



CITY OF
HAYWARD
HEART OF THE BAY

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DATE: July 22, 2008
TO: Mayor and City Council
FROM: City Attorney
SUBJECT: Amendments to the Mobilehome Space Rent Stabilization Ordinance

RECOMMENDATION

It is recommended that the City Council introduce this Ordinance.

BACKGROUND

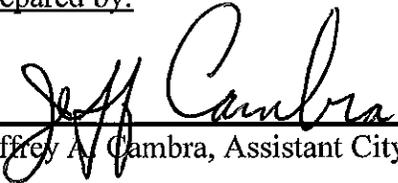
In 2005, the City Attorney's Office brought an amendment to the City's Mobilehome Space Rent Stabilization Ordinance to the City Council at the request of the Hayward Mobilehome Owners Association to provide for a mandatory meet and confer process prior to the commencement of any formal administrative hearing to determine the validity of a proposed space rent increase. As part of the discussion between the City Attorney's Office and representatives of HMOA at that time, there was a request to remove the "Alternate Dispute Resolution" (ADR) procedure contained in the Ordinance making the mandatory "Meet and Confer" process the only available course in the rent dispute process. Due to time constraints, the meet and confer amendment was presented without the language removing the ADR procedure.

Under the ADR procedure, both the park owner and the residents are required to "mediate" before participating in a formal hearing. The difference between the ADR and Meet and Confer processes is that under ADR, the hearing officer's decision is binding. This means that the Superior Court would review the record of the ADR hearing on appeal for only major procedural errors. An appeal of the Meet and Confer process, as provided for in the Ordinance, is controlled by the State's Code of Civil Procedure and allows a more in depth review of the formal hearing. The Meet & Confer procedure satisfies all the due process requirements required by law.

Historically, the ADR process has not been used in many years. In the last five years, two different park owners proposed major space rent increases and participated in the Meet and Confer process. The facilitated discussions were organized and moderated by the City Attorney's Office and resulted in agreements without the need for costly lawyers and participation in expensive formal hearings.

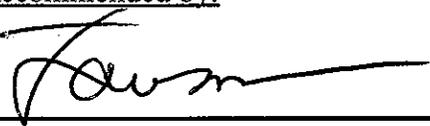
The attached amending Ordinance removes the “Alternate Dispute Resolution” procedure from the Ordinance, leaving Meet and Confer as the sole process for resolving space rent disputes. Additionally, the amendment changes the spelling of “subpoena” to the more contemporary spelling. The City Attorney’s Office recommends that the City Council introduce this amendment.

Prepared by:



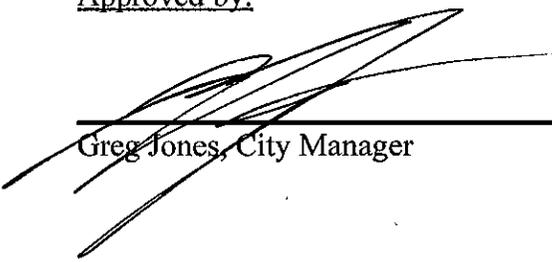
Jeffrey A. Cambra, Assistant City Attorney

Recommended by:



Michael S. Lawson, City Attorney

Approved by:



Greg Jones, City Manager

ORDINANCE NO. 07-

AN ORDINANCE AMENDING ORDINANCE NO. 89-057 C.S., AS AMENDED, THE MOBILEHOME SPACE RENT STABILIZATION ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 4(b)(2) (iv) of Ordinance No. 89-057 C.S., as amended, is further amended by removing the language as follows:

“mediation or”.

(iv) A copy of the petition form prepared by the City's Rent Review Office which initiates the ~~mediation or~~ arbitration process authorized by this ordinance.

Section 2. Section 5 (b) of Ordinance No. 89-057 C.S., as amended, is further amended by removing the language as follows:

“either a Petition for Alternate Dispute Resolution (“ADR”) or”.

(b) Service Reduction Claims. Any Tenant who believes that a housing service has been reduced by a Park Owner in violation of this ordinance, and desires to have such service restored or the rent adjusted shall submit a written request for restoration of such housing service or rent reduction no later than one year after the Tenant's actual discovery of such housing service reduction or one year after a prudent person exercising reasonable care would have discovered the service reduction. Upon receipt of such notice, the Park Owner shall respond to the Tenant within 30 days. If the Homeowner and Tenant are not able to resolve their dispute over the alleged housing service reduction, the Tenant shall file a ~~Petition for Alternative Dispute Resolution or~~ Petition for Space Rent Arbitration with the Rent Review Office no later than two years after the Tenant's discovery of such housing service reduction. Any change in the severity of a service reduction shall give rise to a new claim and the deadlines for service of notice to the Park Owner and the filing of a Petition start to run anew when the Tenant actually discovers or should have discovered the increase in service reduction.

Section 3. Section 5 (c) of Ordinance No. 89-057 C.S., as amended, is further amended by removing the language as follows:

“either a Petition for Alternate Dispute Resolution (“ADR”) or”

(c) Petition. If the Park Owner and Tenant do not resolve the housing service reduction or rent increase dispute between them, the Tenant may file with the Rent Review Officer either a ~~Petition for Alternative Dispute Resolution ("ADR")~~ or a Petition for Space Rent Arbitration. The Petition shall be filed with a copy of the notice of rent increase, if applicable, within 30 days after service of the notice of rent increase, or no later than two years after the Tenant's discovery of a housing service reduction. If there are more than ten affected mobilehome spaces as shown on the notice required by Section 3(b) or 4(b) of this ordinance, the Rent Review Officer shall not accept a petition for filing unless it has been signed by Tenants representing at least 51 percent of all affected mobilehome spaces.

Section 4. Section 5 (g) of Ordinance No. 89-057 C.S., as amended, is removed in its entirety.

~~(g) Mediation and Binding Arbitration Hearings. A mediation hearing requested or agreed to by the parties shall be scheduled by the Rent Review Office within 10 days after a Park Owner has agreed to participate in the ADR process. The mediation hearing may be continued from time to time at the request of the parties. The parties agreement shall be memorialized in writing and filed with the Rent Review Office. If the mediation is unsuccessful, the Rent Review Office shall schedule an arbitration hearing within 10 days after the termination of the mediation and the arbitrator's decision shall be binding.~~

Section 5. Section 6 of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

"SECTION 6. SUBPOENA POWER.

Subpoenas, including subpoenas duces tecum, requiring a person to attend a particular time and place to testify as a witness, may be issued in connection with any dispute pending before an Arbitrator, and shall be issued at the request of the Rent Review Officer, an Arbitrator, or a party. Subpoenas shall be issued and attested by the City Clerk in the name of the City. A subpoena duces tecum shall be issued only upon the filing with the City Clerk of an affidavit showing good cause of the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceeding, and stating that the witness has the desired matters or things in his or her possession or under his or her control, and a copy of such affidavit shall be served with the subpoena. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance may be served in person or by certified mail, return receipt requested, and must be served at least five days before the hearing for which the attendance is sought. Service by certified mail shall be complete on the date of receipt. Notwithstanding any other provision of this ordinance, any time limits set forth in this ordinance shall be extended or such time as is necessary, but not longer than five days, if a subpoena has been served and

five days have not elapsed since the service. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this ordinance shall be deemed issued by and in the name of the City Council.”

Section 6. Section 13 of Ordinance No. 89-057 C.S., as amended, is further amended by removing the following language as follows:

“except the costs pertaining to ADR proceedings agreed to by a Tenant and Park Owner pursuant to Section 5 (b)”.

The costs of administration of this ordinance ~~except the costs pertaining to ADR proceedings agreed to by a Tenant and Park Owner pursuant to Section 5(b)~~ shall be reimbursed in full to the General Fund by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the City. The Park Owner who pays these fees may pass through up to 50 percent of the fees assessed against a mobilehome space to the Tenant pursuant to the provisions of Section 3(b) herein. The remaining 50 percent of the fees assessed against a mobilehome space shall not be passed on in any way to Tenants.

The fees imposed by this Section shall be paid annually with the Park Owner's business license tax. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this Section shall be as provided in Article 1 of Chapter 8 of the Hayward Municipal Code. The City Manager and Rent Review Officer shall recommend to the City Council the amount of such fee and the City Council shall adopt such fee by resolution.

If the Park Owner elects to pass on a percentage of the fee, the Park Owner shall comply with the requirements of Subsection 3(b) and send a notice to the Tenant in substantially the following form:

Section 7. Section 13, “Notice to Tenants” paragraph 2 of Ordinance N. 89-057 C.S., as amended, is further amended to read as follows:

“The rent stabilization fee imposed for 20__ reflects costs incurred during the calendar year of 20__.”

The costs of administration of this ordinance ~~except the costs pertaining to ADR proceedings agreed to by a Tenant and Park Owner pursuant to Section 5(b)~~ shall be reimbursed in full to the General Fund by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the City. The Park Owner who pays these fees may pass through up to 50 percent of the fees assessed against a mobilehome space to the Tenant pursuant to the provisions of Section 3(b) herein. The remaining 50 percent of the fees assessed against a mobilehome space shall not be passed on in any way to Tenants.

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Section 8. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 9. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2007, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2007, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT 

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