 [W]e hold that the landowners cannot meet the burden of
5 showing irrationality." Richardson, 124 F3d at 1162 (internal
6 citation omitted) (emphasis in original).

7 171. The evidence adduced by MHC offers no grounds for
8 distinguishing the Ninth Circuit's decision in Levald, Inc v
9 City of Palm Desert, 998 F2d 680, 690 (9th Cir 1993).

10 172. The Supreme Court's decision in Lingle v Chevron USA, Inc, 544
11 US 528 (2005), appears to counsel against the deferential
12 review mandated by Levald. The Court observed that "prob[ing]
13 the regulation's underlying validity" is "logically prior to
14 and distinct from the question whether a regulation effects a
15 taking, for the Takings Clause presupposes that the government
16 has acted in pursuit of a valid public purpose." Lingle, 544
17 US at 543. The Court further emphasized that "a regulation
18 that fails to serve any legitimate governmental objective may
19 be so arbitrary or irrational that it runs afoul of the Due
20 Process Clause." Id at 542. See also Steven J Eagle,
21 Property Tests, Due Process Tests and Regulatory Takings
22 Jurisprudence, 2007 BYU L Rev 899, 957 ("In Lingle v Chevron
23 USA, the Court did not repudiate its pronouncement * * * that
24 a regulation does not pass muster if it does not substantially
25 advance legitimate state interests. To the contrary, it
26 ratified that formulation - not as a takings test - but rather
27 as a test to determine if landowners have been accorded due
28 process.") (quotation marks and footnotes omitted).

1 173. Justice Kennedy, who joined the Lingle opinion in its
2 entirety, issued a concurrence in which he noted "that [the
3 Lingle] decision does not foreclose the possibility that a
4 regulation might be so arbitrary or irrational as to violate
5 due process. The failure of a regulation to accomplish a
6 stated or obvious objective would be relevant to that
7 inquiry." Lingle, 544 US at 548 (Kennedy concurring)
8 (citations omitted).

9 174. The discussion in Lingle of due process scrutiny remains
10 dicta, however, because the Court had no occasion to assess
11 plaintiff's due process claim as it had voluntarily dismissed
12 the claim prior to the Court's review of the case.
13 Furthermore, a recent panel decision of the Ninth Circuit
14 appears to indicate that the court of appeals is reluctant to
15 depart from the line of authority, albeit on a different set
16 of facts from this case. See Equity Lifestyle Properties v
17 San Luis Obispo, 505 F3d 860 (9th Cir 2007). As such, it
18 would be inappropriate to construe the foregoing language in
19 Lingle as overturning long-standing Ninth Circuit precedent
20 sub silentio.

21 175. Accordingly, the court concludes that the challenged Ordinance
22 does not violate the Due Process Clause of the United States
23 Constitution.

24 **FINAL FINDING OF FACT:** To the extent that any of these findings of
25 fact should more properly be characterized as conclusions of law,
26 they shall be deemed as such.

27
28

CLAIMED DEFENSES

Ripeness Defense

- 1
2
3 1. Under Williamson County Regional Planning Commission v
4 Hamilton Bank, 473 US 172, 186-87 (1985), a takings claim is
5 ripe when: (1) "the government entity charged with
6 implementing the regulations has reached a final decision
7 regarding the application of the regulations to the property
8 at issue," and (2) the plaintiff "seek[s] compensation through
9 the procedures the State has provided," unless doing so would
10 be futile. See also Ventura Mobilehome Communities Owners
11 Ass'n v City of San Buenaventura, 371 F3d 1046, 1053 (9th Cir
12 2004) (request for capital improvement pass-through may
13 suffice for exhaustion purposes).
- 14
15 2. The first prong of the Williamson ripeness analysis only
16 pertains to as-applied takings claims. Facial claims, by
17 definition, "derive from the ordinance's enactment, not any
18 implementing action on the part of the government
19 authorities," and therefore do not require a final decision.
20 Ventura, 371 F3d at 1052. The exhaustion requirement applies
21 to both facial and as-applied takings claims.
- 22 3. A premium-based takings claim is a challenge to the regulation
23 on its face, not as it is applied. Richardson, 124 F3d at
24 1165, citing Carson Harbor, 37 F3d at 474 n5; Levald, 998 F2d
25 at 686 (existence of premium "is relevant only to a facial,
26 not an as-applied, regulatory challenge" because "[i]t is not
27 the particular application of the statute that gives rise to
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the premium; the premium arises solely from the existence of the statute itself").

4. With respect to MHC's substantive due process and private takings claims, only the final decision requirement applies. The Supreme Court has stated that "if a government action is found to be impermissible - for instance because it fails to meet the 'public use' requirement or is so arbitrary as to violate due process - that is the end of the inquiry. No amount of compensation can authorize such action." Lingle, 544 US at 543; see also Armendariz, 75 F3d at 1321 n5 ("Because a 'private' taking cannot be constitutional even if compensated, a plaintiff alleging such a taking would not need to seek compensation in state proceedings before filing a federal takings claim.").
5. The final decision requirement ensures that a concrete case or controversy exists, as "[a] court cannot determine whether a regulation goes 'too far' unless it knows how far the regulation goes." Palazzolo, 533 US at 621-22, quoting MacDonald, Sommer & Frates v Yolo County, 477 US 340, 348 (1986). See also Palazzolo, 533 US at 620 (remarking that the final decision prong of Williamson embodies "the important principle that a landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation").

- 1 6. "[R]esort beyond the 'initial decision-maker' is not necessary
2 to fulfill the final decision prong of the ripeness analysis."
3 Hacienda Valley Mobile Estates v City of Morgan Hill, 353 F3d
4 651, 657 (9th Cir 2003).
- 5 7. "Once it becomes clear that the * * * permissible uses of the
6 property are known to a reasonable degree of certainty, a
7 takings claim is likely to have ripened." Palazzolo, 533 US
8 at 620; see also Carson Harbor Village, Ltd v City of Carson,
9 353 F3d 824, 826-27 (9th Cir 2004) (final decision prong
10 requires giving the government the "opportunity to grant any
11 variances or waivers allowed by the law").
- 12 8. The final decision requirement does not oblige MHC to file for
13 a discretionary rent increase because of the settlement
14 reached by the parties. Under the settlement agreement, the
15 City agreed to "initiate" amendments to the Ordinance that
16 would eliminate vacancy control, Doc #23, Ex 1, § 2, but then
17 the City reversed course and formally declined to eliminate
18 vacancy control. Through these events, MHC obtained a final
19 decision from the City notwithstanding MHC's failure to
20 request a discretionary rent increase after 1999. The City's
21 conduct throughout the dispute makes plain its intention to
22 subject MHC to the Ordinance, a fact underscored by City's
23 unwillingness to eliminate vacancy control pursuant to the
24 parties' settlement agreement in 2002.
- 25 9. MHC's Penn Central claim must also satisfy the exhaustion
26 requirement of Williamson County unless doing so would be
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futile. Under the Just Compensation Clause of the Fifth Amendment, a landowner whose land is taken by the government is entitled to the "market value of the property at the time of the taking contemporaneously paid in money." Olsen v United States, 292 US 246, 255 (1934); Palazzolo, 533 US at 625 ("When a taking has occurred, under accepted condemnation principles the owner's damages will be based upon the property's fair market value.").

10. As this court found in its December 5, 2006 order, see Doc #486, MHC has exhausted remedies in seeking an inverse condemnation remedy in 1996.
11. In 1996, MHC filed a rent increase petition related to capital expenditures it made for the park lagoon transfer station. MHC Trial Ex 346. After an initial dispute regarding the appropriate amount of the rent increase, MHC reached a settlement with residents for the first phase of the capital expenditure. Yet a dispute arose concerning the second phase rent increase, which was resolved informally by an arbitrator the parties had dealt with previously. The arbitrator sided with the tenants and declined to recommend that MHC receive the full amount of the rent increase it requested.
12. MHC appealed the opinion to the City council. MHC Trial Ex 312. But the City refused to accept the appeal on the ground that the arbitrator in the second dispute had been acting as a mediator, not an arbitrator. MHC Trial Ex 314; 4/9/07 Tr at 236:6-237:2.

- 1 13. Next, the tenants sued MHC for attempting to collect the
2 capital expenditure increase permitted under the second phase
3 of its settlement agreement. MHC cross-claimed and asserted
4 inverse condemnation against the City. In connection with
5 that cross-claim, the City demurred and held that MHC had
6 waived any right to be heard on the merits because it did not
7 take a writ of mandate from the City's refusal to hear its
8 appeal of the non-binding decision from the mediator. The
9 state courts agreed with the City in a final opinion issued on
10 July 15, 2005. MHC Trial Ex 332; 4/11/07 Tr at 284:14-287:7.
- 11 14. In the end, MHC spent almost ten years in litigation only to
12 recoup about one third of the capital expenditures it was
13 seeking to recover, 4/11/07 Tr at 276:5-288:4; there is no
14 further recourse on the merits of its fair return petition and
15 state inverse condemnation petition. MHC Trial Ex 314; 4/9/07
16 Tr at 237:3-238:4.
- 17 15. These events demonstrate that the City's tactics deprive MHC
18 of the ability to obtain judicial review of administrative
19 decisions. The City does so by refusing to issue an
20 administrative decision from which MHC may appeal and then
21 citing MHC's failure to seek mandamus relief as a means of
22 precluding further judicial review of the merits of MHC's
23 claims.
- 24 16. The record makes clear that the City's discretionary rent
25 increase process does not provide a remedy to cure an
26 impermissibly low rental increase.
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17. In Kavanau v Santa Monica Rent Control Board, 16 Cal 4th 761, 782, 66 Cal Rptr 2d 672, 941 P2d 85 (1997), the California Supreme Court held that "a remedy for the due process violation [of an unconstitutional rent control ordinance], if available and adequate, obviates a finding of a taking [under the Fifth Amendment]." See also Galland v City of Clovis, 24 Cal 4th 1003, 1025 103 Cal Rptr 2d 711, 16 P3d 130 (2001) ("[W]hen landlords seek section 1983 damages from allegedly confiscatory rent regulation, we hold that they must show (1) that a confiscatory rent ceiling or other rent regulation was imposed and (2) that relief via a writ of mandate and a Kavanau adjustment is inadequate."). The only alternative to the City's procedures is a future rent increase or Kavanau adjustment under state law, which, for reasons discussed below, is likewise inadequate. 4/9/07 Tr at 239:24-240:12; 4/9/07 Tr at 182:18-21.

18. California recognizes a constitutional right to receive a "fair rate of return one's property." Hillsboro Properties v City of Rohnert Park, 138 Cal App 4th 379, 391 (Cal Ct App 2006), for which the exclusive remedy is a Kavanau adjustment. Hillsboro, 138 Cal App 4th at 392. A Kavanau adjustment is a prospective rent increase to enable a park owner to recoup lost rents (from tenants) sufficient to provide a "fair return."

- 1 19. To satisfy Williamson County, the Kavanau adjustment must
2 serve as a "reasonable, certain and adequate provision for
3 obtaining compensation." Williamson, 473 US at 194.
- 4 20. To seek a Kavanau adjustment, a landowner must first petition
5 for a rent adjustment before an administrative agency. If
6 unsuccessful, the landowner may appeal to the city council
7 and, if that appeal is unsuccessful, the landowner may seek
8 review in state court through a writ of administrative
9 mandamus. Then, if the state courts agree that the city
10 council should have granted the petition, the landowner must
11 return to the original administrative agency and file another
12 petition requesting the agency to remedy its prior decision.
13 4/30/07 Tr at 868:8-870:8. The entire process takes seven
14 years on average. 4/30/07 Tr at 870:21-871:21. In the
15 meantime, landowners such as MHC have no way to recoup any
16 losses stemming from the difference between the rents to which
17 they are entitled and those being collected during the entire
18 time this process takes place. 4/30/07 Tr at 871:22-873:22.
- 19 21. As MHC's expert testified, only one landowner has succeeded in
20 having a Kavanau adjustment granted, and that required the
21 owner to wait nine years and yielded about half of what the
22 owner sought in his original petition. 4/30/07 Tr at 876:3-
23 21.
- 24 22. Requiring a Kavanau remedy would be futile here, as it would
25 remand MHC to the very administrative body - the City council
26 - that has squarely rejected a resolution of this claim. The
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1 ripeness doctrine does not require a landowner "to submit
2 applications for their own sake"; rather, it imposes
3 obligations because "[a] court cannot determine whether a
4 regulation goes 'too far' unless it knows how far the
5 regulation goes." Palazzolo, 533 US at 620; MacDonald, 477 US
6 at 348.

7 23. Moreover, the Kavanau remedy does not pass muster under
8 Williamson County, as it fails to provide either a fair return
9 or adequate remedy. 4/30/07 Tr at 874:9-875:2. Carson Harbor
10 Village, Ltd v City of Carson, 353 F3d 824, 830 (9th Cir 2004)
11 (O'Scannlain concurring) (noting "serious concerns about the
12 adequacy of the * * * compensation procedures established in
13 Kavanau"). As has been pointed out, a Kavanau adjustment
14 would entail increased future pad rentals. To the extent that
15 lessees paying these higher rentals had not received the
16 benefit of the impermissibly depressed rentals, such lessees
17 would be required to pay the just compensation that the City
18 is required to pay. Carson Harbor Village, 353 F3d at 831
19 (O'Scannlain concurring). In this case, that result would be
20 doubly injurious to lessees who moved into Contempo Marin
21 after the effective date of the 1999 Amendments; such lessees
22 would not only have paid the premium the Ordinance creates but
23 they would be obligated to pay the compensation which the City
24 is constitutionally obligated to pay. A Kavanau adjustment
25 affords no remedy at all in these circumstances.
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1 24. Accordingly, MHC has fully exhausted state remedies with
2 respect to its as-applied taking claims by litigating
3 unsuccessfully its 1996 fair return petition and by
4 negotiating a settlement agreement with the City.
5 Additionally, further pursuit of administrative remedies would
6 be futile and unavailing.

7
8 Statute of Limitations Defense

9 25. The City and CMHA argue that the statute of limitations bars
10 MHC's constitutional challenge.

11 26. The "statute of limitations is an affirmative defense, which
12 the claimant bears the burden of proving." United States v
13 Real Property, Titled in the Names of Godfrey Soon Bong Kang
14 and Darrell Lee, 120 F3d 947, 949 (9th Cir 1997), citing
15 California Sansome Co v United States Gypsum, 55 F3d 1402,
16 1406 (9th Cir 1995).

17 27. All parties agree that the applicable statute of limitations
18 in this case is one year (for § 1983 suits in California). De
19 Anza Properties X, Ltd v County of Santa Cruz, 936 F2d 1084,
20 1085 (9th Cir 1991). The parties disagree, however, whether
21 the 1999 Amendments effected a new injury so that a new
22 limitations period began on enactment of the 1999 Amendments.

23 28. In general, the statute of limitations begins to run when a
24 potential plaintiff knows or has reason to know of the
25 asserted injury. Norco Constr, Inc v King County, 801 F2d
26 1143, 1146 (9th Cir 1986).
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- 1 29. A facial takings claim accrues upon passage of the legislative
2 action at issue. Levald, Inc v City of Palm Desert, 998 F2d
3 680, 687 (9th Cir 1993).
- 4 30. An amendment to an ordinance does not constitute a different
5 injury, creating a new limitations period, if "the effect of
6 the ordinance upon the plaintiffs has not been altered" and
7 the plaintiffs experienced "substantially the same injury
8 [under the previous ordinance] that they experienced [under
9 the amended ordinance]." De Anza Properties X, 936 F2d at
10 1086.
- 11 31. As explained, the 1999 Amendments altered the formula used to
12 calculate the rent increase that could automatically be
13 charged by a park owner.
- 14 32. This modification to the City's Ordinance deprived MHC, which
15 purchased the park in 1994 under a substantially different
16 regulatory regime, of its investment-backed expectations by
17 effecting a reduction in the parks' value and assuring that
18 regulated rents remain and over time fall progressively
19 further below fair market rents.
- 20 33. The court concludes that the City and CMHA have failed to meet
21 their burden of proving by a preponderance of the evidence
22 that the 1999 Amendments effected substantially the same
23 injury. Instead, the court finds the opposite to be true. As
24 noted above, the value of Contempo Marin decreased by slightly
25 more than \$10 million as a result of the 1999 Amendments. See
26 11/6/02 Trial at 196:5-198:3. This reduction in land value
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1 was due to the anticipated effect of the reduced revenues
2 caused by the modification in the automatic rent adjustment
3 formula. Id; see also Werner Z Hirsch and Joel G Hirsch,
4 Legal-Economic Analysis of Rent Controls in a Mobile Home
5 Context: Placement Values and Vacancy Decontrol, 35 UCLA L Rev
6 399, 424 (1988) (explaining that because the "reduced future
7 income flow is capitalized into the value of the park", "the
8 immediate effect of rent control is that the value of [the
9 park] has been reduced"). Moreover, from the enactment of
10 vacancy control in 1993 until the 1999 Amendments, the CPI-C
11 did not increase by more than 5 percent in any year. As a
12 result, plaintiffs did not suffer the injury that resulted
13 from the 1999 Amendments.

14 34. MHC's expert testified convincingly that the 1999 Amendments
15 materially altered the dynamic between the automatically
16 allowed increase and the vacancy control provisions. Insofar
17 as the alleged premium occurs because new mobilehome owners
18 are willing to pay current tenants for the privilege of paying
19 pad rents artificially kept below market rate, the shift away
20 from a regime under which the rental rate increases largely
21 keep up with inflation to one under which cumulative rent
22 increases fall progressively further behind the overall rate
23 of inflation means that the change in the formula enacted in
24 1999 constituted more than a "minor amendment" in the
25 operation of the Ordinance. Rather, the Ordinance, as amended
26 in 1999, represented a fresh injury subject to facial
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1 challenge. See also Adamson Companies v City of Malibu, 854 F
2 Supp 1476, 1484 (CD Cal 1994) (“[E]ven if each element
3 standing alone would be constitutional, the [regulatory]
4 scheme must fall if, taken as a whole, it exceeds
5 constitutional bounds.”).

6 35. De Anza Properties X, 936 F2d at 1086, is inapposite precisely
7 because the operation of the ordinance at issue in that case
8 did not change; only the sunset provision was modified.

9 36. By contrast, in the case at bar, the court finds that the
10 operation of the Ordinance was substantially altered in 1999.
11 As a result, MHC and CMHA’s statute of limitations defense
12 fails.

13 37. The court hastens to add that MHC may bring a timely claim
14 based on the totality of the amended Ordinance. Provisions
15 that were found in the predecessor Ordinance are not immunized
16 from judicial scrutiny. The constitutionality of an ordinance
17 can only be determined by evaluating the totality of its
18 provisions and effects, and there is no precedent suggesting
19 that only limited parts of an integrated regulatory scheme
20 should be evaluated in isolation. Richards v United States,
21 369 US 1, 11 (1962).
22

23
24 Res Judicata Defense

25 38. The City argues that based on the De Anza litigation, MHC’s
26 takings claims must fail because they have already been
27 adjudicated in a prior judicial proceeding.
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- 1 39. "The doctrine of res judicata provides that 'a final judgment
2 on the merits bars further claims by parties or their privies
3 based on the same cause of action.' The application of this
4 doctrine is 'central to the purpose for which civil courts
5 have been established, the conclusive resolution of disputes
6 within their jurisdiction.' Moreover, a rule precluding
7 parties from the contestation of matters already fully and
8 fairly litigated 'conserves judicial resources' and 'fosters
9 reliance on judicial action by minimizing the possibility of
10 inconsistent decisions.'" In re Schimmels, 127 F3d 8875, 881
11 (9th Cir 1997), quoting Montana v United States, 440 US 147,
12 153-54 (1979).
- 13 40. 28 USC § 1738 requires federal courts to give the same
14 preclusive effect to state court judgments as they would be
15 given by another court of that state. See San Remo Hotel, LP
16 v City & County of San Francisco, 545 US 323, 338 (2005).
- 17 41. Once there is a final judgment on the merits in an action, res
18 judicata generally precludes a party or their privies from
19 relitigating issues that were or could have been raised in the
20 previous action. Allen v McCurry, 449 US 90, 94 (1980). To
21 determine the preclusive effect of a state court judgment,
22 federal courts look to state law. Palomar Mobilehome Park
23 Ass'n v City of San Marcos, 989 F3d 362, 364 (9th Cir 1993).
- 24 42. California law differs from both federal law and that of a
25 majority of states in that its "same cause of action" aspect
26 of the res judicata doctrine is based not on a transactional
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analysis but upon a primary rights theory. Manufactured Home Communitites, Inc v City of San Jose, 420 F3d 1022, 1031 (9th Cir 2005).

43. Under the primary rights theory, a cause of action consists of (1) a primary right possessed by the plaintiff; (2) a corresponding primary duty on the defendant and (3) a wrongful act done by the defendant constituting a breach of that duty. Agarwal v Johnson, 25 Cal 3d 932, 954-55 (1979). The primary right is the plaintiff's right to be free of the injury suffered. Alpha Mech, Heating & Air Conditioning, Inc, v Traveler Cas & Sur Co of Am, 133 Cal App 4th 1319, 1327 (2005). This right is distinguished from both the theory of liability on which the injury is premised and the remedy sought. If an action involves "the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery." Eichman v Fotomat Corp, 147 Cal App 3d 1170, 1174 (1983). See also Mycogen Corp v Monsanto Co, 28 Cal 4th 888, 897 (2002) (concluding that different theories of recovery are not separate primary rights);

44. The City's res judicata argument fails because the De Anza litigation does not concern the same primary rights.

45. Here, the relevant primary rights involve the operation of the 1999 Amendments and their application to MHC's property.

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While the Ordinance's vacancy control provision has not been altered since the De Anza litigation, the operation of the City's mobilehome rent regulation was altered in 1999 when the automatic rent increase adjustment formula was modified to impose a flat 75 percent of the change in the CPI-C.

46. The absence of a textual change in the vacancy control provisions themselves does not alter this conclusion. MHC challenges the City's entire regulatory regime as of 1999. That scheme of regulation may not escape constitutional scrutiny through piecemeal legislation effected by carefully timed amendments as a means of avoiding such scrutiny.

47. This is not a case in which the Ordinance's "relevant and legal factual components were fixed" in 1993 "and were not modified after that date." Tahoe-Sierra Preservation Council, Inc v Tahoe Regional Planning Agency, 322 F3d 1064, 1079 (9th Cir 2003). Because the claims presently before the court could not "have been asserted in the previous lawsuit," *id* at 1078, the City's *res judicata* argument must fail.

CONCLUSIONS OF LAW

Relief

1. Injunctive relief is appropriate when an ordinance is deemed unconstitutional under the Takings Clause. Carson Harbor Village, Ltd v City of Carson, 37 F3d 468, 473 n4 (9th Cir 1994); see also Golden Gate Hotel Ass'n v City and County of San Francisco, 836 F Supp 707, 709 (ND Cal 1993), vacated on

1 other grounds, 18 F3d 1482 (9th Cir 1994) (permanent
2 injunction against enforcement of an ordinance was justified
3 when the ordinance failed substantially to advance legitimate
4 state interests).

- 5 2. Under Penn Central, if the government has had an opportunity
6 to provide just compensation in response to a taking and fails
7 to do so, the City may be enjoined from continuing to take the
8 property unless or until it provides just compensation. See
9 Penn Central, 438 US at 124. In Eastern Enters v Apfel, 524
10 US 498 (1998), a four-justice plurality recognized that a
11 federal court may issue an injunction or declaratory judgment
12 concerning whether the government's conduct constituted a
13 "taking," even though the plaintiff had not yet sought
14 compensation. See also, for example, Student Loan Marketing
15 Ass'n v Riley, 104 F3d 397, 402 (DC Cir 1997) (entertaining
16 declaratory relief request despite the availability of
17 compensatory remedy under the Tucker Act; such availability
18 "does not wipe out equitable jurisdiction"); In re Chateaugay
19 Corp, 53 F3d 478, 491-93 (2nd Cir 1995) ("Because the
20 plaintiff sought only declaratory relief on its takings claim,
21 the plaintiff was not required to go to Claims Court first.").
22 See also Armendariz, 75 F3d at 1321 n5 ("Because a 'private'
23 taking cannot be constitutional even if compensated, a
24 plaintiff alleging such a taking would not need to seek
25 compensation in state proceedings before filing a federal
26 takings claim.").
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1 FINAL CONCLUSION OF LAW: To the extent that any of the foregoing
2 conclusions of law should more properly be considered findings of
3 fact, they shall be deemed as such.

4
5 Severability

6 The severability of a statute held to be unconstitutional
7 under the Fifth and Fourteenth Amendments is a matter of state law.
8 National Broiler Council v Voss, 44 F3d 740, 748 n12 (9th Cir
9 1994). Under California law, the unconstitutional provision in a
10 law can be severed only if the defective provision is gramatically,
11 functionally and volitionally severable:

12 It is "grammatically" separable if it is
13 "distinct" and "separate" and, hence, "can be
14 removed as a whole without affecting the
15 wording of any" of the measure's "other
16 provisions." It is "functionally" separable
17 if it is not necessary to the measure's
18 operation and purpose. And it is
19 "volitionally" separable if it was not of
20 critical importance to the measure's
21 enactment.

22 Hotel Employees and Restaurant Employees Int'l Union v Davis, 88
23 Cal Rptr 2d 56, 77 (Cal 1999) (internal citations omitted).

24 Even if a law contains a severability clause,
25 severability is not guaranteed: "[t]he final determination depends
26 on whether 'the remainder * * * is complete in itself and would
27 have been adopted by the legislative body had the latter foreseen
28 the partial invalidation of the statute' or 'constitutes a
completely operative expression of the legislative intent * * *
[and] are [not] so connected with the rest of the statute as to be
inseparable.'" Santa Barbara Sch Dist v Superior Court, 530 P2d

1 605, 618 (Cal 1975) (internal citation omitted). The lack of a
2 severability clause is evidence that the provision is not
3 volitionally severable: the legislating body intended that one
4 part of the law would not persist if another part was invalid.
5 Consider Matter of Reyes, 910 F2d 611, 613 (9th Cir 1990) (applying
6 principles of severability to Executive Order).

7 The Mobilehome Rent Stabilization law as codified in the
8 San Rafael Municipal Code lacks a severability clause although one
9 appears in Ordinance 1743, the legislation that contains the
10 provisions enacted in 1999. The court assumes, therefore, that the
11 City would seek to retain in effect such portions of its mobilehome
12 rent regulations that are not invalidated.

13 The City contends that elimination of the 75 percent
14 limitation on permissive rent increases and the sentence excluding
15 capital replacements and improvement assessments in the base rent
16 and eligible for permissive CPI-C increases would return mobilehome
17 rent regulation to that provided for in the code as it existed in
18 1993. Because the 1993 version of the Ordinance survived an attack
19 by MHC's predecessor, the City asserts that the 1993 regulatory
20 scheme is beyond attack. Therefore, the City argues that the court
21 should simply strike the 1999 enacted provisions which the City
22 contends would restore the status quo that existed in 1993.

23 The City's approach is not supported legally or
24 practically and is inconsistent with California law on
25 severability. First, invalidation of an enactment does not restore
26 the law as it existed prior to the enactment. Consider Cal Gov't
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1 Code § 9607(a) (repeal of repealing statutes). Second, assuming
2 arguendo that only the provisions of Ordinance 1743, the 1999
3 Ordinance, unconstitutionally take MHC's property under Penn
4 Central principles, the court may remove or excise these provisions
5 from the law but only if they are grammatically, functionally and
6 volitionally severable. See Jevne v Superior Court, 35 Cal 4th
7 935, 960-62 (2005); Calfarm Ins Co v Deukmejian, 48 Cal 3d 805,
8 821-22 (1989). The 1999 provisions fail this test for several
9 reasons.

10 The Appendix sets out the entire San Rafael mobilehome
11 rent stabilization law showing the law as it existed in 1993 and
12 the changes enacted in 1999 with Ordinance 1743. Although the
13 provisions of the 1999 Ordinance dealing with capital improvements
14 are grammatically severable, see Appendix § 20.04.020 M and §
15 20.08.010 B 1 (last sentence), elimination of those provisions
16 alone does not cure the difficulty the court has found. The heart
17 of the 1999 Amendments is the reduction of the permissive rent
18 increases from the sliding scale increases allowed under the 1993
19 version of the Ordinance to the flat 75 percent CPI-C adjustment
20 permitted by the 1999 Amendments. Excision of the 75 percent
21 language renders the Ordinance as a whole essentially meaningless.
22 For although the 1999 Amendments added and deleted relatively few
23 words to the law, those words are central to the operation of the
24 mobilehome rent regulatory scheme the City sought to put into
25 place.
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First, the permissive rent increase is referred to in the Ordinance as "automatic." See App § 20.08.010 (last sentence). Without the 1999 provisions, the Ordinance lacks any permissive or automatic rent adjustment, a feature that has been included in all formulations of the City's mobilehome rent regulations dating back to their origination in 1989.

Second, numerous other provisions of the mobilehome rent Ordinance are keyed to the permissive or automatic rent increases. For example, the vacancy control provision limits any increase in rent upon transfer of a pad lease to a new tenant to that increase "otherwise exempted under the provisions of subsections (B) (2) and (3) of [section 20.08.010]." App § 20.08.010 C. There is a similar relationship between the automatic or permissive rent increase and the freeze provisions of the Ordinance. App § 20.08.010 E.

Third, much of the language of the Ordinance becomes surplusage in the event of elimination of the 75 percent CPI-C adjustment. For example, references to the CPI-C are spread throughout the Ordinance, see e g, App § 20.08.010 B, § 20.08.030, § 20.12.030, yet these references become essentially meaningless without a permissive or automatic rent increase linked to the CPI-C.

Fourth, excision of the 75 percent permissive or automatic increase renders all rent increases subject to the fairly elaborate regulatory mechanisms of the Ordinance. For example, MHC is required to furnish the city manager and the affected lease pad

1 holder a notice ninety days in advance of any rent increase, App §
2 20.08.010. In the event of excision of the automatic rent increase
3 provision, each pad lessee's rent increase is subject to the
4 elaborate rental dispute resolution mechanism of the Ordinance.
5 App § 20.12.010 et seq. As a base rent is established for each of
6 the 396 lots in Contempo Marin, any increase in any single pad rent
7 would trigger the possibility of a hearing, arbitration and appeal
8 provided for in the Ordinance. See App § 20.12.090. As each one
9 of these increases could be appealed to and reviewed by the City
10 council, with an ensuing possible court challenge pursuant to
11 section 1094.5 of the California Code of Civil Procedure to follow,
12 it is quite possible that the City council could be called upon to
13 hear and decide a virtually endless string of disputes arising from
14 Contempo Marin.

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16 It is plain from the structure of the Ordinance and the
17 exemption for any rent increase less than or equal to the 75
18 percent CPI-C adjustment that the City council sought to avoid this
19 elaborate dispute process except for rent increases greater than
20 the 75 percent threshold. The Ordinance simply cannot perform the
21 functions that the City council plainly envisioned when it enacted
22 the 1999 Amendments once they have been excised. Under such
23 circumstances, it cannot be argued that the City council would have
24 adopted the Ordinance denuded of the 1999 provisions and these
25 provisions cannot be deemed volitionally severable. Moreover, of
26 course, and although its approach was constitutionally flawed, the
27 City council attempted to adjust what it deemed to be the competing
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interests of Contempo Marin residents and MHC's interest in a "fair and reasonable return," as well as "encouraging competition in the provision of mobilehome lots," App § 20.04.010 J. A permissive or automatic rent increase equivalent to 75 percent of the CPI-C adjustment was integral to that legislative balancing. Because it is not clear that had it foreseen the invalidation of the 1999 Amendments the City council would have adopted the Ordinance without those provisions, they cannot simply be excised from the law. It is not the court's task, nor its prerogative, to re-write legislation that the City may enact. Indeed, the City council may now wish to refashion its regulation of mobilehome rent in a manner that is constitutionally permissible and adopting the City position in this litigation that the court "restore" the 1993 law would be inconsistent with the City's ability to make that change.

MHC shall submit a proposed form of judgment consistent with the foregoing.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge

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APPENDIX

The portions of the Ordinance deleted by the 1999 Amendments appear in strikethrough font. The portions of the Ordinance inserted by the 1999 Amendments appear in underlined and italicized font.

Chapter 20.04 GENERAL PROVISIONS

20.04.010 Findings.

20.04.020 Definitions.

20.04.030 Applicability.

20.04.040 Notice requirements.

20.04.050 Purchaser's rights.

20.04.060 Administration.

20.04.010 Findings.

The city council finds as follows:

A. There is presently within the city and the surrounding areas, a shortage of lots for the placement of mobilehomes.

B. Mobilehomes presently constitute an important source of housing for persons of low and moderate income.

C. A large number of persons living in mobilehomes are elderly, some of whom live on small fixed incomes. These persons may expend a substantial portion of their income on rent and may not be able to afford other housing within the city.

D. There is an extremely low vacancy rate in mobilehome parks within the city, with no lots presently available in some or all of

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the mobilehome parks within the city.

E. Rents for lots within mobilehome parks have, in the few years preceding adoption of the Rent Stabilization Ordinance codified in this title by the city, increased substantially, in parks within the city and other areas of the state.

F. Homeowners residing in mobilehome parks have very limited mobility because it is difficult and costly to move mobilehomes; therefore, such homeowners are forced to accept and pay substantially increased rents.

G. There is a potential for damage while moving mobilehomes from one site to another and a considerable amount of cost for landscaping, awning installations, and site preparation after such a move.

H. The San Rafael general plan 2000 housing policy H-8 recommends maintaining the city's existing stock of lower cost units of which the Contempo Marin Mobilehome Park is an example.

I. Owners and/or operators of mobilehome parks provide an important housing source for residents of the city. Unduly restrictive rent review ordinances can operate to discourage the establishment of new and the expansion of existing mobilehome parks in the city; to encourage owners to convert their mobilehome parks to other uses; and adversely affect the maintenance and other services offered by mobilehome parks, thereby exacerbating the shortage of mobilehome lots and the quality of life in mobilehome parks.

J. It is the purpose of this title to establish a speedy and efficient method of reviewing rent increases in mobilehome parks to protect homeowners from arbitrary, capricious or unreasonable rent increases while insuring owners and/or operators and investors a fair and reasonable return and encouraging competition in the provision of mobilehome lots.

K. Vacancy Control. The initial Mobilehome Rent Stabilization Ordinance, No. 1564, contained vacancy control provisions at its first reading; and

Said ordinance was thereafter revised to exempt from coverage space rent or space rent increases upon the transfer of ownership of a mobilehome where the mobilehome remains in the park, sometimes referred to as "vacancy decontrol"; and

Said revisions were made in response to the decision of the United States Court of Appeal for the Ninth Circuit in Hall v. City of Santa Barbara; and

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2 The decision of the United States Supreme Court in Yee v. Escondido
3 effectively overruled Hall v. City of Santa Barbara, and the Yee
4 opinion found that vacancy control of rents on in-place transfers
of mobilehomes does not constitute a physical taking of property
without just compensation; and

5 The council finds that the city's policy to continue rent control
6 protection for all mobilehome parks in the city, has proven useful
in stabilizing rent in mobilehome parks; and

7 Establishment of rent regulations on spaces where ownership of the
8 mobilehome is transferred but the mobilehome remains, sometimes
9 referred to as "vacancy control," is an important part of rent
10 control policy as it protects mobilehome owners from excessive
space rent increases and permits sales of mobilehomes without
"unconscionable" rent increases to the new owner; and

11 Rent control regulations, including vacancy control can assist in
12 protecting affordable housing in combination with city programs and
13 actions to help provide a variety of housing types within a range
of costs affordable to the low and very low income households; and

14 A significant number of residents have become residents following
15 the effective date of Ordinance No. 1564 on October 16, 1989, and
were required to pay a rental rate substantially higher than
comparable spaces; and

16 Many residents of such spaces are senior citizens on fixed incomes
17 and have been forced to pay unnecessarily high rents and/or have
18 been constrained in their ability to sell their mobilehomes.

19 This city council desires to enact a measure that would regulate
20 rent increases upon in-place transfers of mobilehomes.

21 L. The city council has reviewed the findings above set forth in
22 subsections A through K of this section and finds them to be still
23 true and correct and continues to find a profound need for
continued mobilehome rent stabilization. (Ord. 1654 (20.01.010),
1993).

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25 20.04.020 Definitions.

26 A. "Arbitration" is a process much like a trial where the
27 arbitrator listens to both sides and makes a decision (called an
28 award) for the disputing parties.

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2 B. "Capital improvements" means those new improvements which
3 directly and primarily benefit and serve the existing mobilehome
4 park homeowners by materially adding to the value of the mobilehome
5 park, appreciably prolonging its useful life, or adapting it to new
6 uses, and which are required to be amortized over the useful life
7 of the improvements pursuant to the provisions of the Internal
8 Revenue Code and the regulations issued pursuant thereto. "Capital
9 improvements costs" means all costs reasonably and necessarily
10 related to the planning, engineering and construction of capital
11 improvements and shall include debt service costs, if any, incurred
12 as a direct result of the capital improvement.

13 C. "Capital replacement" means the substitution, replacement or
14 reconstruction of a piece of equipment, machinery, streets,
15 sidewalks, utility lines, landscaping, structures or part thereof
16 of a value of five thousand dollars (\$5,000.00) or more which
17 materially benefits and adds value to the mobilehome park. "Capital
18 replacement costs" means all costs reasonably and necessarily
19 related to the planning, engineering and construction of capital
20 replacement and shall include debt service costs, if any, incurred
21 as a direct result of the capital replacement.

22 D. "Debt service costs" means the periodic payment or payments due
23 under any security or financing device which is applicable to the
24 mobilehome park including any fees, commissions, or other charges
25 incurred in obtaining such financing.

26 E. "Representative" means a person appointed in writing by an
27 owner, an operator, a homeowner, or a group of homeowners and
28 authorized to represent the interest of, negotiate on behalf of,
and bind the appointing party.

F. "Filing" means actual receipt of the item being filed by the
person designated in this chapter to receive the item, or by his or
her designee.

G. "Maintenance and operation costs" means all expenses, exclusive
of costs of debt service, costs of capital improvements, and costs
of capital replacement, incurred in the operation and maintenance
of the mobilehome park, including but not limited to: real estate
taxes, business taxes and fees (including fees payable by landlords
under this chapter), insurance, sewer service charges, utilities,
janitorial services, professional property management fees, pool
maintenance, exterior building and grounds maintenance, supplies,
equipment, refuse removal, and security services or systems.

H. "Mobilehome" means a structure as defined in Section 798.3 of
the Civil Code as follows:

1
2 "Mobilehome" is a structure designed for human habitation and for
3 being moved on a street or highway under permit pursuant to Section
4 35790 of the Vehicle Code. Mobilehome includes a manufactured home,
5 as defined in Section 18007 of the Health and Safety Code, and a
6 mobilehome, as defined in Section 18008 of the Health and Safety
Code, but does not include a recreational vehicle, as defined in
Section 799.24 of this code and Section 18010 of the Health and
Safety Code or a commercial coach as defined in Section 18001.8 of
the Health and Safety Code.

7 I. "Mobilehome owner" or "homeowner" means any person legally
8 occupying a mobilehome dwelling unit pursuant to ownership thereof
9 within a mobilehome park and holding a rental or lease agreement
with the park owner.

10 J. "Operator" means the owner, operator, or property manager of a
mobilehome park within the city.

11 K. "Owner" means the owner or lessor of real property used for a
12 mobilehome park within the city.

13 L. "Rent" means the consideration, including any bonus, benefits or
14 gratuity, demanded or received in connection with the use and
15 occupancy of a mobilehome lot in a mobilehome park, including
16 services and amenities, and for the use of real property used for
the operation of a mobilehome park, but exclusive of any amounts
paid for the use of the mobilehome dwelling unit.

17 M. "Rent increase" means any additional rent demanded of or paid by
18 a homeowner for a rental lot and related amenities, including any
19 reduction or elimination of amenities without a corresponding
20 reduction in the moneys demanded or paid for rent, and any
21 additional rent demanded of or paid by an operator for rental of
real property used for the operation of a mobilehome park. Any
portion of a rent increase assessed for capital replacements or
capital improvements shall be separately identified and shall not
be included in the base rent.

22 N. "Rental lot" means a lot rented in a mobilehome park or offered
23 for rent in the city for the purpose of occupancy by a mobilehome
24 with all services connected with the use of occupancy thereof.

25 O. "Services" means those facilities which enhance the use of the
26 rental lot, including, but not limited to, repairs, replacement,
27 maintenance, painting, heat, hot and cold water, utilities,
28 security devices, laundry facilities and privileges, janitorial
service, refuse removal, telephone service, and meeting,
recreational, and other facilities in common areas of the
mobilehome park in which the lots are located. (Ord. 1743 § 1,

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1 1999; Ord. 1654 (20.02.020), 1993).

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3 20.04.030 Applicability.

4 The provisions of this title apply only to mobilehome parks which
5 contain mobilehomes as defined in this title and to the mobilehomes
6 within such parks. (Ord. 1654 (20.03.030), 1993).

6 20.04.040 Notice requirements.

7 Any owner/operator wishing to claim an exemption from this title
8 based upon Civil Code Section 798.17 shall provide the following
9 notice to any person and in the manner specified in this section.

10 A notice which conforms to the following language and printed in
11 bold capital letters of the same type size as the largest type size
12 used in the rental agreement shall be presented to any prospective
13 purchaser at the time of presentation of a rental agreement
14 creating a tenancy with a term greater than twelve (12) months:

13 **IMPORTANT NOTICE TO PROSPECTIVE PURCHASER REGARDING THE PROPOSED**
14 **RENTAL AGREEMENT FOR _____ MOBILEHOME PARK. PLEASE TAKE**
15 **NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM IN**
16 **EXCESS OF TWELVE MONTHS. BY SIGNING THIS RENTAL AGREEMENT, YOU ARE**
17 **EXEMPTING THIS MOBILEHOME SITE FROM THE PROVISIONS OF THE CITY OF**
18 **SAN RAFAEL MOBILEHOME RENT STABILIZATION ORDINANCE FOR THE TERM OF**
19 **THIS RENTAL AGREEMENT. THE CITY OF SAN RAFAEL MOBILEHOME RENT**
20 **STABILIZATION ORDINANCE AND THE STATE MOBILEHOME RESIDENCY LAW**
21 **(CALIFORNIA CIVIL CODE SECTION 798 et seq.) GIVE YOU CERTAIN**
22 **RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT YOU MAY CHOOSE TO SEE**
23 **A LAWYER. UNDER THE PROVISIONS OF THE MOBILEHOME RENT STABILIZATION**
24 **ORDINANCE, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR**
25 **(1) A TERM OF TWELVE MONTHS, OR (2) A LESSER PERIOD AS YOU MAY**
26 **REQUEST, OR (3) A LONGER PERIOD AS YOU AND THE MOBILEHOME PARK**
27 **MANAGEMENT MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR**
28 **AT LEAST 30 DAYS BEFORE ACCEPTING OR REJECTING IT. IF YOU SIGN THE**
AGREEMENT, YOU MAY CANCEL THE AGREEMENT BY NOTIFYING THE PARK
MANAGEMENT IN WRITING WITHIN 72 HOURS OF YOUR EXECUTION OF THE
AGREEMENT. IT IS UNLAWFUL FOR A MOBILEHOME PARK OWNER OR ANY AGENT
OR REPRESENTATIVE OF THE OWNER TO DISCRIMINATE AGAINST YOU BECAUSE
OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE CITY OF SAN
RAFAEL MOBILEHOME RENT STABILIZATION ORDINANCE, OR BECAUSE OF YOUR
CHOICE TO ENTER INTO A RENTAL AGREEMENT WHICH IS SUBJECT TO THE
PROVISIONS OF THAT LAW.

26 The notice shall contain a place for the prospective purchaser to
27 acknowledge receipt of the notice and shall also contain an
28 acknowledgment signed by owner/operator that the notice has been
given to the prospective purchaser according to this section. A

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copy of the notice executed by owner/operator shall be provided to the prospective purchaser. (Ord. 1654 (20.03.040), 1993).

20.04.050 Purchaser's rights.

A prospective purchaser of a mobilehome which is subject to an in-place transfer shall have all the same rights as a homeowner, as defined in Civil Code Section 798.18 including:

A. The right to be offered a rental agreement for (1) a term of twelve (12) months, or (2) a lesser period as the homeowner may request or (3) a longer period as mutually agreed upon by both the homeowner and management.

B. The right to reject the offer of a rental agreement in excess of twelve (12) months and instead accept a rental agreement for a term of twelve (12) months or less from the date the offered rental agreement begins.

C. The owner/operator of any park shall file a standard multiyear residency agreement in the office of the city clerk. A standard form of written rejection approved by the city attorney's office shall also be filed in the office of the city clerk. A prospective purchaser may elect to reject a rental agreement in excess of twelve (12) months by executing the standard form of written rejection which incorporates applicable terms and conditions of the owner's standard multiyear residency agreement on file in the office of the city clerk. The execution of said written rejection shall be deemed to be a rental agreement between the purchaser and the owner with a month-to-month tenancy and with the rent limitations as set forth in this chapter sufficient for compliance with Civil Code Section 798.75(a). (Ord. 1654 (20.03.050), 1993).

20.04.060 Administration.

The city manager shall establish administrative procedures for the implementation of this title. (Ord. 1654 (20.10.260), 1993).

Chapter 20.08 RENT INCREASES

20.08.010 Increases subject to review--Exceptions.

20.08.020 Notices.

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20.08.030 Limitations on rent increases.

20.08.010 Increases subject to review--Exceptions.

A. Except as provided in subsection B of this section, any rent increase including rent on change of ownership as hereinafter defined under subsection C of this section, Vacancy Control, proposed to take effect on or after February 1, 1993, shall be subject to this title.

B. The following rent increases shall be exempt from review under this title.

1. Except as provided in subsections (B) (2) and (3) of this section any rent increase for any mobilehome lot in any twelve (12) month period which is equal to or less than the rent charged on the date twelve (12) months prior to the date the increase is to take effect, multiplied by a cost of living factor and rounded off to the nearest dollar. ~~The cost of living factor shall be as follows:~~

One Hundred Percent	1.00 (CPI/C)	where CPI/C is equal to or less than five percent (5%).
Seventy-five Percent	.75 (CPI/C)	or five percent (5%), whichever is greater, where CPI/C is greater than five percent (5%) and equal to or less than 10 percent (10%).
Sixty-six Percent	.66 (CPI/C)	or seven and a half percent (7.5%), whichever is greater, where CPI/C is greater than 10 percent (10%).

"CPI/C" *The cost of living factor shall be seventy-five percent (75%) of the CPI/C, where the CPI/C shall mean the percentage change in the consumer price index ("CPI") for California, All Urban Consumers, San Francisco-Oakland-San Jose areas, as published by the Bureau of Labor Statistics, San Francisco, over the most recent twelve month period for which figures are available through the month before the month preceding the date notice of the rent*

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increase is given. The most recently published CPI figure available at the time the rent increase notice is given shall be used for the calculation. The city of San Rafael will supply each owner and/or operator the published CPI figure to be used in any rent increase. Each owner and/or operator shall post such document in a conspicuous place in the park office or office area, where it can easily be seen by the park homeowners. Capital replacement and/or capital improvement assessment(s) shall not be included in the base rent nor eligible for automatic CPI increases under this section.

2. Mobilehome spaces where the homeowner and the mobilehome owner/operator have entered into a negotiated lease agreement that exempts the space in accordance with subdivision (b) of Civil Code Section 798.17.

3. Mobilehome spaces that are "new construction" as defined in Civil Code Section 798.7 and as exempted in accordance with Civil Code Section 798.45.

C. Vacancy Control. When a mobilehome is transferred by the homeowner to another with the mobilehome remaining on the space, it is sometimes referred to as an "in-place transfer." No increase in rent shall be imposed upon an in-place transfer of a mobilehome.

When a mobilehome space becomes vacant and the mobilehome which is located thereon is removed from the space, the space rental shall not be increased upon re-rental of the space unless otherwise exempted under the provisions of subsections (B) (2) and (3) of this section.

D. Base Rent Provisions. In the event a mobilehome space is exempted from the provisions of this title by reason of the existence of a space rent agreement that meets the requirements of Civil Code Section 798.17, and that agreement expires, the base space rent for that space shall be the space rent in effect for that space immediately preceding the expiration of the agreement.

In the event a mobilehome space was subject to the space rent restrictions of this title and between October 16, 1989 and February 1, 1993, was subject to an in-place transfer, the space rent that was demanded by the park owner immediately preceding February 1, 1993, shall be the base space rent for the space.

E. Freeze. Notwithstanding the provision for annual adjustment of space rents as provided in subsection (B) (1) of this section, a freeze in space rent shall be effected as set forth below for spaces where a mobilehome space was exempted from the space rental provisions of this title by reason of the existence of a space rent agreement in accordance with Civil Code Section 798.17 and that agreement expires or where there has been an in-place transfer of a

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mobilehome between October 16, 1989 and February 1, 1993.

The base space rent for said spaces shall remain frozen until such time as the base rent is less than or equal to the rent said space would have been under the Rent Stabilization Ordinance. Upon attainment of the level set forth in the preceding sentence, the space rent freeze provided for in this paragraph shall be lifted and the rent limitations of subsection B of this section shall then apply.

In the event the rent that a particular space would be if the space had been subject to the provisions of this title under rent stabilization cannot be determined for any reason, the base rent for said space shall remain frozen until such time that the lowest rent for a comparable space in a park on February 1, 1993, where no space rent agreement that was exempt from the provisions of this title expired or where no in-place transfer took place between October 16, 1989 and February 1, 1993 attains the same level as the base rent determined in accordance with subsection D of this section for said space. Thereafter the provisions of subsection (B) (1) of this section shall then apply.

The owners shall not have any obligation to return any rents heretofore collected under exempt rental agreements or under rent control ordinances numbers 1564, 1584 and 1644. Ordinance number 1644 was not intended to impose on owners any obligation to roll-back rents at mobilehome parks in San Rafael.

The freeze provisions of this subsection are to only have prospective application from the effective date of Ordinance No. 1644. (Ord. 1743 § 2, 1999; Ord. 1654 (20.04.040), 1993).

20.08.020 Notices.

The owner/operator is required to furnish to the city manager or an authorized designee at least ninety (90) days before the effective date of any rent increase, a complete list of the existing rent for each space within the park together with a copy of any rental agreement or lease applicable to all spaces within the park. The lease or rental agreement is required to show the commencement and expiration date as well as the initial rent applicable under the agreement.

Ninety (90) days prior to any increase in rents, the operator shall provide each homeowner and the owner shall provide each operator with written notice setting the amount of the proposed increase, the then current rent and whether or not in the owner's and/or operator's opinion such increase is exempt from review under the provisions of this title. (Ord. 1654 (20.05.050), 1993).

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20.08.030 Limitations on rent increases.

Each park operator shall, by November 1, 1989, establish an anniversary date for all rent increases, and such yearly increases, if any, except as specified below, shall be enacted only on the anniversary date of that park, which date shall also be posted in the park office or office area where it can easily be seen by the homeowners. The increases allowed by the terms of this title shall be applied equally on such annual basis to all lots subject to an increase as provided herein. The operator shall notify the city manager's office in writing of such anniversary date on or before November 1, 1989.

The operator, in calculating the amount of increase allowed, shall use the average rent per lot subject to the terms of this title. This figure shall be determined by dividing the number of lots subject to the terms of this title into the total gross rent receipts received from those lots. The CPI increase shall then be applied to that average lot rent, to determine the actual dollar increase.

The owner, in calculating the amount of increase allowed, shall apply increases as allowed in Section 20.08.010(B) to the current yearly rent to determine the actual dollar increase.

After the calculations showing the amount of anticipated increase and how the increase was determined has been approved and reviewed by the city manager or his or her designee, said calculations and method determining the increase shall both be posted in the park office or office area where it can easily be seen by the homeowners and a declaration of posting shall be forwarded to the city manager's office within five (5) days thereafter.

Failure to timely comply with the provisions of Sections 20.08.020 and 20.08.030 shall defer the effective date of any proposed annual increase until ninety (90) days after compliance. (Ord. 1654 (20.06.060), 1993).

Chapter 20.12 RENTAL DISPUTE HEARING PROCESS

20.12.010 Petition filing.

20.12.020 Filing fees.

20.12.030 Consultant services.

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20.12.040 Supporting information.

20.12.050 Submission of petition by owner or operator.

20.12.060 Appointment of arbitrator.

20.12.070 Arbitration hearing.

20.12.080 Recording.

20.12.090 Appeal.

20.12.100 Arbitration--Paying all costs.

20.12.110 Standards of reasonableness to be applied to rent increases.

20.12.010 Petition filing.

Within forty-five (45) days after the notice provided in 20.08.020, upon the written petition of more than twenty-five percent (25%) of the homeowners of any mobilehome park without rental agreements exempt in accordance with Civil Code Section 798.17 filed with the city clerk as set forth in this title, the rental dispute hearing process may be invoked. A copy of the petition shall be provided to the operator or representatives at the same time. The petition shall include the names, addresses, and telephone numbers of the authorized homeowner representatives. The petition shall also include such supporting materials as the city manager shall prescribe including, but not limited to, a copy of the owner's notice of space rent increase. The petition shall be verified. (Ord. 1654 (20.07.070(A)), 1993).

20.12.020 Filing fees.

The fee for filing a petition shall be two (2) times the then current daily rate for American Arbitration Association services. Upon receipt of the petition and filing fee from homeowners, the city manager shall notify the owner/operator of the receipt of the petition and shall require from the owner/operator a like fee. The filing fees may be adjusted by resolution of the city council from time to time to cover administrative costs and the cost of arbitration services. (Ord. 1654 (20.07.070(B)), 1993).

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20.12.030 Consultant services.

The city manager may, from time-to-time, employ the services of an accountant to supply information to the arbitrator such as the past twelve (12) months' CPI, a profit income to revenue statement, a profit income to investment statement, or such other financial data as may be independently required for or requested by the arbitrator. The fees for the consultant services may be paid from the filing fees or by the city from redevelopment low and moderate income set aside funds. (Ord. 1654 (20.07.070(C)), 1993).

20.12.040 Supporting information.

Within thirty (30) days after the filing of a petition, the homeowners and the owner/operator shall file with the city clerk all information reasonably available in support of or opposition to any proposed increase of rent. Copies of said supporting information shall be provided to the opposing party and the arbitrator. (Ord. 1654 (20.07.070(D)), 1993).

20.12.050 Submission of petition by owner or operator.

Any Operator or owner whose mobilehome park is subject to the provisions of this title and who seeks to increase rent in excess of the provisions of this title, or contends that the freeze of rents as provided by Section 20.08.010(E) does not result in a just and reasonable return shall be required to invoke the hearing process by a petition filed with the city clerk which shall be heard and processed in the same manner as provided in this title for homeowner applications; provided, that the owner/operator shall notify, in writing, all homeowners or operators subject to such rental increase with proof of service of such notification listing the names and addresses of each affected homeowner and/or operator. (Ord. 1654 (20.07.070(E)), 1993).

20.12.060 Appointment of arbitrator.

The city manager shall appoint the arbitrator. The parties may submit to the city manager a list of three nominees who are members of the American Arbitration Association. The city manager may also

1 consider retired judges of courts of record, or additional members
2 of the American Arbitration Association or other experienced
3 professional arbitrators. The city manager will give deference to
4 any nominee agreed to by the parties. The arbitrator shall not own
5 any interest in a mobilehome park, or be the operator of a
6 mobilehome park or be a resident of a mobilehome park. (Ord. 1654
7 (20.07.070 (F)), 1993).

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20.12.070 Arbitration hearing.

The arbitrator shall set a hearing within thirty (30) days after
the date the arbitrator was selected.

Any party or their counsel may appear and offer such documents,
testimony, written declarations or other evidence as may be
pertinent to the proceedings. The hearing may be continued at the
request of each party for not to exceed ten (10) days. The
arbitrator may continue the hearing for a reasonable time upon a
showing of good cause. The burden of proving the amount of a rent
increase is reasonable shall be on the owner by a preponderance of
the evidence. The hearing need not be conducted according to
technical rules of evidence.

The arbitrator shall render within fifteen (15) days of the hearing
a written decision together with the reasons for said decision
determining the amount of allowable rent increase, if any, in
accordance with the standards of Section 20.12.110. (Ord. 1654
(20.07.070 (G)), 1993).

20.12.080 Recording.

The party requesting arbitration shall arrange to have a court
reporter present to record the proceeding before the arbitrator.
(Ord. 1654 (20.07.070 (H)), 1993).

20.12.090 Appeal.

Upon the written request of any party within fifteen (15) days of
the arbitrator's decision, the decision of the arbitrator can be
appealed and reviewed by the city council. The appeal shall consist
of a review of the record of the proceedings before the arbitrator
and upon a showing of good cause in accordance with the provisions
of the Code of Civil Procedure Section 1094.5(e), the city council

1 may permit additional evidence at the hearing on the appeal. The
2 appealing party shall cause a transcript to be prepared by the
3 certified court reporter. Within fifteen (15) days after the
4 original transcript is filed with the city clerk the appeal will be
5 set for hearing. The city council may affirm, modify or reverse the
6 decision of the arbitrator. The decision of the city council is
7 final. The decision of the city council will be subject to the
8 provision of California Code of Civil Procedure Section 1094.5.
9 (Ord. 1654 (20.07.070(I)), 1993).

20.12.100 Arbitration--Paying all costs.

10 The party requesting arbitration shall be responsible for paying
11 all costs associated with the selection and retention of the
12 arbitrator; provided, that if the arbitration is requested by the
13 owner/operator, and the final arbitration award is eighty percent
14 (80%) or more of the increase requested by the owner/operator, not
15 previously granted by an arbitrator, the owner/operator shall be
16 allowed to pass the costs through to the homeowners, spread over a
17 one (1) year period in addition to any increase allowed. If the
18 arbitration is requested by the homeowners and the final
19 arbitration award is eighty percent (80%) or more of the reduction
20 requested by the homeowners, not previously granted by an
21 arbitrator, the operator shall refund such cost in a lump sum to
22 the homeowners within thirty (30) days to be distributed to the
23 contributing homeowners in accordance with their contributions.
24 (Ord. 1654 (20.10.130), 1993).

20.12.110 Standards of reasonableness to be applied to rent
increases.

A. Standards of reasonableness applicable to rent increases in
order to assure owner and/or operator a fair and reasonable return
to be considered by the arbitrator are:

1. The rental history of the mobilehome park, including:

a. The presence or absence of past increases,

b. The frequency of past rent increases and the amounts,

c. The owner and/or operator's response to any tax-reduction
measure,

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d. The occupancy rate of the mobilehome park in comparison to comparable units in the same general area;

2. The physical condition of the mobilehome park, including the quantity and quality of maintenance and repairs performed during the last twelve (12) months;

3. Any increases or reductions in services during the twelve (12) months prior to the effective date of the proposed increase;

4. Other financial information which the owner and/or operator are willing to provide;

5. Existing market value of rents for mobilehome spaces in communities with housing comparable to San Rafael;

6. Cost to replace the park;

7. Changes in the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose areas published by the Bureau of Labor Statistics;

8. Any costs incurred as a result of a natural disaster and only to the extent such costs have not been reimbursed to the owner by insurance or other sources;

9. The arbitrator shall not consider changes in operating or other expenses caused by the park owner's refinancing of the park.

B. In determining an owner and/or operator's fair and reasonable return, the arbitrator shall consider all relevant factors, such as the owner's and/or operator's investment in the mobilehome park and the owner's net operating income; provided, that the determination may include a review of the replacement cost of the park.

In any determination of what constitutes a reasonable rent increase under the circumstances, the arbitrator shall consider and weigh evidence establishing the nature and extent of any violations by either the owner, the operator, or homeowners of the city building and housing codes. Any rent increase may be disallowed, reduced, or made subject to reasonable conditions, depending on the severity of such violations. (Ord. 1654 (20.10.180), 1993).

Chapter 20.16 REMEDIES--VIOLATIONS--PENALTIES

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20.16.010 Services.

20.16.020 Fair return hearing.

20.16.030 Retaliation.

20.16.040 Civil remedies.

20.16.050 Penalties.

20.16.010 Services.

During the term of operation of this title, no operator shall reduce or eliminate any service to any rental lot unless a proportionate share of the cost savings, due to such reduction or elimination, is simultaneously passed on to the homeowner in the form of a decrease in existing rent or a decrease in the amount of a rent increase otherwise proposed and permitted by this chapter. (Ord. 1654 (20.10.190), 1993).

20.16.020 Fair return hearing.

In the event an owner invokes the rental dispute process by reason of the freeze provisions contained in Section 20.08.010(E) the owner shall include in the petition the following additional information:

1. The name and address of the mobilehome park owner;
2. The name of the mobilehome park;
3. For each mobilehome space subject to a freeze by reason of an in-place transfer or expiration of a rental agreement in excess of twelve (12) months:
 - a. The number of the lot or space on which the mobilehome is located together with an executed copy of the most recent rental agreement for said space,
 - b. The name and address of the transferor of the mobilehome,
 - c. The name and address of the transferee of the mobilehome,

- 1 d. The date of transfer,
2 e. The rent charged prior to transfer,
3 f. The rent charged following the transfer,
4 g. The rent proposed as a fair and reasonable return,
5 h. All previous transfers of the mobilehome located in the affected
6 mobilehome space since October 16, 1989, together with the
7 information requested in subdivisions (a) through (g) for each such
8 transfer;
- 9 4. The name and address of the person who signed the notice;
10 5. The park owner shall mail a copy of the petition to all
11 mobilehome owners whose rents are the subject of the petition. The
12 petition shall contain a proof of service that a copy of the
13 petition was mailed to all such mobilehome owners;
- 14 6. The park owner shall bear the burden of proving by a
15 preponderance of the evidence at the hearing that because of the
16 rent freeze, the park owner is unable to obtain a fair and
17 reasonable return;
- 18 7. The fair and reasonable return hearing shall be in accordance
19 with the arbitration proceedings of Chapter 20.12. (Ord. 1654
20 (20.10.205), 1993).
- 21 20.16.030 Retaliation.
- 22 A. No operator shall in any way retaliate against any homeowner for
23 the homeowner's assertion or exercise of any right under this
24 title. Such retaliation shall be subject to suit for actual and punitive
25 damages, injunctive relief and attorney's fees and costs.
26 Such retaliation shall also be an available defense in an unlawful
27 detainer action.
- 28 No owner shall in any way retaliate against any operator for the
operator's assertion or exercise of any right under this title.
Such retaliation shall be subject to suit for actual and punitive
damages, injunctive relief and attorney's fees and costs.

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No homeowner shall in any way retaliate against any owner for the owner's assertion or exercise of any right under this title. Such retaliation shall be subject to suit for actual and punitive damages, injunctive relief and attorney's fees and costs. (Ord. 1654 (20.10.210), 1993).

20.16.040 Civil remedies.

If any owner or operator demands, accepts, receives, or retains any payment of rent in excess of the maximum lawful lot rent, as determined under this title, the homeowners of such park affected by such violation, individually or by class action, may seek relief in a court of appropriate jurisdiction for injunctive relief and/or damages. In any such court proceeding, the prevailing party shall be awarded his reasonable attorney's fees and the court, in its discretion and in addition to any other relief granted or damages awarded, shall be empowered to award to each affected homeowner civil damages in the sum of not more than three (3) times the total monthly lot rent demanded by the operator from each such homeowner.

If any owner demands, accepts, receives or retains any payment of rent in excess of the maximum lawful lot rent, as determined under this title, the operators of such park affected by such violation, individually or by class action, may seek relief in a court of appropriate jurisdiction for injunctive relief and/or damages. In any such court proceeding, the prevailing party shall be awarded his reasonable attorney's fees and the court, in its discretion and in addition to any other relief granted or damages awarded, shall be empowered to award to each affected operator civil damages in the sum of not more than three (3) times the total monthly lot rent demanded by the owner from each such operator. (Ord. 1654 (20.10.220), 1993).

20.16.050 Penalties.

Any person, firm, or corporation violating any of the provisions of this title shall be deemed guilty of a misdemeanor and such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of the provisions of this title is committed, continued or permitted, and upon conviction of any such violation, such person shall be punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. (Ord. 1654 (20.10.230), 1993).