



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 02/01/05

AGENDA ITEM _____

WORK SESSION ITEM WS#2

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Proposed Amendment to the Trust Provision of the Mobilehome Space Rent Stabilization Ordinance

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

The trust provision language contained in Section 5(c) of the Ordinance was added in 1994 in response to the federal court's ruling in *U.S.A. v. City of Hayward*. Specifically, the judge concluded that the City could be held liable for an erroneous ruling by an arbitrator conducting hearings pursuant to the City's Ordinance. As a result of the decision in *U.S.A.*, the City was required to pay more than \$100,000 to the United States Justice Department. At the request of the Council, mobilehome parkowners and representatives from the mobilehome community met with City representatives to address the issues raised by the *U.S.A.* decision and other concerns regarding the Ordinance. The result of a series of meetings, conducted over eight months, was bipartisan support for amendments to the Ordinance including the trust provision now contained in Section 5(c). Section 5(c) of the Ordinance requires the residents of a mobilehome park who have filed a petition for rent review to pay the disputed space rent amount to the parkowner in trust after a state-required 90-day notice period has passed even if a hearing challenging the request is in progress and the final allowable space rent has not been determined.

On Tuesday, September 21, 2004, members of the Amendments Committee of the Hayward Mobilehome Owners Association met with staff and proposed an amendment to the trust provision in the Ordinance. The amendment was scheduled to be heard at the October 19th City Council meeting. The item was removed from the agenda at the request of HMOA. On January 20, 2005, the Committee met with staff to discuss various methods to protect mobilehome residents from possible eviction for the non-payment of a challenged space rent increase prior to the completion of a rent review hearing pursuant to the City's Mobilehome Space Rent Stabilization Ordinance.

The Committee feels that the existing provision works to create a hardship on mobilehome residents when the proposed rent increase is a large percentage of the overall space rent and the resident is required to pay the challenged amount to the parkowner in trust. Additionally, the present language could expose mobilehome residents to possible eviction by the parkowner if the resident fails to pay the proposed space rent increase to the parkowner in trust.

Past experience indicates that mobilehome residents make individual decisions regarding the payment of a proposed space rent increase in trust to the parkowner. They may consider the amount of the proposed space rent increase and their ability to pay that amount when deciding whether to pay the proposed space rent increase. In past hearings, it appears that a number of mobilehome residents did not pay the proposed space rent increase to the parkowner in trust even though the trust provision required them to do so. In those situations, the parkowner did not attempt to enforce the trust provision against the non-paying residents or initiate eviction proceedings to remove them from the park.

Removing the Trust Provision

One method of reducing the hardship would be to remove the trust provision from the Ordinance and establish the payment date of the proposed space rent increase as the date of the hearing officer's decision on the merits of the increase. This would benefit mobilehome residents by not requiring them to pay any space rent increase until a hearing officer has made a decision regarding the validity of the proposed space rent increase. It also will remove any perceived threat of eviction experienced by mobilehome residents who receive a space rent increase notice, since the proposed space rent would not be due until after the hearing officer rendered a decision.

A consequence of removing the trust provision is the potential hardship created by requiring a resident who deferred the proposed increase to pay a larger lump sum of money to the parkowner when the hearing officer establishes the actual amount of the increase and determines that the right to collect the rent accrued at the time the notice was sent to the residents plus the 90-day notice period required under state law. If a hearing extended beyond several months, the accrued space rent owed to the parkowner could be considerable.

In addition, if the trust provision is removed, the City will need to bring petitions for rent review to hearing quickly to avoid a possible due process violation of the parkowner's right to a timely hearing and to prevent the accrual of expensive space rent increases. This could significantly shorten the time the parties will have to meet and confer. The meet and confer provision was added to the Ordinance to facilitate settlement discussions informally without the need for an expensive hearing. Additionally, meet and confer provided the residents time to evaluate the support documentation and discuss their concerns with the parkowner.

Finally, since state law allows a parkowner to notice a space rent increase and begin collecting it after the 90-day notice period expires, there is concern that attempting to redefine the effective date of the increase from day 91 to the date the hearing officer renders his decision may conflict with state law. If a court determined there were a conflict, the protection provided to mobilehome residents would be lost and the accrued space rent would be calculated from the 91st day rather than the decision date resulting in a larger accrued amount. Additionally, the City could be liable to the parkowner for delaying his/her right to collect the proposed space rent increase.

Non-Eviction Amendment

In order to provide additional protection to mobilehome residents, the Ordinance could also include an affirmative defense to an eviction based on the non-payment of contested space rents being challenged by residents in the rent review hearing process. This method would not affect the present trust provision and mobilehome residents challenging a proposed space rent increase could choose between paying the disputed amount in trust to the parkowner, and not paying the increase until the hearing officer has made a determination regarding the exact allowable space rent increase, if any. This non-eviction provision could be required to appear in the notice of space rent increase so that mobilehome residents would be aware of the Ordinance protections against evictions, thereby reducing any fear of eviction.

CONCLUSION

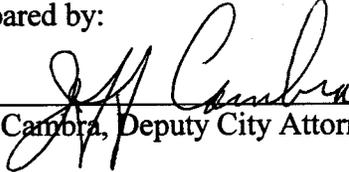
A financial hardship may be created when the trust provision is utilized in the situation where a parkowner notices a large space rent increase, the hearing extends beyond 90 days, and the residents are required, under the trust provision, to begin paying the large space rent increase in trust pending the decision of the hearing officer.

Conversely, a financial hardship may also occur if a proposed space rent increase is not required to be put into trust, the hearing that authorizes the rent increase extends beyond 90 days, and the decision of the hearing officer requires the residents to pay an accrued space rent amount. The financial hardship is directly proportional to the amount of the actual space rent increase and the elapsed time of the entire space rent review process. As long as the hearing to determine the actual amount of the space rent increase is completed within 91 days of the initial notice of space rent increase, there is no financial hardship created by the removal of the trust provision.

Removal of the trust provision could raise questions regarding possible conflicts with state law. For example, if the rent review hearing extends beyond 90-days and/or results in an arbitrary decision by a hearing officer, the City may be responsible for damages to the parkowner for the delay caused by the City's hearing process.

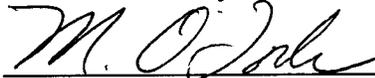
If the Council concurs staff will prepare the documents necessary to remove the trust provision and add a section prohibiting a parkowner from attempting to evict mobilehome residents who fail to pay a proposed space rent increase prior to a determination by a hearing officer.

Prepared by:



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Recommended by:



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Approved by:



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