

**OFFICE OF THE CITY ATTORNEY
ANTIOCH, CALIFORNIA**

FOR CONSIDERATION AT THE COUNCIL MEETING OF DECEMBER 19, 2006

TO: Honorable Mayor and Members of the City Council

DATE: December 14, 2006

SUBJECT: Mobile Home Park Issues: Agreement with Vista Diablo Mobile Home Park or
Mobile Home Rent Control Ordinance

OPTIONS:

1. Provide direction on an agreement regarding Vista Diablo Mobile Home Park; and/or
2. Provide direction on a Mobile Home Rent Control Ordinance.

A matrix comparing the key terms of the Park ownership/ management's proposed agreement and of a mobile home rent control ordinance is attached as Attachment A. In summary, the benefit of an agreement format is that it can address the initial issue of the Park converting from a senior park to an all-age/family park, as well as at least some rent issues and other issues raised by the residents.

The benefit of a mobile home rent control ordinance is that it can impose greater rent restrictions than those offered by the Park ownership/management; however, under state law those restrictions would only apply if the resident has a lease for the space of 12 months or less. Most, if not all, of the current residents at Vista Diablo have long-term leases, which are defined under state law as longer than 12 months. Therefore, rent control would only benefit those residents when their existing leases expire or when the mobile home is sold (in the context of valuing the sales price of the home).

BACKGROUND:

City Council Meeting on October 24, 2006

At the Council meeting on October 24, 2006, the City Council heard from residents of Vista Diablo Mobilehome Park about two primary concerns: 1) the Park management's notification to residents of a plan to convert the park from a senior-only park to a family/all-age park; and 2) increasing rents. Abe Arrigotti, President of Sierra Corporate Management, was also present and indicated that the Park ownership had reconsidered the decision to convert from

a senior park and indicated that the rents were based on what the market would bear as the value of the mobile home was in the land and not the coach itself.

After hearing the testimony, the City Council generally expressed concern about the possible loss of this important component of affordable senior housing in the community. Staff was directed to work with the Park management on a voluntary agreement to address the concerns expressed. However, if that approach was not successful, staff was also directed to look into adopting a mobile home rent control ordinance based on the City of Concord's ordinance.

City Council Meeting on November 22, 2006

At the Council meeting on November 22, 2006, staff provided an update on the matter, including a conference call with the two partners of the Park's ownership. On staff's recommendation, the matter was continued until December 19, 2006 to allow the Mayor, City Manager and City Attorney additional time for further discussions with the Park ownership/management and the representatives of the residents of Vista Diablo Mobile Home Park.

DISCUSSION

The operation of mobile homes and mobile home parks are extensively regulated by state law (e.g. "Mobilehome Residency Law" at Cal. Civ. Code §§ 798 et seq.; Cal. Health & Safety Code §§ 18000 et seq.). Thus, many areas of local regulation of mobile homes and mobile home parks are pre-empted by state law. However, a city can use its police powers to regulate rent if: 1) the space was constructed prior to January 1, 1990 and 2) the resident has a lease for the space of less than 12 months. Most, if not all, of the current residents at Vista Diablo have long-term leases, which are defined under state law as longer than 12 months. Therefore, rent control could only benefit when those existing leases expire or when the mobile home is sold (in the context of valuing the sales price of the home). It is questionable whether a city could prohibit or regulate the conversion to an all-age/family park given federal and state fair housing laws, particularly absent a clear condition of approval in a use permit.

Therefore, the Mayor, City Manager and City Attorney focused their efforts on reaching an agreement with the Park ownership/management in order to address the wider array of issues raised by the residents, including the initial issue of the Park converting from a senior park to an all-age/family park. As discussed below, and at the time of the writing of this report, the City representatives and Park ownership/management were unable to reach a consensus on acceptable terms.

Accordingly, as instructed by the City Council, a rent control ordinance remains an option and later in this report, specific points are raised for Council input in order to finalize an ordinance for presentation to the City Council if desired.

A summary of rents at Vista Diablo Mobile Home Park from Sierra Corporate Management dated October 18, 2006 is attached. (Attachment B) In addition, a chart with information collected in March 2005 by Brookview Park in Concord regarding other mobile home parks in the County is attached as Attachment C. City staff is in the process of verifying this information. In particular, there may be some discrepancy between the rental information provided by Sierra Corporate Management (Attachment B) and Attachment C beyond the 19-month difference in time periods, but Attachment C does provide some basis for comparison.

Agreement Regarding Vista Diablo Mobile Home Park

The following are the terms discussed by the City and representatives of Sierra Corporate Management and the Park's ownership along with a description of what the residents have been seeking based on correspondence and conversations with the representatives of the residents. The residents have indicated that the conversion and rent issues are equally important issues for the majority of the resident group.

If an agreement were reached, the terms would be memorialized in a written agreement recorded on the Park property and binding on any future owners of the Park. A 10-year term for the agreement is proposed with a provision that the agreement would be voided if mobile home rent control was imposed during that period.

1. Conversion from a senior park to an all-age/family park – The parties discussed an agreement by which the park would remain 100% senior for 10 years. The Park's ownership/management indicated on December 13, 2006 that they would only agree to the Park remaining 100% senior for 5 years and 80% senior in years 6-10.

The residents have indicated a desire that the Park remain 100% senior until formal notice of any change is given and the most recent lease signed the notice of change expires. (As an aside, any proposed agreement would not affect any individual mobile home owners' right to pursue individual legal action against the Park ownership on the basis of fraud, negligent misrepresentation, breach of contract or other legal theory).

2. Rent increases – The parties discussed the following revisions to the rent terms:

- a. Rents for new residents would be decreased from \$1,100 to \$950. Annual increases for new leases would be capped at higher of the CPI (Bay Area) or 5% (currently some leases can go up to 6%). The Park's ownership/management indicated on December 13, 2006 that they would only agree to a roll-back in rents for new residents until December 2007 instead of the December 2008 date asked by the City representatives.
- b. The Park ownership would provide a 10% rent reduction to those who meet the federal lower income threshold (80% of median income) with less than \$10,000 in assets other than the mobile

home. This program could be administered in conjunction with the Agency's current \$61.56 per unit per month subsidy, which is further discussed under the "Additional Options" section at the end of this report. The Park's ownership/management indicated on December 13, 2006 that they would not agree to be obligated to continue this program during any term of an agreement.

- c. Existing residents whose leases expire would be offered long-term leases starting at the same rent when the prior lease expired. Annual increases for new leases would be capped at higher of the CPI (Bay Area) or 5% (currently some leases can go up to 6%).

The residents have indicated that they want current leases above \$750.00 per month to be reduced to \$750.00 per month with annual increases limited to 85% of the CPI with a minimum of 2% and a cap of 5%. They would also like sewer, water and garbage to be included in the monthly rental amount.

3. Additional Mobile Home Spaces – Based on a comment during the City Council meeting of October 24, 2006, the Park's ownership/management has requested approval for five additional mobile home spaces.

4. Upgrades to the Community Center—The parties have discussed the Park ownership conducting an inspection of the wall along Somersville Boulevard and the electrical and plumbing systems and other health and safety issues with the clubhouse within 30 days of the execution of this Agreement. Any needed repairs would occur within 60 days of the inspection. In addition, the Park ownership/management would meet with the residents to discuss and implement upgrades to the community center, such as new carpeting, window coverings, etc. These upgrades shall be completed within six months of the execution of this Agreement.

The residents have discussed wanting more of a "Caltrans" style sound wall along Somersville Boulevard.

5. Irma Casteen and Freda Hargrove – The letter dated December 4, 2006 is Sierra Corporate Management's response to the situation of Ms. Casteen. (Attachment D). The letter dated November 29, 2006 is Sierra Corporate Management's response to the situation of Ms. Hargrove. (Attachment E).

Ordinance

Mobile home rent control is often quite litigious both when an ordinance is adopted and whenever a proposed rent control increase is denied. In effect, rent control somewhat institutionalizes an adversary relationship between Park ownership and the residents. Accordingly, I contacted both a law firm well versed in handling mobile home rent control matters (McDonough Holland & Allen) and a consultant in this field (Ken Baar), as well as the

City of Concord. With their expertise, I have outlined the following steps necessary for adopting and implementing a mobile home rent control ordinance:

1. Survey the mobile home market for data on vacancies, rents, etc. Staff would update and expand the information in Attachment C. (In particular, staff would be confirming that parks do not accept older mobile homes and the number of vacancies at the various parks);
2. Consider decision points on the provisions of the ordinance as discussed below;
3. Prepare a draft ordinance based on the City of Concord's model and have it reviewed by experts in the field; and
4. Consider fees, staffing and other implementation measures for the ordinance as discussed below.

In addition, the issue of subdividing mobile home parks has been increasingly raised throughout the state either by mobile home owners wanting to have an ownership interest in the land or by park owners following the example of apartment conversions to condominiums. Some cities are concerned about the effect of such actions on affordable housing stock and have considered adopting regulations. If this were an issue for the Council, staff could be directed to explore the issue further.

The following issues are highlighted for the Council's consideration and direction, in order that a mobile home rent control ordinance could be brought to the Council for its consideration, if that is Council's desire.

The components of the Ordinance are generally as follows:

Purpose and Findings

Definitions

Applicability of the Ordinance

Under State law, mobile home rent control does not apply to mobile home spaces constructed after January 1, 1990 or those with rental agreements of more than one year. Mirroring state law, the draft ordinance would provide that with an in-place sale of a mobile home, the initial maximum space rent to be charged the new mobile home owner would be the last space rent charged for that space prior to the sale. This provision addresses the concern raised by the residents that their investment or equity is undermined when the park owners substantially increase the rent above the cost of living or the park's operational expenses.

- *Decision Point:* Does the City Council intend for this ordinance to apply to all mobile home parks in the City or just the two senior mobile home parks?

Mobile Home Park Rent Review Board.

- *Decision Point:* The City of Concord uses a 3-member appointed Mobile Home Park Rent Review Board to hear requests regarding rent increases or other disputed matters pursuant to the ordinance. Other cities have found that a single hearing officer is more effective given the highly technical financial data that is often involved in reviewing these issues.

- *Decision Point:* Whether a board or hearing officer format is used, there is still a significant amount of staff time involved in administering a mobile home rent control ordinance, in addition to specialized consultants and legal expertise. In talking with other jurisdictions and given the City's three mobile home parks, we estimate that at least one new part-time position would be necessary to implement the ordinance. Staff can also bring back additional budget information for consultant and legal expertise.

Annual adjustment of rent.

Limit on frequency of rent increases.

Following the Concord model, these provisions would provide that the park owner is permitted to increase the rent on mobile home spaces 60 percent of the percentage increase of the CPI, but that the annual automatic increase would be no more than five percent of the base rent charged. Any rents above this amount or housing service reductions (decrease in the amenities such as maintenance, recreational facilities, laundry service, refuse removal, etc.) would automatically be subject to the hearing review process.

- *Decision Point:* Increases of only 60% of the CPI are lower than most mobile home rent control ordinances, which tend to be at least 75% up to 100% of the CPI. Using a different index factor is not recommended by the experts in this area, because the CPI index is standard in the industry and has withstood prior legal challenges. Accordingly, staff recommends using an index factor no less than 75% of the CPI.

Procedures for petitioning for a special rent increase beyond the allowed automatic increase

These provisions would set forth the process by which a mobile home park owner can seek a hearing on a special rent increase beyond the annual increase set forth above or to reduce housing services without a corresponding reduction in space rent. The procedures include filing a notice with the City Clerk and providing a designated notice to the affected mobile home owners. If more than 10% of the affected mobile home owners sign a petition, then the Board (or hearing officer) would hear the dispute.

The Board (or hearing officer) would make a determination whether or not the proposed rent increase is reasonable under the circumstances, in accordance with the maintenance of net

operating income formula as set forth, or any other factor necessary to provide the park owner with a fair return.

- *Decision Point:* The City of Concord's model provides that the City Council shall establish a reasonable fee, which shall be charged to the park owner for the cost of holding a special rent increase hearing, and a reasonable fee shall be charged the petitioning mobile home owners for a housing service reduction hearing. The fee is intended to pay all costs of the city incurred in conducting proceedings on the petition, including, without limitation, city staff time, noticing, audit costs, accountant costs, postage, and costs of in-house or outside services reasonably required to make the record. If a rent increase petition is granted in whole or in part, the Board may in its discretion allow the cost of the petition filing fee to be passed through to the affected mobile home owners in addition to the justifiable rent increase. If the rent increase is denied, no part of the hearing fee may be passed through to the mobile home owners. If a housing service reduction petition is granted in whole or in part, the Board may in its discretion allow the cost of the petition filing fee to be assessed against the park owner. Concord's fees are currently \$307; although, we do not believe that covers all of the costs. If the Council desired, a more comprehensive survey of mobile home fees could be undertaken.
- *Decision Point:* The Concord model allows decisions of the Board to be appealed to the City Council, not as a new hearing, but only as to whether the Board proceeded without or in excess of its jurisdiction and whether there was any prejudicial abuse of discretion. Alternatively, decisions of the Board can be subject to a new hearing by the City Council or be final only subject to review by a court action.

Violations and penalties.

This provision would prohibit any person from demanding, accepting, receiving or retaining any rent in excess of the amounts allowed under this article, with a willful violation being a misdemeanor. The provision would also prohibit the park owner from the next year's automatic increase if such a violation occurs.

Right of tenant to refuse to pay rent in excess of maximum rent.

A mobile home owner may refuse to pay any rent in excess of the maximum rent established under the procedures in the ordinance.

Mandatory mediation of nonrental disputes.

This provision requires mediation of nonrental disputes. Under the City of Concord's model a reasonable petition filing fee intended to defray the costs of the mediator and the hearing costs are established by resolution of the City Council.

Duty of park owner to provide information to tenants.

The park owner would be required to provide a copy of the ordinance and various notices to each resident mobile home owner or prospective resident mobile home owner at least three working days prior to the signing of any lease or rental agreement.

Administrative fee.

- *Decision Point:* The City of Concord's model provides that the City Council shall establish an administrative fee for administration of the mobile home rent control ordinance based on the general costs of administration, including city staff time, costs of drafting the ordinance, preparation of notices, postage, copying, etc. The administrative fee is apportioned equally to all mobile home spaces in the city except those exempt from local rent control pursuant to Civil Code 798.17 (i.e. apportioned among those who have leases less than 12 months in duration). Concord's administrative fee is paid by the park owner, but 50% may be passed on to the applicable mobile home owners. Concord does not currently charge this fee. The City of Rohnert Park, which uses a Rent Control Board with a budget of \$27,000, which is completely passed on to the mobile home owners (approximately \$20 annually per space). Again, if the City were interested in recovering its costs, a more comprehensive survey could be conducted of other cities with mobile home rent control ordinances.

FISCAL IMPACT:

If the Council authorizes the execution of an Agreement regarding Vista Diablo Mobile Home Park, there will be the costs of finalizing that Agreement and coordinating the subsidy programs, but otherwise it does not require active City involvement to implement.

If the Council wants to proceed with a mobile home rent control ordinance, there will be costs in finalizing the ordinance and on-going costs to implement the program (which may be defrayed by fees as discussed above). There will also likely be future legal and consultant costs, if a park owner brings a lawsuit on the ordinance or if future rent increases are denied.

ADDITIONAL OPTIONS:

The Antioch Development Agency currently provides a monthly rental subsidy to the Vista Diablo residents pursuant to a 2003 Agreement with the Park ownership. The subsidy amount is currently \$61.56 per month per unit for a current total of 149 out of the 150 units in the Park. The Agreement also provides that the amount of the subsidy may be increased by 75% of the CPI for the prior year if determined by the Agency. It appears in the past that Agency staff has made the decision to give the CPI increases in the past years. This practice can continue, unless the Agency Board wants to direct staff otherwise.

ATTACHMENTS:

- A. Matrix comparing an agreement to a mobile home rent control ordinance
- B. A summary of rents at Vista Diablo Mobile Home Park from Sierra Corporate Management dated October 18, 2006
- C. Survey of mobile home parks dated March 14, 2005
- D. Letter from Sierra Corporate Management to Ms. Casteen
- E. Letter from Sierra Corporate Management to Ms. Hargrove

LYNN TRACY NERLAND
City Attorney