

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

FOR CONSIDERATION AT THE COUNCIL MEETING OF MAY 22, 2007

TO: Honorable Mayor and Members of the City Council

DATE: May 17, 2007

SUBJECT: Mobile Home Parks:

1. Direction regarding Agreement with the Owners of Vista Diablo Mobile Home Park; and/or
2. Consideration of Adopting an Interim Urgency Ordinance Placing a Moratorium on the Conversion of any Mobile Home Park Currently Existing in the City from a Senior Park to an All-Age Park

RECOMMENDATION:

1. Provide direction regarding an Agreement with the Owners of Vista Diablo Mobile Home Park (Exhibit A);
2. If the Council desires to adopt an Interim Urgency Ordinance placing a moratorium on the conversion of any mobile home park currently existing in the City from a senior park to an all-age park, then the recommended action would be:
 - a. Approve by motion the reading of the ordinance by title only;
 - b. Adopt an urgency ordinance placing a moratorium on the conversion of any mobile home park currently existing in the City from a senior designated park to an all-age park (4/5th vote required) (Exhibit B)

BACKGROUND:

There are three mobile home parks in the City of Antioch of which two are designated as senior mobile home parks for persons 55 years of age and older, including Vista Diablo Mobile Home Park with 150 spaces. The two senior parks represent approximately 257 spaces out of 379 spaces or 69 percent of all of the mobile home spaces in Antioch. This represents a significant amount of housing that has been designated specifically for seniors within the City.

In March 2006, Sierra Corporate Management, the management company for the Park (“Management”), told the residents of Vista Diablo Mobile Home Park (“Park”) that Kort and Scott, the owners of the Park (“Owners”), were considering converting the Park from senior only

to an all-age park. When the residents' attempts to dissuade the Owners from converting the Park were unsuccessful, the residents began contacting City officials. The residents were also concerned about increasing rents that were beyond the ability of those with fixed incomes to pay, were significantly higher than rents for neighboring parks, and seemed to be depressing the sales market for mobile homes creating a large number of vacancies. As discussed in more detail below, the City and the Management and Owners entered into discussions about a recorded agreement on the property to address the concerns raised by the residents in lieu of the City considering the enactment of a mobile home rent control ordinance. If those discussions were not productive, the City Council's direction to staff was to bring a mobile home rent control ordinance forward for consideration.

It remains City staff's desire to finalize an agreement with the Owners, but delays in doing so suggest that this interim urgency ordinance placing a moratorium on conversions of senior mobile home parks may encourage the parties to finalize the agreement; will address the residents' fears that the Park will be converted from a senior park significantly affecting their lifestyle; and may provide some stability to the market for mobile homes at the Park. The Park's Management indicated at the City Council meeting on October 24, 2006 that it was no longer considering conversion of the park from a senior only park. However, in a December 18, 2006 letter to the Park's residents, the Management indicated that it would convert the Park from senior-only to an all-age park if an agreement was not reached and the City enacted mobile home rent control. (Exhibit I) The interim urgency ordinance prohibiting such a conversion attempts to address the impacts of this threatened action.

Chronology

City Council Meeting on October 24, 2006 (see Exhibits C and D)

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 an all-age park; and 2) increasing rents. Abe Arrigotti, President of Sierra Corporate Management, was also present and indicated that the Owners 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 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 (see Exhibits E and F)

At the Council meeting on November 22, 2006, staff provided an update on the matter, including a conference call with the Owners. 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 Owners/Management and the representatives of the residents of Vista Diablo Mobile Home Park.

City Council Meeting of December 19, 2006 (see Exhibits G and H)

At the December 19, 2006 Council meeting, City staff reported that City representatives and the Park's Management and Owners had discussed a written and recorded agreement on the Park property that would generally address:

1. Requirement that the park stay a senior park for a set period of time;
2. Rent increases would be decreased and the annual increases capped;
3. Existing residents whose leases expire would be offered long-term leases starting at the same rent when the prior lease expired with caps on annual increases;
4. Upgrades to the Community Center and wall along Somersville Boulevard;
5. Resolution of the issues facing residents Irma Casteen and Freda Hargrove; and
6. City's consideration of additional mobile home spaces at the Park.

The parties were not able to reach an agreement on all of these terms and the Park Management sent out a letter on December 18, 2006 (before the City Council meeting) to the residents (see Exhibit I) stating that any attempt by the City to establish rent control would lead the Park's Owners to convert the park to an all-age park. At the Council meeting, the City Council gave direction to staff on components that it wanted to see in a rent control ordinance if no agreement could be reached with the Park's Owners.

January – March 2007 Negotiations regarding Vista Diablo Mobile Home Park

Following the Council meeting on December 19, 2006, communications were re-opened between City representatives and the Park's Management and Owners to see if an agreement could still be reached. There were a number of emails and phone calls further discussing the terms of an agreement. The City was also contacted by the other mobile home parks in the City; the Western Manufactured Housing Communities Association ("WMA"), a lobbying group for mobile home park owners to which Kort and Scott do not belong; the Golden State-Manufactured Home Owners League, Inc. (GSMOL), a lobbying group for mobile home park residents; and county and state representatives.

After a conference call in late January 2007 with the Park Owners and Management and the Mayor, City Manager and City Attorney, a verbal agreement was reached with the major points memorialized by staff as shown on Exhibit A and shared with representatives of the Park's residents on March 8, 2007. Although the representatives of the residents indicated that the agreement did not address every concern, they seemed generally pleased with the bullet point agreement terms in Exhibit A and the potential for resolving the issues.

City staff understood that the Park's attorney was to draft the initial agreement reflecting the points in Exhibit A. Since then, there have been further emails back and forth from

the Park's Management and the City questioning and refining the bullet points, a degree of which is to be expected when any negotiations are memorialized. These refinements are shown in italics type on Exhibit A. For example, the cap on annual increases with new rental agreements was discussed with different formulations, and the Park's Management has indicated its preference for a cap at 5% or CPI (Bay Area), whichever is greater rather than the minimum of 2% and maximum of 5%.

Actions Since March 2007

As time has passed and the Park's Management has raised more points for discussion without producing a draft agreement and residents have expressed increasing anxiety over the unsettled nature of the matter. There is a sense that this unsettled nature has led to continued high vacancies and low sales prices on the mobile homes, causing residents who need to move out for medical reasons a great deal of financial hardship. In addition, some recent actions have not suggested a more positive relationship between the Park's residents and Management/Owners, such as the lack of a resident manager for a long period of time; installation of a wood fence instead of repair/replacement of the existing masonry wall along Somersville Boulevard; and an apparent change on whether the Park Management or the residents are expected to mow certain areas.

Moratorium on Conversions of Senior Mobile Home Parks

Again, it remains the City staff's desire to finalize an agreement with the Owners to present to the City Council for its consideration along the lines of Exhibit A. However, the direction to staff in December 2006 was to bring back a mobile home rent control ordinance if an agreement was not brought back. Staff recognizes that it has been five months since that direction was given and there has yet to be an agreement presented to the City Council.

Given the Park Management's letter to the residents of December 18, 2006 (Exhibit I) threatening the residents with a conversion to an all-age park if rent control was enacted, the City Council may want to consider an interim urgency ordinance placing a moratorium on such conversions to allow the city to study the effects of such conversions on the provision of affordable housing for seniors and the City's land use in general. An interim urgency ordinance placing a moratorium on these kinds of land use matters are initially only effective for 45 days, unless extended by the City Council. During these 45 days, it would be staff's intent to memorialize an agreement with the Park's Owners to be brought to the Council for consideration, but if that was not possible, to begin looking at the impacts of conversions of senior mobile home parks and possible land use mitigations.

Staff anticipates that the Park's Management and Owners will argue that the City does not have the authority to adopt such a moratorium and that such a moratorium violates federal and state fair housing laws. It is true that 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, but not all. As previously discussed, a city can use its police powers to regulate mobile home rents in certain circumstances 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. A city can also use its police powers to enact zoning ordinances.

Furthermore, the City’s Housing Element calls out the important role that senior mobile home parks fulfill in providing housing to meet the needs of the Antioch community. Section 9.2.2.4 states: “Existing Mobile Home and Manufactured Housing Communities currently provide an important housing opportunity particularly for the growing senior population in the City at the senior-restricted Vista Diablo Mobile Home Park and Delta Villa Estates.” The Housing Element then goes on to refer to the subsidy that the Antioch Development Agency has been providing to Vista Diablo Mobile Home Park residents and makes the recommendation to explore alternatives “to address the issue of preserving the age restricted nature and affordability of existing senior mobile home and modular communities, given the importance of these communities to the diversity of the City’s housing stock.” Section 9.3.1.3 discusses age distribution in the community and the need to preserve housing options for seniors who may be looking for smaller housing that is better suited to their needs. Section 9.3.2.7 in the Housing Element also addresses the special housing needs of the elderly in the community and the importance to preserve existing senior communities.

The senior-only parks in Antioch have been operated as senior parks either through a conditional use permit process or by common practice of the park. Mobile home parks have been a significant source of affordable senior housing as noted in the City’s Housing Element. The City currently does not have a “senior only” mobile home park zoning ordinance in place, but such a zoning ordinance may be needed in the immediate future to preserve the affordable housing options available to the City’s senior residents. By adopting this moratorium, it would give staff the time necessary to study the possible adoption of a zoning ordinance amendment regulating senior mobile home parks. Such a study would look at the impacts of senior-only parks converting to all-age parks and the impacts of any proposed ordinance on senior housing stock and the general affordable housing stock in the City.

As to the argument that this action violates state housing laws, the California Legislature has authorized cities to provide zoning for “senior only” mobile home parks, pursuant to California Health and Safety Code section 18300. The California Attorney General has also opined that such senior only zoning is not in conflict with the general prohibition against discrimination based upon age (87 Cal. Ops Atty Gen. 148).

As to the argument that this action violates federal housing laws, Vista Diablo’s Management has already strongly taken the position that the City is precluded from interfering with its ability to convert from a senior-only park to an all-age park, because doing so would violate federal fair housing laws. (see Exhibit J)

Nature of an Interim Urgency Ordinance (Moratorium)

Government Code section 65858 authorizes cities to adopt interim urgency ordinances to protect the public health, safety and welfare and to prohibit any use that may be in conflict with a contemplated zoning proposal that the legislative body, planning commission or planning department is considering or studying or intends to study within a reasonable time. The urgency ordinance requires a four-fifths vote for adoption.

The interim urgency ordinance would continue in force and effect for forty-five days after its adoption and may be extended for ten months and fifteen days and may subsequently be extended for an additional one year period. These extensions require a public notice and a public hearing. Such extensions would also require a four-fifths vote of the City Council.

To adopt the attached interim urgency ordinance, the Council would need to determine that there is a current and immediate threat to public health, safety and welfare arising from the lack of affordable housing for senior citizens aged 55 and older in and around the City that would be exacerbated by a decision to convert a mobile home park, which has primarily or exclusively been occupied by seniors. The Council would need to determine that an interim urgency ordinance is needed to allow a study about the possible adoption of a zoning ordinance to address senior mobile home parks. Such a study would look at affordable local housing for senior citizens and also to determine if such an ordinance would have any adverse effects upon the general housing market and particularly the affordable housing market within the City.

FISCAL IMPACT:

Adoption of this urgency interim ordinance will not have a direct fiscal impact; however, there will be some expense associated with conducting the required study, as well as responding to any action that the Park Management/Owners takes.

OPTIONS:

1. Provide direction regarding an Agreement with the Owners of Vista Diablo Mobile Home Park;
2. Adopt an Interim Urgency Ordinance placing a moratorium on the conversion of any mobile home park currently existing in the City from a senior park to an all-age park; or
3. Provide direction to bring forward a Mobile Home Rent Control Ordinance without imposing a moratorium on conversions.

ATTACHMENTS:

1. Bullet points for an Agreement with the Owners of Vista Diablo Mobile Home Park with revisions shown in italics (Exhibit A)
2. Urgency ordinance placing a moratorium on the conversion of any mobile home park currently existing in the City from a senior designated park to an all age park (Exhibit B)
3. Staff Report and Minutes from October 24, 2006 City Council Meeting (Exhibits C and D)
4. Staff Report and Minutes from November 28, 2006 City Council Meeting (Exhibits E and F)
5. Staff Report and Minutes from December 19, 2007 City Council Meeting (Exhibits G and H)
6. Letter from Sierra Corporate Management, Inc. dated December 18, 2006 (Exhibit I)
7. Letter from Terry Dowdall on behalf of Sierra Corporate Management dated July 3, 2006 (Exhibit J – memorandum and enclosures not attached)

LYNN TRACY NERLAND
City Attorney

c: Abe Arrigotti, Sierra Corporate Management, Managers of Vista Diablo Mobile Home Park
Bill and Bobbe Kemp, Managers, Delta Villa Estates
Lola Buck and Archie Gore, representatives of the Vista Diablo Homeowners Association

AGREEMENT POINTS REGARDING VISTA DIABLO MOBILEHOME PARK

01/31/07 (subsequent revisions discussed in italics)

There would be a recorded agreement on the property addressing these issues and binding on future property owners. If the City imposed rent control or if a class action lawsuit is brought against the Park ownership related to these issues, then the Park ownership/management could terminate the Agreement. Likewise, the City could terminate the Agreement if more favorable terms are adopted by State legislation.

1. **Conversion from a senior park to an all-age/family park** – The Park would remain 100% senior for 10 years.

2. **Rent increases** – Rent issues would be addressed as followed:
 - a. Rents for new residents would be decreased from \$1,100 to \$950 until December 31, 2008. These rental agreements and future agreements beyond December 31, 2008 would be subject to annual CPI-Bay Area increases with a minimum of 2% and a maximum of 5% *or capped at 5% or CPI (Bay Area) whichever was higher*

 - b. Current leases above \$950 would be decreased to \$950 through December 31, 2008 *and then be subject to the rental increases per their Agreement based on the \$950 rent.*

 - c. Existing residents whose leases expire would be offered long-term leases starting at the same rent when the prior lease expired, but would be subject to annual CPI-Bay Area (Sept. 1st) increases with a minimum of 2% and a maximum of 5% *or capped at 5% or CPI (Bay Area) whichever was higher.*

3. **Physical Upgrades**—Park ownership/management to repair/replace the wall along Somersville Boulevard and the electrical and plumbing systems and other health and safety issues with the Community Center, if any, within 60 days of the execution of this Agreement with a report provided to the City.

In addition, the Park ownership/management shall 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 180 days of the execution of this Agreement.

4. **Irma Casteen and Freda Hargrove**

- a. Park ownership/management had already indicated to Ms. Casteen that a new buyer would be offered a lease at the monthly rental rate of \$950. This is consistent with item 2a above.
- b. *Park Management indicates that* Freda Hargrove to be offered a lease at a rate consistent with item 2c above.

5. **Additional Spaces** – The City would facilitate, but not guarantee, the processing of an application for up to an additional 5 mobile home spaces. The costs for such spaces (development, construction, utility lines, etc.) would not be passed on to existing residents in any manner.

6. **Subsidy** – Residents would need to complete an annual income verification to be eligible for any City/Agency rent subsidy.

ORDINANCE NO. _____

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF ANTIOCH PLACING A MORATORIUM ON THE
CONVERSION OF ANY MOBILEHOME PARK CURRENTLY EXISTING
IN THE CITY FROM A PARK OCCUPIED PRIMARILY OR EXCLUSIVELY
BY RESIDENTS OVER THE AGE OF 55 YEARS (SENIOR RESIDENTS) TO
A MOBILEHOME PARK ALLOWING RESIDENTS OF ALL AGES**

WHEREAS, the lack of affordable housing options in and around the City of Antioch creates a serious problem for senior citizens living in the City of Antioch that will only increase with the aging of the community's population;

WHEREAS, one of the few affordable housing options left to senior citizens lies in mobilehome parks that permit exclusive residence by those individuals over the age of 55 years;

WHEREAS, the City's Housing Element calls out the important role that senior mobile home parks fulfill in providing housing to meet the needs of the Antioch community, and in particular states: "Existing Mobile Home and Manufactured Housing Communities currently provide an important housing opportunity particularly for the growing senior population in the City at the senior-restricted Vista Diablo Mobile Home Park and Delta Villa Estates" and makes the recommendation to explore alternatives "to address the issue of preserving the age restricted nature and affordability of existing senior mobile home and modular communities, given the importance of these communities to the diversity of the City's housing stock" (Section 9.2.2.4);

WHEREAS, there are three mobile home parks in the City of Antioch of which two are designated as senior mobile home parks for persons 55 years of age and older, including Vista Diablo Mobile Home Park with 150 spaces;

WHEREAS, the two senior mobile home parks represent approximately 257 spaces out of 379 spaces or 69 percent of all of the mobile home spaces in Antioch;

WHEREAS, the management and ownership of Vista Diablo Mobile Home Park has indicated plans to convert from a "seniors only" mobilehome park to a park allowing residents of all ages, thereby reducing the number of affordable housing units available to those over the age of 55;

WHEREAS, such a conversion may unduly burden and irreparably harm senior citizens within the community; and

WHEREAS, the City Council of the City of Antioch has determined that an urgency ordinance is necessary to protect the public health, safety and welfare of the citizens of Antioch:

NOW, THEREFORE, the City Council of the City of Antioch does ordain as follows:

SECTION 1: Moratorium. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code section 65858, a moratorium is hereby placed on the following:

The conversion of any mobilehome park currently in existence in the city from a park where at least eight percent (80%) of the full-time residents are individuals aged fifty-five years (55) and older (a “seniors only” mobilehome park) to a mobilehome park accepting all ages of residents.

SECTION 2: Declaration of Urgency. This urgency is based on the following facts:

a. There is a current and immediate threat to the public health, safety and welfare arising from the lack of affordable housing options for senior citizens aged 55 and older in and around the City.

b. Article XI, Section 7 of the California Constitution authorizes cities to adopt local police, sanitary, and other ordinances not in conflict with general laws.

c. The California Legislature has authorized cities to provide zoning for “senior only” mobilehome parks pursuant to Health and Safety Code section 18300.

d. The California Attorney General has opined that such senior only zoning does not conflict with the general prohibition against discrimination based upon age contained in California Government Code section 65008 (87 Cal.Ops.Atty.Gen. 148 (Oct. 20, 2004)).

e. The City of Antioch currently does not have a “senior only” mobilehome park zoning ordinance in place, but such a zoning ordinance may be needed in the immediate future to preserve the few affordable housing options left to our senior citizens.

f. The City of Antioch requires time to study and decide:

1. If such an ordinance is necessary to protect the public, health, safety and welfare and provide adequate affordable local housing for senior citizens.

2. If such an ordinance would have any adverse effects upon the general housing market and particularly the general low-income housing market in the City of Antioch.

SECTION 3: Exceptions. This ordinance shall not apply to any undeveloped parcels of land or to any mobilehome parks currently operating within the city where the number of full-time residents younger than 55 years of age comprise twenty-one percent (21%) or more of the total number of residents in the mobilehome park.

SECTION 4: Report. Staff is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the local housing conditions that led to the adoption of this ordinance.

SECTION 5: Effective Date. The Council finds that the public health, safety and welfare require that this ordinance become effective immediately upon its adoption and passage, pursuant to Government Code section 65858.

SECTION 6: Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7: Publication. This ordinance shall be published once in the East County Times, within fifteen (15) days of its adoption, and shall become effective immediately upon its passage and adoption.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced and adopted as an urgency ordinance by a four-fifths (4/5) vote of the City Council of the City of Antioch at a regular meeting thereof, held on the ____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

MAYOR OF THE CITY OF ANTIOCH

ATTEST:

CITY CLERK OF THE CITY OF ANTIOCH