



WS#2

DATE: March 18, 2008
TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Mobilehome Park Conversions to Resident Ownership

RECOMMENDATION

That Council reviews this report and provides staff with policy direction.

SUMMARY

Since April 2005, unanticipated events have arisen regarding the conversion of rental mobilehome parks to resident ownership. The City became aware of the intent of the owners of various mobilehome parks, including Eden Gardens, to convert them to resident ownership. Yet, existing City regulations governing conversion were first adopted in 1984, and are outdated. Two companion bills were introduced in the State Legislature (Assembly Bill No. 1542 and Senate Bill No. 900), in February 2007, to amend the State law concerning mobilehome park conversions.

On May 8, 2007, the City Council adopted an emergency ordinance that, along with an extension on June 12, 2007, placed a moratorium on the conversion of mobilehome parks until May 8, 2008. The purpose of the moratorium was to provide the City sufficient time to adequately analyze the City's regulations with proper community input and provide opportunity for resolution on the proposed two bills that could impact Hayward's authority to regulate conversions.

After such analysis, and the Governor's veto of the Assembly bill, staff has prepared a draft ordinance that would update, and replace, Sections 10-3.850 through 10-3.915 of the Hayward Municipal Code, Mobilehome Park Conversions, to bring it into conformance with the State Government Code.

BACKGROUND

In fall 2004, the City Council had several discussions regarding the potential closure and/or conversion of existing mobilehome parks in Hayward. The nine mobilehome parks in Hayward contain almost 2,300 spaces. These mobilehome parks are an integral component of the City's housing stock in that they address special housing needs by providing an alternative to traditional affordable housing. If this type of housing is lost, Hayward would have a difficult time

accommodating these residents within its existing stock of affordable housing due to the present demand by other residents for the limited number of units. Mobilehomes have traditionally provided affordable housing to people such as seniors on fixed incomes or working families that would otherwise be priced out of any type of home ownership. Mobilehomes once placed in a park are difficult to relocate, as it may be physically impractical or cost-prohibitive to do so. Furthermore, there is a lack of mobilehome parks in the region with space available to receive a relocated mobilehome, particularly if it's a model older than 1976. Council has expressed a desire to assist in the preservation of alternative affordable housing, such as that provided by mobilehome parks.

In California today, there are over 4,800 mobilehome parks housing some 700,000 residents. For these reasons and more, 102 local governments (19 percent) have enacted some form of mobilehome park rent control. The City's mobilehome parks are regulated under Hayward's Mobilehome Space Rent Stabilization Ordinance. Mobilehomes comprise a critical component of the City's stock of affordable housing, particularly with respect to the needs of the elderly. State law requires that the Housing Element of each local agency's General Plan analyze and plan for meeting the housing needs of special population groups, such as the elderly. The City's adopted Housing Element notes that most Hayward seniors have very-low fixed and/or limited incomes with minimal cost-of-living adjustments, and states that affordability is this population's most important housing need. The Housing Element identifies mobilehomes as a significant housing resource for seniors and sets the following policies and strategies in order to achieve the goal of preserving the City's affordable housing:

Conserve Housing Stock

2. Ensure the safety and habitability of the City's housing units and the quality of its residential areas.
3. Maintain a supply of various types of rental housing for those who do not have the desire or the resources to purchase homes.

Support "Special Needs" Housing

5. Ensure that special needs households have a variety of housing units from which to choose and that the emergency housing needs of Hayward households are met.
 1. Analyze the special housing needs of the elderly, the disabled, female-headed households, large families, farm workers and homeless persons and families as required by State law.

On April 12, 2005, the City Council approved an amendment to the General Plan involving the creation of a distinct land use designation for Mobile Home Parks on the Land Use Map. This designation was applied to all nine mobilehome parks in the City. The amendment served to implement the policies and strategies contained in the Housing Element of the General Plan and to preserve mobilehome parks as a specific type of land use.

Since April 2005, unanticipated events arose regarding the conversion of rental mobilehome parks to resident ownership. The City became aware of the intent of the owners of various mobilehome parks to convert them to resident ownership. Existing City regulations governing conversion were first adopted in 1984, and need to be amended to comply with State law. In February 2007, two companion bills were introduced in the State Legislature (Assembly Bill No. 1542 and Senate Bill No. 900) to amend the State Health and Safety Code concerning mobilehome park conversions.

On May 8, 2007, the City Council adopted an emergency ordinance that placed a 45-day moratorium on the conversion of mobilehome parks in Hayward. On June 12, 2007, the City Council extended the moratorium for 10 months and 15 days. The purpose of the moratorium was to provide the City sufficient time to adequately analyze the City's regulations with proper community input and provide opportunity for resolution on the proposed bills that could impact Hayward's authority to regulate conversions.

The two companion bills in the State Legislature (Assembly Bill No. 1542 and Senate Bill No. 900) have taken different paths. The Assembly Bill was vetoed by Governor Schwarzenegger on October 12, 2007. His primary objection appears to be the return of control to the local jurisdictions, whereby the local rent control provisions would remain in place. The Senate Bill is still active; however, it cannot be known as to what form it will take as it proceeds through committee in response to the Governor's concerns regarding the Assembly Bill.

On November 13, 2007, the owner of the Eden Gardens Mobilehome Park submitted an application to convert the park to resident ownership. No action may be taken on this matter until the close of the moratorium on May 8, 2008. Subsequently, The Loftin Firm, representing the owner, filed a claim against the City of Hayward for damages as a result of the moratorium on land use approvals of mobilehome park conversions. The owner claims that there is a loss of value of ownership of a converted resident-owned park as compared to a rental mobilehome park.

Conversion to Resident Ownership under the Subdivision Map Act

The Subdivision Map Act governs the division of real property into parcels or condominiums and requires that a subdivider file a tentative map for review and approval by a local agency, which may in its discretion impose conditions on the conversion. Under current State law, conversions of mobilehome parks to resident ownership are generally governed by Government Code Section 66427.5 (text attached). This statute requires that the park owner seeking the conversion:

- obtain City approval of the conversion pursuant to the Subdivision Map Act, including approval of a map (unless waived by a vote of two-thirds of the park's residents);
- submit a report on the impact of the conversion on park residents;
- offer existing tenants an option to buy the lot on which their mobilehome is located;
- "survey" each tenant to assess resident support for the conversion; and
- limit the amount of any increase in rent to tenants not opting to purchase as provided in the statute. Per State law, annual rent increases for lower-income residents (approximately \$40,200 for a family of two) are capped at the Bay Area Consumer Price Index (CPI). Tenant households with incomes above low income would be transitioned to "market-level" rents after four years.

The City's rent control protections for all lots would cease and the statute's rent provisions would apply after the conversion is approved and the first lot is sold. Once a low-income household vacates the space they rent, all State-established rent protections cease for that space.

State courts have previously held that rent control is removed upon even a single sale of a single mobilehome lot, and attorneys representing park owners market the “paper” conversion of parks as an economic boon. When local rent control is removed, rents on remaining lots may be increased in accordance with State Rent Control. Although State law provides protection for low-income residents, the protections are inadequate for other income level households. After a park owner initiated conversion in the City of American Canyon, non-low-income park residents saw their space rent nearly tripled from an average of about \$500 to nearly \$1,300 per month within just a few years after their park was subdivided. City of Hayward records show that space rents in Hayward’s rent-controlled parks currently range from \$358 to \$745 per month, and average \$489 per month.

In *El Dorado Palm Springs, Ltd. v City of Palm Springs* (2001) 96 Cal. App.4th 1153, the court ruled that when a local government acts on a conversion application under Government Code Section 66427.5, they are not authorized to impose mitigations for the economic displacement of residents beyond those provided by the statute. In *El Dorado*, the park owner filed a tentative subdivision map with the City of Palm Springs as a first step in converting his park to resident ownership. To ensure that the conversion was a “bona fide” effort aimed at resident ownership and not a sham to circumvent the City’s rent control regulations, the City of Palm Springs imposed several conditions on the map to mitigate adverse economic impacts. One condition specified that the conversion would not take effect (meaning the park would not be exempt from city rent control) until 50%-plus-1 of the lots in the park were sold to residents. The park owner sued the City, claiming the effective date of conversion was when one lot was sold and that the City had exceeded its authority under the State’s Subdivision Map Act to impose more stringent requirements for a park conversion. Although Palm Springs won in the trial court, the park owner appealed and the 4th District Court of Appeal reversed. The appellate court ruled that the City’s attempt to add such a condition was preempted by Government Code Section 66427.5 and that the conversion took effect upon the sale of the first lot.

In direct response to the ruling in *El Dorado*, Assembly Bill 930 (Keely, Stats. 2002, ch. 1143) was enacted requiring park owners to conduct a survey indicating resident support for a proposed conversion. The survey results must be considered when the local government holds a hearing on the conversion application. Significantly, the bill also included uncodified language stating a legislative intent to ensure that a mobilehome park subdivision carried out pursuant to Government Code Section 66427.5 is a “bona fide” resident conversion:

It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in *El Dorado Palm Springs, Ltd. v City of Palm Springs* (2001) 96 Cal. App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non bona fide resident conversion. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions. (Stats. 2002, ch. 1143, Sec.2, p. 3324).

DISCUSSION

While State law establishes the basic parameters for the conversion of a mobilehome park to resident ownership, it appears to permit some level of local regulation. The State Government Code establishes the basic requirements for the conversion of mobilehome parks to resident ownership regarding the economic displacement of non-purchasing residents (Section 66427.5), or its closure/conversion to another use (Sections 66427.4 & 65863.7). The intent of these sections is to provide reasonable safeguards to current residents of mobilehome parks, since these parks provide a significant housing pool within reach of many households. However, these statutes leave some discretion to the City in regards to the content of the required application submittals and procedure for review of conversion applications. There is need for the City to establish these requirements through an ordinance, both to ensure reasonable protection of existing mobilehome park residents and that applications for conversions are reviewed and treated in a consistent and equitable manner.

Proposed Ordinance

As proposed, the attached ordinance seeks to implement the requirements of Government Code Section 66427.5 in a number of ways. For example, while the statute mandates the filing of a report on the impact of the conversion upon residents (subdivision (b) of Section 66427.5), it is silent on what information must be contained in the report. Proposed new ordinance Section 10-3.860(d) specifies the information that is to be contained in the impact report prepared by the owner. Furthermore, Government Code Section 66427.5(d) requires that a survey of resident support for the proposed park conversion be conducted, but it doesn't make clear that residents be given information before the survey is taken. To assure that residents would have sufficient information to thoughtfully consider their choice of whether to support the conversion, Section 10-3.860(e) of the proposed ordinance clarifies that the information and disclosures be provided to each resident sufficiently in advance of the survey, and not after. This Section also requires that agreement between the residents and the owner be reached on the survey instrument.

In order to ensure that each application meets the specific requirements of Government Code Section 66427.5 that a conversion result in a "bona fide resident conversion," proposed ordinance Section 10-3.910 establishes criteria for the approval of a mobilehome park conversion application. When considering whether to approve an application, the project shall be presumed to be a bona fide resident conversion where 50% or more of the resident survey vote favors conversion to resident ownership. Where the survey shows that less than 50% of the residents support the conversion to resident ownership, the proposed conversion shall be presumed to not be a bona fide resident conversion, and an applicant subdivider would then have the burden of demonstrating that the proposed conversion is actually bona fide. Either presumption may be overcome through the submission of substantial evidence either at or prior to the hearing.

Finally, to implement the requirements of subdivision (f) of Government Code Section 66427.5, if the conversion is approved, proposed ordinance Section 10-3.915 requires the subdivider to provide notice to each mobilehome park tenant of his or her statutory right to purchase their unit of space or alternatively to remain as a tenant.

The proposed ordinance establishes both the procedural and substantive requirements for applications to convert existing mobilehome parks. If adopted, the City's Subdivision Ordinance (Chapter 10, Article 3 of the Municipal Code) would be amended to specifically include regulations to convert an existing mobilehome park to an ownership park. The subdivision application for a conversion would be reviewed and approved, or conditionally approved, by the Planning Commission, provided required findings could be met. The decision of the Planning Commission would be final unless appealed to the City Council or called up by a Council member.

The proposed ordinance includes the following specific provisions:

1. Application Requirements – In order for the City to process the application for a mobilehome park conversion, additional submittal information is required beyond that would be normally required for a subdivision. These requirements include information specifically required by State Law, which includes a Tenant or Conversion Impact Report. The purpose of the report is to provide information to help analyze the true impacts of the conversion on existing residents.

The report is required to include the following information:

- A. The rental rate history for each space for each of the previous five years.
- B. A spreadsheet for the statutory rent increase maximums for lower income households as set forth in Government Code Section 66247.5(f)(2).
- C. The monthly vacancy rate for each month during the preceding two years.
- D. The availability of the mobilehome spaces within the City limits including the current rent charged for the space, the amenities offered, and any restrictions on the type or age of the mobilehome that may occupy the space.
- E. An analysis of moving an existing mobilehome to another site that shall include, but not be limited to, the availability of other sites, the total costs of relocation to a new location, and the likelihood of an existing mobilehome being accepted at other sites.

The proposed ordinance also requires the applicant to submit information that the State requires to operate a mobilehome park, which includes the current operating permit and copies of the State Title 25 Inspection Reports for the last three years. The purpose of the report is to document any health and safety issues regarding sewer, water, gas, etc.

2. CC&Rs – If the application is approved, the applicant is required to submit evidence that Conditions, Covenants, and Restrictions (CC&Rs) have been completed prior to recording the final map.
3. Findings – Prior to approval, the following findings must be made:
 - A. The project is consistent with the housing goals and policies of the City of Hayward General Plan and Zoning Ordinance.
 - B. The Conversion Impact Report and Resident Survey of support are adequate, and that all other requirements of the Government Code Section 66427.5 have been met.
 - C. As a condition of approval, the subdivider must provide a complete Title 25 Inspection Report with written evidence that all deficiencies have been corrected to the satisfaction of the California Department of Housing & Community Development in order for the City to

make a fully informed decision based on the existing condition of the mobilehome park interior and any health and safety issues that may exist in violation of Title 25.

- D. The project complies with all applicable Federal, State, and City laws, regulations and codes.
- E. The project is a bona fide resident conversion.

Of particular note is the determination whether a conversion would be bona fide. Again, where the survey of resident support would show that 50 percent or more of the residents support the conversion, it would be presumed to be bona-fide. Where the survey would show that less than 50 percent of the residents support the conversion, it would be presumed to not be bona-fide. The presumptions could be overcome through the submission of substantial evidence either at or prior to the hearing.

Environmental Review

Adoption of the Mobilehome Park Conversion Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to State CEQ Guidelines Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the ordinance would have a significant effect on the environment; the proposed ordinance is only requiring consistency of review to ensure that proposed conversions comply with existing State law and other existing regulations; and there would be no change in the use of land, but only a change in how title to land is held.

FISCAL IMPACT

There is no known fiscal impact on the City's General Fund for this recommendation.

PUBLIC CONTACT

On November 13, 2007, staff held two public meetings regarding mobilehome park conversions. The owners of the mobilehome parks and their representatives were invited to an afternoon meeting. Seven persons attended this meeting, representing three of the parks (Eden Gardens, Eden Roc, and New England Village), and the Western Manufactured Housing Association. Attendees expressed their opinion that the City should be careful how it portrays the anticipated outcome of the proposed State legislation and that it would be appropriate for the City to amend its ordinances to reflect current law. The attendees indicated that rent control hampers the ability of the park owners to sufficiently upgrade aging infrastructure.

The evening meeting was attended by 37 mobilehome residents from seven parks (Continental, Eden Gardens, Eden Roc, Hayward Mobile Estates, New England Village, Pueblo Springs, and Spanish Ranch I & II). Residents expressed their concern about the aging infrastructure, the loss of City rent control upon conversion to ownership parks, and the financial inability of many residents to purchase the lots in a converted park.

On March 12, 2008, staff held two public meetings regarding the draft mobilehome park conversion ordinance. Again, the owners of the mobilehome parks, and their representatives, were invited to an afternoon meeting. Five persons attended this meeting. Eden Gardens, for which a conversion

application has been submitted, was represented by its owner and legal counsel; the other three attendees were residents of New England Village. Preston Cook, owner of Eden Gardens, expressed his disappointment in the draft ordinance, feeling that it is out of touch with State law and is prohibitive to conversions. He stated that he did not purchase the park based on the future needs of the City, and that the City is not considering his interests as a property owner. Although his application for conversion was submitted well into the moratorium, he decried this proposal to "change the game midstream." Mr. Cook's legal representative, Christopher Bates of The Loftin Firm, stated that the requirements proposed by the draft ordinance are beyond the scope of authority provided under State law. He stated that the requirement to provide a market appraisal at the time of application is premature as conditions may change during the course of application review, and that State law doesn't require disclosure of estimated purchase prices since the residents don't need to know that information at the time of the Resident Survey. He also claimed that litigation has already settled the matter that basing the determination whether a conversion is bona fide on the results of the resident survey denies the rights of the property owner. Overall, he stated that the City has limited to no discretion in determining compliance of a conversion request with State law beyond the technical aspects of approving the tentative tract map. Attachment C contains the complete comments by the Loftin Firm.

The evening meeting was attended by 23 persons, primarily mobilehome residents from six parks (Continental, Eden Gardens, Eden Roc, New England Village, Pueblo Springs, and Spanish Ranch I). Residents expressed support for the proposed ordinance, but stated concern regarding the inability of some residents to understand the materials presented as part of the resident survey, and the potential of owner control of the process.

NEXT STEPS

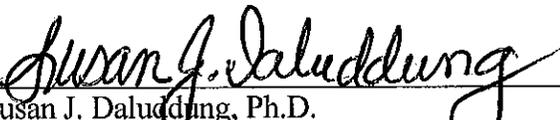
The mobilehome park owners and residents have been invited to meetings on March 12, 2008, to review the proposed ordinance. Staff will consider the public comments received from the review, as well as the Council's input from this meeting, to prepare a final draft ordinance. The proposed ordinance will be presented to the City Council for review at its April 22, 2008 meeting, prior to the close of the moratorium on May 8, 2008.

Prepared by:



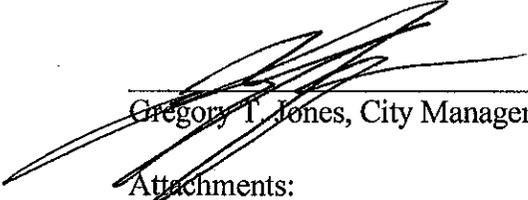
Richard E. Patenaude, AICP
Principal Planner

Recommended by:



Susan J. Daluddung, Ph.D.
Director of Community and Economic Development

Approved by:



Gregory T. Jones, City Manager

Attachments:

- Exhibit A: Government Code Section 66427.5
- Exhibit B: Draft Ordinance
- Exhibit C: Letter, dated March 5, 2008, from The Loftin Firm, responding to Draft Ordinance

66427.5. At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

MOBILEHOME PARK CONVERSIONS

SEC. 10-3.850 FINDINGS, INTENT AND APPLICABLE LAW. A majority of mobilehome residents in the City of Hayward have significant personal and social ties to the community and virtually all mobilehome owners have made a substantial financial investment in their mobilehomes. Mobilehome owners in the City of Hayward elected to make this financial investment in part to secure certain social as well as economic benefits they enjoy in close, secure physical surroundings. A significant proportion of mobilehome residents are senior citizens, many of whom live on limited or fixed incomes. In addition, the cost and risk of potential damage in moving mobilehomes is great, as is the cost of preparing a new site and meeting the code requirements for reinstalling a mobilehome. Unlike other residents of the City of Hayward who rent their dwelling units or even those who own their own homes, mobilehome owners cannot relocate easily within the City of Hayward or Alameda County because of the scarcity of vacant mobilehome sites and/or cost of relocation. It is necessary that the provisions of the Conversion Provisions be applied to mobilehome park subdivisions so that the potential adverse effects of a change in the form of ownership or use are prevented or minimized.

A unique risk to a significant segment of the City's residents is therefore presented when a mobilehome park is converted from a park owned by a single entity in which sites are rented into a form of ownership in which individual sites may be owned. Furthermore, the protection offered by City of Hayward Ordinance No. 89-057 C.S., as amended through Ordinance No. 05-02, Mobilehome Space Rent Stabilization Ordinance, is likely to be lost by a significant number of mobilehome park residents who are unable to afford to buy their mobilehome spaces.

The State Legislature has provided a basis for protecting mobilehome owners in the enactment of Government Code Sections 66426, 66427, 66427.4, 66427.5 and 66428.1, as well as the Mobilehome Parks Act located in the Health and Safety Code Section 18000 et seq., and the Mobilehome Residency Law (MRL) found in the Civil Code Section 798 et seq. These legislative sections are the bases for all mobilehome and mobilehome park regulations within the State of California and are the bases for the conversion provisions that follow.

These provisions (the "Conversion Provisions") address the need for standards and procedures pertaining to mobilehome park conversions to resident ownership pursuant to Government Code Sections 66427.5 and 66428.1 only. The Conversion Provisions do not apply to a change in use or cessation of use of property as a mobilehome park.

In addition, the Conversion Provisions are intended to implement state laws regarding the conversion of mobilehome parks to resident ownership; ensure that conversions to resident ownership are bona fide resident conversions in accordance with state law; maintain consistency with the housing goals and policies of the City's general plan and zoning code; ensure that park residents receive appropriate and timely

information to assist them in fully understanding their rights and obligations under the statute; and ensure the public health and safety in converted parks.

SEC. 10-3.855 DEFINITIONS. Whenever any of the following names or terms are used herein, each such name or term shall be deemed and construed to have the meaning ascribed to it as follows:

The following terms used throughout the Conversion Provisions are described and defined below and shall have the following meanings:

- (a) Association. An entity comprised of all parties who have a property interest resulting from ownership in the project. The entity exists for the purpose of management, maintenance, preservation, operation, and enforcement of entity adopted rules and regulations within the project.
- (b) Common Area. The entire project, excepting all units therein or any parcels of land not owned in common.
- (c) Conversion. The change in ownership structure of a mobilehome park from a rental park to resident ownership pursuant to Government Code Sections 66427.5 and 66428.1.
- (d) Homeowners Association. An organization of people who are mobilehome residents in a given mobilehome park whose major purpose concerns matters of common interest within the mobilehome park.
- (e) Manufactured Home. A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; "Manufactured home" includes a mobilehome subject to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Section 5401, et seq.).
- (f) Mobilehome. A structure that meets the requirements of Section 18007 of the Health and Safety Code. "Mobilehome" does not include a commercial coach, as defined in Section 18001.8, factory-built housing, as defined in Section 19971, or a recreational vehicle, as defined in Section 18010.
- (g) Mobilehome Accessory Building or Structure. Includes, but is not limited to, any awning, portable, demountable, or permanent cabana, ramada,

storage cabinet, carport, skirting, heater, cooler, fence, windbreak, or porch or other equipment established for the use of the occupant of the manufactured home or mobilehome.

- (h) Mobilehome Owner. The person who has a tenancy in a mobilehome park under a rental agreement.
- (i) Mobilehome Park. Any area or tract of land where two or more mobilehome lots are rented or leased or held out for rent or lease, to accommodate mobilehomes used for human habitation. The rental paid for any mobilehome shall be deemed to include rental for the lot it occupies.
- (j) Mobilehome Resident. A mobilehome owner or mobilehome tenant.
- (k) Mobilehome Tenant. A tenant, subtenant, lessee, or sub lessee, or any other person entitled to the use or occupancy of a mobilehome under a rental agreement, lease, or other expression of tenancy. Any notice to a mobilehome tenant required hereunder need be given to only one such tenant in the case of multiple tenants of any mobilehome.
- (l) Project. The entire parcel of real property to be divided into common areas and lots for individual ownership or stock cooperative ownership including all structures thereon which are owned or controlled by the subdivider.
- (m) Site Improvement. Any permanent improvement made to a mobilehome site that cannot be removed without injury either to itself or to the site, including but not limited to, paved patios and parking spaces, permanent decking, and mature landscaping.
- (n) Title 25. Title 25 of the California Code of Regulations relating to Housing and Community Development (HCD).
- (o) Unit. The elements of a project which are not owned in common with other owners in the project or a mobilehome site in a conversion to resident ownership in which the owner has the right of exclusive occupancy.

SEC. 10-3.860 APPLICATION. The Conversion Provisions implement California Government Code Sections 66427.5 and 66428.1 for the standards and procedures to be followed for the conversion of an existing mobilehome park to resident ownership.

- (a) **Application submittal requirements.** In addition to the general subdivision requirements located in Chapter 10, Article 3 of the Hayward Municipal Code, the following information shall be submitted as part of the resident

survey results with any subdivision application for conversion to a resident owned mobilehome park pursuant to Government Code Section 66427.5:

- (1) A Tentative Subdivision and Final Map or Parcel Map unless waived pursuant to Government Code Section 66428.1. A parcel map shall be required for all projects that contain less than five parcels and do not create more condominium units or interests than the number of rental spaces that exist prior to conversion. If additional interests are created or if the project contains more than 5 parcels a Tentative and Final Map shall be required. The number of condominium units or interests to be created shall not determine the type of map required unless additional condominium units or interests are created over and above the number of rental spaces that exist prior to conversion.
- (2) A report on the impact of the conversion on the existing residents, known as a tenant impact report or conversion impact report, pursuant to Section 10-3.860(f).
- (3) A statement of the total number of spaces occupied by residents (excluding any spaces occupied by the subdivider, a relative of the subdivider, or employee of the subdivider); and the total number of votes of such residents in favor of the conversion and the total number of votes in opposition to the conversion, with no more than one vote allocated for each mobilehome space.
- (4) The subdivider shall demonstrate that the procedures and timing used to conduct the survey were in accordance with an agreement between the subdivider and an independent resident homeowners association, if any. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represents the greatest number of tenant homeowners in the park.
- (5) A written statement signed by the authorized representative(s) of an independent resident homeowners association verifying that the survey form was approved by the association in accordance with the requirements of subdivision (d)(2) of Government Code 66427.5.
- (6) A copy of the information and disclosures provided to tenant households pursuant to Section 10-3.860(e).
- (7) Resident survey of support pursuant to Government Code Section 66427.5(d).

- (8) Evidence of agreement with a homeowners' association (HOA) for the resident survey and copies of all signed resident surveys.
- (9) The current permit to operate for the project mobilehome park; current water pressure test, gas line test; and evidence of earthquake proof gas meter and utilities pedestal compliance.
- (10) Copies of all Title 25 inspection reports for the previous three years. If there has been no Title 25 inspection within that time period then one must be obtained. Subdivider shall provide a list of all deficiencies found on inspection and evidence that all deficiencies have been corrected. In addition, written documentation from California Department of Housing and Community Development that the park complies with all applicable Title 25 requirements shall be provided.
- (11) An engineering report on the type, size, current condition, adequacy and remaining useful life of common facilities located within the park, including but not limited to water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, and community buildings. The report shall be prepared by a registered civil or structural engineer or a licensed general engineering contractor.
- (12) All legal documents confirming the legal status of the park, including but not limited to, documents (i) prepared for and defining the powers and duties of the proposed homeowner's association, including articles of incorporation, bylaws, and conditions, covenants and restrictions; and (ii) a general title report.

(b) Map Waiver. Pursuant to Government Code Section 66428.1(c), the City shall provide an application for waiver, when at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, such that the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist:

- (1) There are design or improvement requirements necessitated by significant health or safety concerns.
- (2) The City determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map.
- (3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map.

- (4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion.

The waiver application shall be approved or denied by the Planning Director within 50 days after such application is deemed complete. If no such waiver applies, or the waiver is not approved, then a tentative subdivision and final map or parcel map for mobilehome park conversion shall be required. Decisions of the Planning Director may be appealed pursuant to Section 10-1.2845 of the Zoning Ordinance.

(c) Tentative Subdivision and Final Map or Parcel Map for Mobilehome Park Conversion. The tentative map shall contain all the information required on a tentative map for any subdivision, subject to the following alterations and additions:

- (1) In lieu of the contour lines normally required on a tentative map, sufficient elevations of the existing ground so that average slope of the ground can be determined at a minimum of two-foot intervals, where the slope is less than 50 percent and 10-foot intervals where the slope is greater than 50 percent.
- (2) Locations of existing permanent buildings, swimming pools, and recreational areas.
- (3) A parcel map shall be required for all projects which contain less than five parcels and do not create more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion. If additional interests are created or if the project contains more than five parcels a tentative and final map shall be required.

The number of condominium units or interests to be created shall not determine the type of map required unless additional condominium units or interests are created over and above the number of tenant lots or spaces that exist prior to conversion.

(d) Report on the Impact of the Conversion on Existing Residents. A report on the impact of the conversion upon the residents of the mobilehome park to be converted shall be submitted at the time of filing the application for conversion. This report must include all information required by state law and these Conversion Provisions, including:

- (1) A description of the property, including the number of mobilehomes that are owner-occupied and the number of mobilehomes that are rented. For rented mobilehomes, the nature of the tenancy (e.g., yearly lease or month-to-month) and the name and address of the lessor.

- (2) The rental rate history for each space for each of the previous five years.
- (3) A spreadsheet for the statutory rent increase maximums for lower income households as set forth in Government Code Section 66427.5(f)(2).
- (4) The monthly vacancy rate for each month during the preceding two years.
- (5) The components of existing resident households including family size, length of residence, age of residents, estimated household income and whether receiving government rent subsidies.
- (6) The availability of mobilehome spaces within the City limits including the current space rent charged for the space, the amenities offered, and any restrictions on the type or age of the mobilehome that may occupy the space.
- (7) An analysis of moving an existing mobilehome to another site that shall include, but not be limited to, the availability of other sites, the total costs of relocation to a new location, and the likelihood of an existing mobilehome being accepted at other sites.
- (8) In the event the number of available mobilehome spaces within the City is insufficient to accommodate all the residents of the mobilehome park, the report shall include a statement of the availability and cost of any non-mobilehome housing alternatives located within the City. The report shall also include a description of all available mobilehome spaces within 30 miles of the project, the current space rent charged, the amenities offered, whether rent control is in effect, and any restrictions on the type or age of the mobilehome that may occupy the space.
- (9) A market rent survey or appraisal in accordance with nationally recognized professional standards as set forth in Government Code Section 66427.5(f).

(e) Survey of Support of Residents. The survey shall be conducted in accordance with an agreement between the subdivider and the homeowners association, if such association exists. The homeowners association must be independent of the subdivider or mobilehome park owner. In the event there is more than one homeowners association, the agreement shall be with the one having the greater number of members. The survey shall be obtained pursuant to a written ballot and shall be conducted so that each occupied mobilehome space has one vote. Results of the survey shall be considered as part of the subdivision map hearing. Evidence of the agreement between the

subdivider and the homeowners association must be submitted with the application. If there is no written agreement, then the subdivider shall provide signed affidavits, under penalty of perjury, from the subdivider or the subdivider's representative and from two officers of the association setting forth the details of the agreement.

To assist the residents in determining how to respond to the resident survey required by subdivision (d) of Government Code Section 66247.5, the following information and disclosures shall be provided by the park owner to each tenant household sufficiently in advance of the survey to allow its consideration:

- (1) A statement describing the effects that the mobilehome park conversion will have on the application of the rent control provisions of the City of Hayward Mobilehome Space Rent Stabilization Ordinance for both lower income households and for other households who continue residency as tenants. The statement shall specifically describe the effects that the conversion will have on the application of the vacancy control provisions of the Mobilehome Space Rent Stabilization Ordinance, and a statement describing the effects of vacancy decontrol under Government Code Section 66427.5 on the resale value of mobilehomes of both lower income households and of other households who continue residency as tenants. Included with this statement shall be a separate statement prepared by the City summarizing the major provisions of the City's mobilehome park rent adjustment Ordinance (Ordinance No. 89-057 C.S., as amended through Ordinance No. 05-02).
- (2) A statement specifying the income level that is applicable pursuant to subdivision (f)(2) of Government Code Section 66427.5, to determine whether households in the mobilehome park qualify as lower income household or are not a lower income household, and requesting that the households identify whether they are a lower income household, or are not a lower income household.
- (3) A statement specifying whether the subdivider will begin the phase-in of market level rents pursuant to subdivision (f)(1) and the rent adjustment provisions of subdivision (f)(2) of Government Code Section 66427.5 upon the sale of one lot, upon the sale of more than 50 percent of the lots, or upon the sale of some other percentage of lots.
- (4) A statement specifying the method by which the fair market rent levels authorized by subdivision (f)(1) of Government Code Section 66427.5 will be established, or in the alternative, the specification of the range of rent levels that will be applicable to the subdivided units in the mobilehome park, including, but not

limited to, the inclusion of any inflation adjustment formula to be utilized.

- (5) A statement specifying how space rents will be set for purchasers of mobilehomes, but not the lot, formerly owned by lower-income households and for other households who continue residency as tenants under subdivision (f) of Government Code Section 66427.5.
- (6) A statement specifying the method by which the sales prices of the subdivided units will be established, or in the alternative, the specification of the range of purchase prices that will be applicable to the subdivided units in the mobilehome park, including, but not limited to, the inclusion of any inflation adjustment formulas to be utilized.
- (7) A statement specifying the method for determining and enforcing the controlled rents for non-purchasing households pursuant to Government Code Section 66427.5(f)(2), and, to the extent available, identification of the number of tenant households likely to be subject to these provisions.
- (8) Identification of the potential for non-purchasing residents to relocate their homes to other mobilehome parks within Alameda County, including the availability of sites and the estimated cost of home relocation.
- (9) An engineer's report on the type, size, current condition, adequacy, and remaining useful life of each common facility located within the park, including, but not limited to, water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, and community buildings. A pest report shall be included for all common buildings and structures. "Engineer" means a registered civil or structural engineer, or a licensed general engineering contractor.
- (10) If the useful life of any of the common facilities or infrastructure is less than thirty years, an engineer's estimate of the cost of replacing such facilities over their useful, and the subdivider's plan to provide funding for same.
- (11) An estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, including replacement costs as necessary, over the next thirty years, and the subdivider's plan to provide funding for same.

- (12) A maintenance inspection report conducted within the previous twelve calendar months, demonstrating compliance with Title 25 of the California Code of Regulations (“Title 25 Report”). Proof of remediation of any Title 25 violations or deficiencies shall be confirmed in writing by the California Department of Housing and Community Development (HCD).
- (13) A detailed description of the City and State procedures to be followed for the proposed conversion, including, but not limited to, a tentative timeline.
- (14) The phone number and address of an office designated by the City that can be contacted for further information relating to the proposed mobilehome park conversion.
- (15) The subdivider shall attach a copy of the Conversion Provisions to each survey form.

(f) Information and disclosure requirements for impact report. The report by the subdivider on the impact of the mobilehome park conversion required by subdivision (b) of Government Code Section 66427.5 shall include, but not be limited to, the following disclosures:

- (1) That information specified by subsections (1) through (13) of Section 10-3.860(e) required to be provided to park tenants for purposes of the resident survey.
- (2) A statement specifying the number of mobilehome spaces in the park and the rental rate history for each such space over the four years prior to the filing of the application.
- (3) A statement specifying the method and timetable for compliance with Government Code Section 66427.5(a), and, to the extent available, an estimate of the number of existing tenant households expected to purchase their units within the first four years after conversion including an explanation of how the estimate was derived.
- (4) An estimate of the number of residents in the park who are lower income households pursuant to subdivision (f)(2) of Government Code Section 66427.5, including an explanation of how the estimate was derived.
- (5) An estimate of the number of residents in the park who are seniors (62 years of age or older) or disabled, including an explanation of how the estimate was derived.

SEC. 10-3.895 AVOIDANCE OF ECONOMIC DISPLACEMENT. The subdivider shall avoid any economic displacement of any nonpurchasing resident by the following:

- (a) **Non-Lower Income Households.** As to nonpurchasing residents who are not lower income households, as defined in Section 58079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, in equal annual increases over a four-year period, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards.
- (b) **Lower Income Households.** As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

SEC. 10-3.905 HOMEOWNERS ASSOCIATION CONDITIONS, COVENANTS AND RESTRICTIONS. All residential subdivisions of a mobilehome park shall require the establishment of an association or corporation for the purpose of managing and maintaining the facilities, improvements, and structures within the common area. To formalize the obligations of the association, conditions, covenants, and restrictions (CC&Rs) shall be required. The CC&Rs shall state the City has the right, but not the obligation, to abate public nuisance conditions in the common area if the association or corporation fails to do so, and to assess the cost to the association, corporation, or individual lot owners. To accomplish this, the CC&Rs shall contain a statement with the appropriate language changes clarifying the form of ownership.

Evidence of compliance with the above described requirements shall be submitted to the City for approval by the Planning Director and City Attorney prior to the approval of a final map or parcel map.

SEC. 10-3.910 FINDINGS. No tentative or parcel map for the subdivision of a mobilehome park shall be approved unless the findings required by the Subdivision Map Act and the following findings are made:

- (a) The conversion is consistent with the housing goals and policies of the City of Hayward general plan and zoning code, and any applicable specific or area plan.

- (b) The conversion impact report and resident survey of support are adequate and filed with the City, and that all of the requirements of Government Code Section 66427.5 and the Conversion Provisions have been met.
- (c) The subdivider has provided a complete and current Title 25 inspection report with written documentation from the California Department of Housing and Community Development that all deficiencies and/or violations have been corrected.
- (d) The project complies with all applicable Federal, State and City laws, regulations and codes.
- (e) The project is a bona fide resident conversion. For purposes of determining whether a proposed conversion is a bona-fide conversion, the following presumptions shall be applied based on the results of the survey of resident support conducted in accordance with Government Code 66427.5 and with the Conversion Provisions. The presumptions created by this subsection may be overcome through the submission of substantial evidence either at or prior to the hearing.
 - (1) Where the survey of resident support shows that 50 percent or more of the resident survey vote supports the conversion to resident ownership, the proposed conversion shall be presumed to be a bona-fide resident conversion. Any interested person opposing the conversion shall have the burden of demonstrating that the proposed conversion is not a bona-fide resident conversion.
 - (2) Where the survey of resident support shows that less than 50 percent of the resident survey vote supports the conversion to resident ownership, the proposed conversion shall be presumed to not be a bona-fide resident conversion. The subdivider shall have the burden of demonstrating that the proposed conversion is a bona-fide resident conversion.

SEC. 10-3.915 TENANT NOTIFICATION. The following tenant notifications are required:

- (a) If the application for conversion is approved, the subdivider shall give each resident household written notice of its exclusive right to contract for the purchase of the unit of space it occupies at the same or more favorable terms and conditions than those on which such unit of space shall be initially offered to the general public. The right shall run for a period of not less than ninety days from the issuance of the subdivision public report ("white paper") pursuant to California Business and Professions Code Section 11018.2, unless the subdivider received prior written notice of the resident's intention not to exercise such right.

- (b) If the application for conversion is approved, the subdivider shall give each resident household written notice of its right to continue residency as a tenant in the park as required by Government Code Section 66417.5(a).

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March 5, 2008

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Re: Mobilehome Park Conversions in the City of Hayward
Draft Conversion Ordinance 10-3.850 et. seq.

Mr. Patenaude,

This letter is in response to the Draft Conversion Ordinance ("Draft Ordinance") provided on February 21, 2008. As you know, this Firm represents the Owners of the Eden Gardens Estates Mobile Home Park. The Draft Ordinance is not in compliance with State law as currently written. The items within the Draft Ordinance shall be addressed in the order they appear for ease of reference.

SEC 10-3.850 Findings, Intent and Applicable Law

The Draft Ordinance provides as a basis of the provisions contained therein a statement of "the scarcity of vacant mobilehome sites and/or cost of relocation" as the intent for the necessary Conversion protections. The "cost of relocation" is an improper finding or intent for the purpose of a Conversion ordinance as Government Code 66427.5(f) specifically requires the avoidance of any economic displacement. The cost of relocation finding is more appropriate in the context of a park closure or change of use pursuant to Government Code 65863.7 and 66427.4 respectively. Accordingly, please remove this and any other reference to "cost of relocation" from the Draft Ordinance.

SEC 10-3.855 Definitions – Subsections (a) & (d)

Subsection (a) and (d) define "Association" and "Homeowners Association" as follows:

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Association. An entity comprised of all parties who have a property interest resulting from ownership in the project. The entity exists for the purpose of management, maintenance, preservation, operation, and enforcement of entity adopted rules and regulations within the project.

Homeowners Association. An organization of people who are mobilehome residents in a given mobilehome park whose major purpose concerns matters of common interest within the mobilehome park.

The Mobilehome Residency Law found in Civil Code Section 798 et. seq. defines these terms as a "Resident Organization" pursuant to Section 798.80. A Resident Organization must be "formed by homeowners in the mobilehome park as a nonprofit corporation, pursuant to Section 23701(v) of the Revenue and Taxation Code, stock cooperative corporation, or other entity for purposes of converting the mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the mobilehome park." This is required for notice to be provided by the park owner to the Resident Organization of an offer to sell the park or an entry into listing agreement for the sale of the park. This is the correct standard of forming a Resident Organization, association or mobilehome owners association not only for notice of sale but for all matters of conversion or sale of the park as either in bulk or as subdivided lots. Therefor, the definitions referenced above should be modified to conform to the legal requirements of a mobilehome park Resident Organization.

SEC. 10-3.860 Application

Subsection 10-3.860(a)(3)-(8) – Application Submittal Requirements

Section 10-3.860(a)(3)-(8) has to do with the form of the resident survey of support pursuant to Government Code Section 66427.5(d). The Survey requirements are also outlined in Section 10-3.860(e). This repetitive format is confusing and unnecessary. We suggest removing subsections (a)(1)-(5) and subsection (a)(8) and combining subsections (a)(6) & (7). This will remove the duplicate provisions and provide a clear indication of what is required for the resident survey of support.

Subsection 10-3.860(a)(9)-(11) – Application Submittal Requirements

Section 10-3.860(a)(9)-(11) references Title 25 Inspection Reports, utility tests and earthquake compliance for the gas and utility pedestals as well as an engineering report on the current status and remaining useful life of all park utility systems, community buildings and recreational facilities. These requirements are beyond the scope of the City's review. The City's roll in a conversion to resident ownership is to review the Tenant Impact Report or "TIR" and ensure that it complies with Government Code Section 66427.5. Matters such as these are far beyond the scope of the TIR and would serve no legitimate purpose as, even if included, are beyond the scope of the City's review and could not be considered by the City in approving, denying, or conditioning the application. Section 66427.5(b) describes the requirement and scope of the TIR as follows:

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“The subdivider shall file a report on the impact of conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.”

Any matters pertaining to the condition of the Park are not, and do not, create an impact on residents as a result of the conversion; rather, they are *existing* conditions which impact residents regardless of whether the conversion takes place. However, as detailed in Section 66427.5 and within the TIR itself, every resident has the right to remain renting, in which case any “purchase” type of disclosures simply do not apply.

The impacts of purchasing ones’ lot, along with a host of additional disclosures, are to be made through the California Department of Real Estate (“DRE”) approval process, which is responsible for regulating the sale and marketing of real estate. The state legislature has carefully crafted an entire body of law addressing the sale of subdivided interests in real estate, which is codified (in part) in the Subdivided Lands Law, which is designed to protect purchasers from misrepresentation, deceit and fraud in subdivision sales. That is accomplished in two ways: (1) by making it illegal to commence sales until DRE determination that the offering meets certain affirmative standards and issues a public report; and (2) by disclosing in the public report pertinent facts about the property and the terms of the offering. The subdivider is specifically required to make disclosures to alert consumers to any negative aspects of the offering, including unusual present or future costs (complete with a DRE approved budget or reserve study), hazards or adverse environmental factors, unusual restrictions or easements, necessary special permits for improvements, unusual financing, etc.

Each and every one of the above documents is required to be generated and submitted for DRE review and approval, which is done after City approval. The marketing and sale of interests (and the information generated during that process) is not something that is done piecemeal or haphazardly. This is a carefully regulated process to ensure that each resident is treated fairly and afforded the full protections under the law.

Furthermore, to require an applicant to provide or obtain and subsequently comply with Title 25 inspections is to usurp the jurisdiction of the Department of Housing and Community Development (“HCD”). The City of Hayward has not assumed the enforcement of Title 25 for mobilehome and RV parks within the City and as such HCD remains the *sole enforcement agency* for all matters within these parks. Accordingly each of these sections needs to be removed.

Subsection 10-3.860(a)(12) – Application Submittal Requirements

Subsection 10-3.860(a)(12) requires all “legal documents confirming the legal status of the park”. Such “legal documents” include documents “defining the powers and duties of the proposed homeowner's association, including articles of incorporation, bylaws, and conditions, covenants and restrictions.” As noted above, the DRE is the agency responsible for reviewing and approving such documents. The City cannot require these documents be provided as part of

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the Conversion application as the DRE may require changes or modifications which would then trigger further City review and approval under a likely condition of approval. This never ending circle of dual agency approval is unduly burdensome and unnecessary. This section should be removed as well.

Subsection 10-3.860(c) - Tentative Subdivision and Final Map or Parcel Map for Mobilehome Park Conversion

Subsection 10-3.860(c)(1) states “[i]n lieu of the contour lines normally required on a tentative map, provide sufficient elevations of the existing ground so that average slope of the ground can be determined at a minimum of two foot intervals where the slope is less than 50 percent, and 10 foot intervals where the slope is greater than 50 percent.” The property that comprises a Conversion to Resident Ownership remains post-conversion just as it is pre-conversion, there are no physical changes. As such, the standard topographic information obtained by aerial flyovers or other such means should be sufficient as no changes will take place. Such requested information would require extensive time and money and result in unusable data. There seems to be no reasonable relationship between the request and the project and therefore the detailed topographic study should be removed from the Draft Ordinance.

Subsection 10-3.860(d) - Report on the Impact of the Conversion on Existing Residents

Subsection 10-3.860(d)(5) requires an applicant to provide “*components of existing resident households including family size, length of residence, age of residents, estimated household income and whether receiving government rent subsidies.*” This information may be provided to the extent the applicant/owner has such information. The applicant/owner cannot force residents of a park to come forward and provide said information. Therefore the Draft Ordinance should be revised and add language such as “to the extent available” or other such limiting language.

Subsection 10-3.860(d)(6)-(8) have to do with alternative housing availability, relocation of existing mobilehomes to another park and a location cost and availability study of each mobilehome park within the City limits. These sections are clearly referencing closure provisions in preparation for resident displacement. As mentioned above these provisions belong under closure or change of use applications in accordance with Government Code Sections 65863.7 and 66427.4. There is absolutely no nexus between a conversion to resident ownership and the requirement to provide an in depth City wide study of all mobilehome park space availability, cost and restrictions as well as an alternative housing study and relocation cost breakdown.

Under Government Code 66427.5 there is a statutory protection against economic eviction. Should anyone choose to leave a park that is being converted to resident ownership it is not due to the applicant/owner’s legal right to convert the park. These are closure/change of use provisions and protections and have no basis within a conversion to resident ownership ordinance. Accordingly each of these provisions must be removed.

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Subsection 10-3.860(d)(9) requires a market rent appraisal as set forth in Government Code 66427.5(f). The application stage is not the correct time for this to be required. The market rent appraisal is required prior to the first unit or lot to be sold to the residents. The City is approving an application for conversion to resident ownership and some form of initial map, generally a single lot subdivision with a condominium overlay. Once the City has approved the application the applicant/owner must still draft and submit a condominium plan to the DRE along with all the documentation mentioned above and pursuant to the Subdivided Lands Law. This is closer to the correct time for conducting and making a market rent appraisal available to the residents of a to be converted park. Generally the market rent appraisal is conducted just prior to the issuance of the Final Public Report. The reason is that the real estate market is ever changing and to require such an appraisal at the City application stage would render that appraisal effectively useless when the residents must make a choice to continue renting or to purchase their unit or lot.

The DRE review takes at minimum 180 days from the submittal for a Conditional Public Report to the Issuance of the Final Public Report. Each of the two required reports has a statutory initial review period of 90 days. Therefore the market rent appraisal would be at minimum 6 months old and likely closer to a year or more. This would render the appraisal nearly useless and would require a new update appraisal be conducted. Furthermore, as noted above this is simply beyond the scope of the City's review (see El Dorado Palm Springs, Ltd. v. City of Palm Springs, 96 Cal.App.4th 1153 (2002)). Upon the Conversion to resident ownership the City can no longer regulate rents within a converted mobilehome park and the "state rent control" takes over pursuant to Government Code 66427.5. Accordingly this provision must be removed from the Draft Ordinance.

Subsection 10-3.860(e) - Survey of Support of Residents

Subsection 10-3.860(e)(1) requires, among other things, a "*statement describing the effects of vacancy decontrol under Government Code Section 66427.5 on the resale value of mobilehomes of both lower income households and of other households who continue residency as tenants.*" (emphasis added) This is quite simply a requirement for the applicant/owner to *speculate* as to what *may happen* in the future with a real estate pricing assumption. This is unacceptable to any applicant or owner and is completely outside the scope of the City's review. There is absolutely no basis for this requirement and no standard to which the statement can reference. The requirement is completely obtuse and irrational and must be removed.

Subsection 10-3.860(e)(3) requires that the market rent imposition timing be stated within the resident survey of support. The inclusion of this provision is required to be in the TIR, not the survey. El Dorado Palm Springs, Ltd. v. City of Palm Springs defines the date of the rent control change as the date of the first sale. Should an applicant/owner choose a later date as represented in Subsection 10-3.860(e)(3), it is an individual choice and may not be imposed. Regardless, the correct place for such a provision is in the TIR and not the survey of resident support. Such a survey is simple, a survey of support. It should not be used as a preliminary TIR and accordingly Subsection 10-3.860(e)(3) should be removed.

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Subsection 10-3.860(e)(4) essentially requires a statement of how the market rent appraisal will be conducted, or in the alternative a formula for how the rent will be raised to market level based on an estimated range or inflation rate. Such a requirement is improper and as stated above the market appraisal is not only outside the scope of the City's review but also the timing is inappropriate. This section does not belong in the survey or any other document required by the City for an application of conversion to resident ownership and should be removed.

Subsection 10-3.860(e)(5) requires a statement of how the space rent will be calculated for purchasers of mobilehomes only (not the land) on those spaces formerly occupied by low income households. This is irrelevant as those who purchase after the conversion to resident ownership has occurred must purchase the home and the land together. To allow otherwise would defeat the purpose of converting the once rental park to resident ownership. As this simply does not apply the provision should be removed.

Subsection 10-3.860(e)(6) requires the tentative purchase price to be provided in the survey of support. This is something the City may not require even in the TIR, let alone the survey of support. The California Court of Appeal has specifically addressed this, and perhaps the most critical factor that one would want to know – the purchase price of the lot. Even as to purchase price, the Court has stated that “*the subdivider does not need to disclose a tentative price at that time because residents do not need to decide whether to purchase at that time*” [time of City review and approval]. At the time of filing the application (and during the City approval process), “*the subdivider must only notify residents that they will have an option to purchase their sites, or to continue to rent them.*” El Dorado v. City of Palm Springs at 1180. Therefore, as this matter has been specifically litigated and decided upon, the section must be removed from the Draft Ordinance.

Subsection 10-3.860(e)(7) requires 2 separate statements within the survey of support, (1) “[a] statement specifying the method for determining and enforcing the controlled rents for non-purchasing households pursuant to Government Code Section 66427.5(f)(2),” and (2) the “identification of the number of tenant households likely to be subject to these provisions.” First the statement regarding enforcement of the “state rent control” provisions if it were proper to do so, should be within the TIR not the survey of support. Second the estimate of the number of tenants who would likely remain renting is another improper requirement to speculate by the applicant/owner. This section must also be removed.

Subsection 10-3.860(e)(8) has to do with relocation due to displacement and is improper in an application for conversion to resident ownership. This is an improper closure provision as described above and must be removed.

Subsection 10-3.860(e)(9)-(12) are the same requirements as set forth in Subsection 10-3.860(a)(9)-(11) and as addressed above are improper as the DRE reviews and approves such items as listed in Subsection 10-3.860(e)(9)-(11). Items listed in Subsection 10-3.860(e)(12) are under the sole jurisdiction of HCD and cannot be required by any City. All provisions must be removed.

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The provisions of subsection 10-3.860(e)(13), with the exception of the timeline, are all contained within the TIR. Again the survey of support cannot be used as a preliminary TIR and as such these provisions are improper. As for the required timeline this is another example of a requirement for the applicant/owner to speculate and as above, is improper. The provision must be removed.

Subsection 10-3.860(f) – Information and disclosure requirements for impact report

Subsection 10-3.860(f)(1) addresses all of subsections (1) through (13) of Section 10-3.860(e) above, please see above.

Subsection 10-3.860(f)(3) again requires a timeline, however this timeline is for the compliance with Government Code 66427.5(a) which is specifically addressed in Government Code Section 66459, and each Resident shall be informed that they have a ninety (90) day right of first refusal period. Any other speculative timeline is improper. The second requirement of Subsection 10-3.860(f)(3) requires further speculation by the applicant/owner as to how many existing residents will purchase in the first 4 years of the conversion. As discussed above mere speculation cannot be a requirement by a local agency and as such must be removed.

Subsection 10-3.860(f)(4)-(5) should be limited to the results of the resident survey of support and no other means as the residents are not required to provide such information unless made a part of the application for residency within the park.

SEC. 10-3.910 Findings

Subsection 10-3.910(a) – Consistency

Subsection 10-3.910(a) states “*The conversion [must be found] consistent with the housing goals and policies of the City of Hayward general plan and zoning code, and any applicable specific or area plan.*” It should be noted that many mobilehome parks throughout California are pre-existing, non-conforming uses and as such may not comply with current general plans, zoning or other applicable local codes. Such uses are grandfathered in and cannot be required to comply with ever changing standards. To accommodate this reality the provision should be modified accordingly.

Subsection 10-3.910(c) – Title 25

Subsection 10-3.910(c) requires a Title 25 inspection and report as issued by HCD. As noted above, HCD has the regulatory authority for such inspections and reports and cannot be required by a local agency to conduct such inspections or provide such reports. In light of the above the provision must be removed.

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Subsection 10-3.910(e) Bona Fide Conversion

The Draft Ordinance requires, as a condition to approval, that the City conclude the conversion is “bona fide.” Unfortunately, the proposed ordinance sets forth absolutely no criteria as to what constitutes a bona fide conversion. Rather, the proposed ordinance establishes a “presumption” type approach which is tied to the level of resident support for the conversion. Beyond the fact that there are no criteria for establishing what it means to be bona fide, there is absolutely no legal basis for such a presumption in the first place. Further, the only criterion the ordinance establishes is to direct the City to look to the level of resident support as guidance for whether a bona fide conversion exists, while both case law and the legislative history are very clear that resident support is not required for a conversion.

There is only one reported case which directly addresses the concept of a bona fide conversion, which is the El Dorado case noted above. In El Dorado, the residents had claimed that the park owner sought to subdivide the park as a measure to get out of rent control and not to offer the lots for sale to the residents. The court found no merit in that claim. Rather, the Court stated that:

“the legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent.” El Dorado v. City of Palm Springs at 1182.

The legislative history associated with Section 66427.5 (which comes after the El Dorado case) further supports this position that the survey does not grant a veto vote to the residents:

*“The results of the survey would not affect the duty of the local agency to consider the request to subdivide pursuant to Section 66427.5 but merely provide additional information. It is foreseeable that the results of this survey could be used to **argue to a court** that the conversion is a sham and that the rent formulas in Section 66427.5 should not be applied. **The fact that a majority of the residents do not support the conversion is not however an appropriate means for determining the legitimacy of a conversion.** The law is not intended to allow park residents to block a request to subdivide. Instead, the law is intended to provide some measure of fiscal protection to nonpurchasing residents.” CA B. An., A.B. 930 Assem., 8/26/2002, Barkman/H.&C.D (emphasis added).*

Finally, any determination as to whether or not the conversion is bona fide is an analysis that can not reasonably be conducted until *after* the units are offered for sale. Until such a time as units are offered for sale there can be no reliable and accurate way to project the percentage of sales within a given conversion. For that reason, as cited above, the legislative history to AB 930 states that the survey results could be used to “argue to a court” that a conversion is a sham. The role of the City is to provide for the municipal review of land use and planning application, and lacks the several elements which come later in this process (i.e., DRE budget and reports, lot purchase prices, numbers of residents who may actually purchase, manner for implantation of

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state rent control, etc.). In theory it would be this information which court (as a trier of fact) could apply the applicable provisions of law and draw such a conclusion. It is not the role of the municipality.

And so, based upon the plain reading of the statute, interpretative case law and the legislative intent behind Section 66427.5, it is abundantly clear that lack of resident support can not serve as a basis for denial of an application for conversion to resident ownership. Similarly, creating a presumption of bona fide vs. non-bona fide conversion based solely on resident support (which is the one criteria the Court has said does not provide a measure of preventing a conversion) is inconsistent with State law. Therefore the provision must be removed.

We hope you find this summary of our concerns with the Draft Ordinance helpful. As always, we are happy to discuss these matters if you wish.

Sincerely,

THE LOFTIN FIRM



Jacob Gould, Esq.

cc: Michael Lawson, City Attorney
Jeff Cambra, Asst. City Attorney
Greg Jones, City Manager
Client (via email)