

**SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET**

Creation Date: 2/28/07
Source Code: AGCOM
Agenda Date: 3/6/07
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Resolution(s):

Ordinance(s): 4853

Contract(s):

Continue Date(s): [1] 4/17/07

Index: --Letter of County Counsel
--Interim Ordinance

- Item: 30.** CONSIDERED adoption of an urgency ordinance establishing a moratorium and a recommendation on whether to extend the moratorium, and related actions;
- (1) adopted ORDINANCE NO. 4853 adopting and imposing a temporary moratorium on the conversion of Mobilehome Parks to resident ownership;
 - (2) directed the Planning Director to file a notice of exemption in accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines;
 - (3) directed County Counsel and the Planning Department to return on April 17, 2007 with a report on the need for and proposed scope of any additional County regulations, and a recommendation on whether to extend the moratorium, and directed the Clerk of the Board to publish notice of public hearing for that date;
 - (4) with additional directions to amend the Ordinance by adding a sentence to the end of Number 6 under Section I which would read: "The State program offering financial assistance to mobilehome park residents in purchasing their park or individual low-income residents in purchasing their space (Mobilehome Park Resident Ownership Program) has limited annual funding to meet statewide needs" and to direct the Chairperson to convey the Boards support for any state legislation that is being considered that would help protect the residents

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA



AT THE BOARD OF SUPERVISORS MEETING
On the Date of March 06, 2007

REGULAR AGENDA Item No. 30

CONSIDERED adoption of an urgency ordinance establishing a moratorium and a recommendation on whether to extend the moratorium, and related actions;

Upon the motion of Supervisor Pirie, duly Seconded by Supervisor Coonerty, the Board, by unanimous vote, (1) adopted ORDINANCE NO. 4853 adopting and imposing a temporary moratorium on the conversion of Mobilehome Parks to resident ownership; (2) directed the Planning Director to file a notice of exemption in accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines; (3) directed County Counsel and the Planning Department to return on April 17, 2007 with a report on the need for and proposed scope of any additional County regulations, and a recommendation on whether to extend the moratorium, and directed the Clerk of the Board to publish notice of public hearing for that date; (4) with additional directions to amend the Ordinance by adding a sentence to the end of Number 6 under Section I which would read: "The State program offering financial assistance to mobilehome park residents in purchasing their park or individual low-income residents in purchasing their space (Mobilehome Park Resident Ownership Program) has limited annual funding to meet statewide needs" and to direct the Chairperson to convey the Boards support for any state legislation that is being considered that would help protect the residents

cc:

County Administrative Office
Planning Department
Mobile Home Commission

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

by _____, Deputy Clerk ON March 13, 2007



COUNTY OF SANTA CRUZ

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Samuel Torres, Jr.

March 2, 2007

Agenda: March 6, 2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Re: Conversion of Mobilehome Parks to Resident Ownership Pursuant to Government Code § 66427.5

Dear Members of the Board:

On February 27, 2002, your Board directed this Office to return with an initial report on the issues related to the conversion of mobilehome parks to resident ownership pursuant to Government Code § 66427.5 (see copy attached as Exhibit "A"). This report will briefly review the history of mobilehome park conversions leading up to the enactment of 566427.5, the statute's subsequent amendment, and its interpretation by the courts. Finally, this report includes a recommendation that your Board consider adoption of an ordinance establishing a interim moratorium at this time to provide the County with an opportunity to study the need for and consider enacting local regulations consistent with 566427.5 for the processing and consideration of these applications to ensure that they result in bona fide resident conversions.

A. BACKGROUND

At present there are 49 mobilehome parks subject to rent regulation within Santa Cruz County. These 49 parks contain some 2,314 regulated mobilehome spaces and comprise an important component of the County's stock of affordable housing.

Under the Subdivision Map Act, local governments have the authority to regulate the conversion of a mobilehome park to resident ownership or to a non-mobilehome park use. In 1980, the Legislature enacted Government Code § 66427.4 specifically authorizing local governments considering a mobilehome park conversion application to

require conditions aimed at mitigating the economic displacement of park residents who choose not to purchase their space. Some park residents complained that local governments were hindering resident efforts to purchase their own parks by adding onerous conditions to the subdivision approvals required for a conversion. In response, the Legislature enacted **§66427.5** in 1991 to assist these *resident* initiated park conversions by limiting what mitigations local governments could require. Section **66427.5** was substantially amended in 1995 to expand its applicability to all park conversions, those initiated by residents as well as park owners.

B. GOVERNMENT CODE 566427.5

Under state law, conversions of mobilehome parks to resident ownership are governed by Government Code **§66427.5**. This statute requires that the park owner seeking the subdivision:

- o Obtain County 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).
- o Submit a report on the impact of the conversion.
- o Offer existing tenants an option to buy the lot on which their mobile home is located.
- o "Survey" each tenant to assess resident support for the conversion.
- o Limit the amount of **any** increase in rent to tenants not opting to purchase as provided in the statute. Annual rent increases for lower income residents (approximately **\$62,800** for a family of four) capped at the CPI (Consumer Price Index). Tenant households with incomes above low income would be transitioned to "market-level" rents after four years.

The County's rent control protections 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 rent protections cease for that space.

While State law has evolved over the years to establish specific provisions for mobilehome park conversions to resident ownership, the County Code has not been amended to address these new statutes. The County's current land use and subdivision regulations do not set forth the requirements for processing and approving subdivision maps for the conversion and subdivision of mobilehome parks subject to Government Code **§66427.5**. The County therefore needs to adopt regulations to govern how such applications are to be processed. Since one mobilehome park owner has already indicated an intent to seek the conversion of two parks, there is a need for an urgency

interim ordinance to ensure that regulations are in place to address these applications in a manner consistent with the requirements of 566427.5 and the case law interpreting it.

A temporary moratorium on the conversion of mobilehome parks to resident ownership would enable the Planning Department to properly draft new regulations and assure that any applications for conversion are not prejudiced by the current lack of applicable procedures and standards.

C. CASE LAW INTERPRETING 866427.5

There have been two published cases interpreting 566427.5. The first, *Donohue v. Santa Paula W. Mobile Home Park* (1996) 47 Cal. App. 4th 1168, held that §66427.5 does not apply when the conversion of a mobilehome park to resident ownership fails to occur. It was argued by park residents that the rent regulation provisions of 566427.5 applied as soon as their application for a subdivision map was submitted to the City of Santa Paula, even though admittedly the conversion never occurred. The appellate court rejected this argument and ruled that 566427.5 applies only after conversion to resident ownership takes place and lots are actually sold.

In *El Dorado Palm Springs, Ltd., v. City of Palm Springs* (2001) 96 Cal.App.4th 1153, the court ruled that when local governments acted on conversion applications, they were not authorized to impose mitigations for the economic displacement of residents beyond those provided in § 66427.5. 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 meant to circumvent the city’s rent control regulations, the city imposed several conditions on the map. 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 the city 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 566427.5 and that the conversion took effect upon the sale of the first lot.

In response to *El Dorado*, Assembly Bill 930 (Keeley, Stats. 2002, ch. 1143; see copy attached as Exhibit “B”) 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 566427.5 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* (2002) 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 nonbona fide resident conversions. 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, § 2, p. 3324; emphasis added.)

Some mobilehome park residents have asserted that 566427.5 was not originally intended to be used by park owners to convert parks to resident ownership and the statute is now being adapted to allow owners to circumvent local rent control, gentrify affordable housing and economically evict low-moderate income homeowners, many of whom cannot afford the asking prices for their spaces. Information from the California Senate Select Committee on Mobile and Manufactured Housing indicates that as many as 30 park-owner initiated conversions appear to be taking place in the cities of Buellton, Carson, Ojai, Vallejo, Santa Rosa, Healdsburg, and Rohnert Park as well as the counties of Sonoma and San Luis Obispo.

D. SUMMARY AND CONCLUSIONS

Many mobilehome owners are long-time park residents, often seniors on low or moderate incomes. The County’s current mobilehome rent control law was enacted due to complaints from residents in some parks about high rent increases and concern about the need to preserve affordable housing. The 2,314 regulated mobilehome spaces comprise an important component of the County’s stock of affordable housing.

State law permits a mobilehome park to be subdivided into separate lots. Under Government Code §66427.5, these subdivisions are known as “conversions to resident ownership.” Upon such conversion to resident ownership, local rent control provisions are, by state law, no longer applicable.

While §66427.5 establishes certain limited parameters for the conversion of a mobilehome park to resident ownership, it appears that some level of local regulation is appropriate. Local subdivision, land use or other regulations may be necessary to specify the procedures for accepting, processing and acting on applications to ensure compliance with state laws and local regulations.

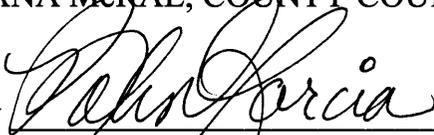
If the Board adopts the proposed interim ordinance as an urgency measure, it will take effect immediately upon adoption and remain in effect for a period of 45 days. A 4/5th vote of the Board is required for adoption. The proposed ordinance will provide staff the time necessary to sufficiently study the issues related to mobilehome park conversions and report back to the Board. At that time the need for and proposed scope of additional regulations will be described as well as a schedule for completing any required work. If necessary, the moratorium may then be extended for an additional period of time to complete the required work. A moratorium and any extension may not exceed two years total in duration.

IT IS THEREFORE RECOMMENDED that the Board:

1. Adopt the attached interim ordinance establishing a temporary moratorium on the conversion of mobilehome parks to resident ownership pursuant to Government Code §66427.5 as an urgency measure based on the findings contained in the ordinance.
2. Direct the Planning Director to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.
3. Direct County Counsel and the Planning Department to return on April 17, 2007 with a report on the need for and proposed scope of any additional County regulations, and a recommendation on whether to extend the moratorium, and direct the Clerk of the Board to publish notice of a public hearing for that date.

Very truly yours,

DANA McRAE, COUNTY COUNSEL

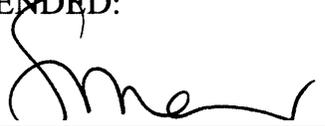
By 
RAHN GARCIA
Chief Assistant County Counsel

Enclosures

cc: County Administrative Office, Planning Department, Mobile Home Commission

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RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

GOVERNMENT CODE
 Title 7. Planning and Land Use
 Division 2. Subdivisions
 Chapter 2. Maps
 Article 1. General Provisions

Cal Gov Code § 66427.5 (2007)

§ 66427.5. Displacement of nonpurchasing residents

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:

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(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.

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Assembly Bill No. 930

CHAPTER 1143

An act to amend Section 66427.5 of the Government Code, relating to housing.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 930, Keeley. Mobilehome parks: conversion to resident ownership.

Existing law requires a subdivider, 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, to avoid the economic displacement of nonpurchasing residents by limiting the amount of rent increases, as specified. The subdivider is required to offer each existing tenant the option to purchase his or her condominium unit and is subject to a hearing on the matter, the scope of which is limited to the issue of compliance with these provisions.

This bill would require the subdivider to obtain a survey of support of residents of the mobilehome park for the proposed conversion pursuant to a written ballot, to be conducted as specified, with results to be submitted to the local agency upon filing of the tentative or parcel map, and considered as part of the hearing.

The people of the State of California do enact as follows:

SECTION 1. Section **66427.5** of the Government Code is amended to read:

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.

SEC. 2. 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* (2002) 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 nonbona fide resident conversions. 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.

SEC. 3. The changes in law enacted by **this** act shall not apply to any application for parcel map approval for conversion of a rental mobilehome park to resident ownership approved by the local agency under Section 66427.5 of the Government Code prior to January 1, 2003.

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ORDINANCE NO. 4853

**URGENCY ORDINANCE ADOPTING AND IMPOSING A
TEMPORARY MORATORIUM ON THE CONVERSION OF
MOBILEHOME PARKS TO RESIDENT OWNERSHIP**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

This ordinance is adopted pursuant to §65858 and §25123 (d) of the California Government Code. The purpose of this ordinance is to prohibit the conversion of mobilehome parks to resident ownership within the unincorporated area of the County of Santa Cruz pending enactment of permanent regulations affecting such conversions. The Santa Cruz County Board of Supervisors finds and determines as follows:

1. Mobilehome parks provide a significant segment of the affordable housing stock available for Santa Cruz County residents. At present there are 49 mobilehome parks subject to rent regulation within Santa Cruz County. These 49 parks contain some 2,314 mobilehome spaces subject to the rent adjustment provisions of Chapter 13.32.
2. In most instances, mobilehome residents own or are purchasing their mobilehomes and pay monthly rent for the land beneath. Annual rent increases for mobilehome spaces that have a lease of 12 months or less are regulated under Chapter 13.32 of the Santa Cruz County Code.
3. The purposes of the County's Mobilehome Rent Adjustment Ordinance are set forth in Santa County Code § 13.32.010, which is incorporated herein by reference.
4. The County's Housing Element of its General Plan seeks to preserve affordable housing by conserving the County's existing stock of mobilehomes through enforcement of County ordinances that protect mobilehome parks from conversion and by providing rent stabilization protection.
5. State law permits a mobilehome park to be subdivided into separate lots, such that residents may own not only the mobilehome itself, but also the space beneath it. These subdivisions are known as "the conversions of a mobilehome park to resident ownership." Upon such conversion to resident ownership, local rent control provisions are, by state law, no longer applicable. The County has been notified by representatives of one mobilehome park owner that the owner intends to

seek conversion of two parks to resident ownership.

6. When initiated by residents of a mobilehome park, the conversion of the park to resident ownership may provide the residents with the security and advantages of full homeownership. Such resident-initiated conversions, however, can be challenging in Santa Cruz County, where the land underlying mobilehome parks is often valued in the millions of dollars, far beyond the financial reach of most park residents. The State program offering financial assistance to mobilehome park residents in purchasing their park or individual low-income residents in purchasing their space (Mobilehome Park Resident Ownership Program) has limited annual funding to meet statewide needs.

7. The economic displacement of nonpurchasing residents resulting from the conversion of a mobilehome park initiated by the park owner is subject to Government Code **566427.5**. State courts have previously held that local rent controls are displaced upon the sale of a single lot within a mobilehome park. Local experiences indicate that when local rent control is removed, space rents and the sales values of mobilehomes are destabilized. Although state law provides some protection for certain mobilehome park residents, the protections may be inadequate for residents who do not qualify as a lower income household. Furthermore, the rent adjustment provisions applied pursuant to subdivision (f) of Government Code **566427.5** do not appear to extend to new tenants.

8. While Government Code **566427.5** establishes certain parameters for the processing of an application for conversion of a mobilehome park to resident ownership, it appears to permit some level of local regulation which may include, but need not be limited to: specifying the procedures for accepting and processing applications; regulating the form, content and use of the survey required by Government Code **566427.5**; establishing standards to ensure that a conversion to resident ownership is “bona fide” in accordance with case law and Section 2 of Chapter **1142** of the California Statutes of **2002**; establishing local incentives for voluntary protection of housing affordable to lower income households within mobilehome parks; or such other regulations as may essential to avoid the current and immediate loss of a significant portion of the County’s vital affordable housing stock.

9. It is in the interest of the County of Santa Cruz, of owners and residents of mobilehome parks, and of the community as a whole, that the Board of Supervisors consider regulations to promote the lawful purposes of preserving affordable housing within mobilehome parks, while providing opportunities for resident ownership wherever feasible and appropriate. The Board of Supervisors finds that the adoption of the temporary moratorium is necessary to provide staff sufficient time to study the issues and make recommendations on whether and how to regulate mobilehome park conversions consistent with the provisions of Government Code **566427.5**.

10. If a temporary moratorium is not imposed, it would be destructive of any proposed future requirements and regulations if, during the period they are being studied and considered for adoption, parties seeking to avoid their operation and effect are permitted to convert existing mobilehome parks to resident ownership in a manner that might defeat in whole, or in part, the objectives of such requirements and regulations. As a result, it is necessary to establish a moratorium and prohibition on the conversion of mobilehome parks to resident ownership within the unincorporated area of the County of Santa Cruz pending the completion of the County's review of the impacts of park conversions and the enactment of local regulations consistent with the provisions of Government Code §66427.5.

SECTION II

During the period this ordinance remains in effect, no permit or approval of any entitlement application shall be granted allowing the conversion of a mobilehome park to resident ownership within the unincorporated area of the County of Santa Cruz.

SECTION III

Based on the findings and conditions set forth in Section I of this ordinance, the Board of Supervisors determines and declares that the conversion of mobilehome parks to resident ownership without local regulation consistent with the provisions of Government Code §66427.5 constitutes a current and immediate threat to the public health, safety, and welfare; and that this ordinance is necessary as an urgency measure for the immediate preservation of the public peace, health, or safety.

SECTION IV

For the purposes of this ordinance, "mobilehome park" shall mean a mobilehome park as defined in section 13.32.020 of the Santa Cruz County Code. The phrase "conversion of a mobilehome park to resident ownership" shall mean a subdivision of a mobilehome park pursuant to Government Code §66427.5.

SECTION V

During the period this ordinance remains in effect, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provision of the Santa Cruz County Code, or any County ordinance, resolution, or policy, the provisions of this ordinance shall control.

SECTION VI

Environmental Determination. This ordinance is exempt from the California

Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines § 15061(b)(3) and § 15262 in that it can be seen with certainty that there is no possibility that this ordinance or its implementation would have a significant effect on the environment. The Planning Director is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION VII

Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VIII

Effective Date. This ordinance is an ordinance for the immediate preservation of the public health, safety and welfare and is hereby declared to be in full force and effect immediately upon its passage, and shall continue in full force and effect for a period of 45 days from its date of adoption unless the terms and time period of this ordinance are extended by the Board of Supervisors in accordance with Government Code §68585.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this 6th day of March, 2007, by the following vote:

AYES:	SUPERVISORS	Pirie, Coonerty, Campos, Stone and Beautz
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None

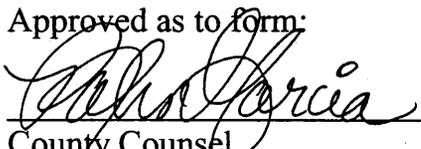
JANET K. BEAUTZ

Chair, Board of Supervisors

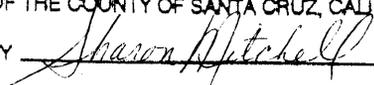
Attest:

GAIL T. BORKOWSKI

Clerk of the Board

Approved as to form:


County Counsel

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTEST MY HAND AND SEAL THIS 6th DAY OF March 2007
SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.
BY  DEPUTY

LAW OFFICES
GILCHRIST & KUTTER
PROFESSIONAL CORPORATION

WILSHIRE PALISADES BUILDING
1299 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000

TELEPHONE (310) 393-4000
FACSIMILE (310) 394-4700
E-MAIL: rclose@gilchristrutter.com

March 5, 2007

VIA FACSIMILE, EMAIL & U.S. MAIL

✓ Supervisor Jan Beautz
Supervisor Ellen Piries
Supervisor Neal Coonerty
Supervisor Tony Campos
Supervisor Mark W. Stone
Santa Cruz County Board of Supervisors
701 Ocean Street
Santa Cruz, CA 95060

Re: Adoption Of Urgency Ordinance Adopting And Imposing A Temporary
Moratorium On The Conversion Of Mobilehome Parks To Resident Ownership -
Board of Supervisors' Meeting: Tuesday, March 6, 2007

Dear Supervisors Beautz, Piries, Coonerty, Campos, and Stone:

We represent owners ("Owners") of Carriage Acres Mobile Home Park ("Carriage Acres") and Trailer Haven Mobile Home Park ("Trailer Haven"), two mobilehome parks which are planning to convert from rental parks to resident-owned parks pursuant to the Subdivision Map Act, Government Code section 66427.5 ("Conversions").

It has come to our attention that a proposed Ordinance to impose a 45-day moratorium on approvals of development permits or other entitlements allowing the conversion of an existing mobilehome park from a rental facility to a resident-owned park (the "Ordinance") is scheduled for consideration by Santa Cruz County's ("County") Board of Supervisors at its March 6, 2007 hearing. We have reviewed the Ordinance and determined that it is illegal (as it pertains to conversion of mobile home parks to resident ownership) in light of controlling state statutes and appellate court opinions. We therefore urge you not to approve the Ordinance.

As explained in further detail below, under California law, local governments are preempted from legislating in the area of mobilehome park conversions. Furthermore, County has no authority to enact the Ordinance because the conversion of a mobile home park from a leasehold to resident ownership does not constitute a change of use allowing for the imposition of an interim ordinance under Government Code section 65858. We also note that a local agency simply cannot enact a moratorium on the filing or processing of subdivision applications. *See Building Industry Legal Defense Found. v. Superior Court*, 72 Cal. App. 4th 1410, 1420

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(1999). Therefore, the Ordinance's enactment would be an improper use of the County's authority to pass interim urgency measures. Lastly, we note that the Ordinance is not supported by adequate findings as required by Government Code section 65858. Accordingly, the Ordinance will have no affect on the processing of Owners' tentative tract map applications to convert Carriage Acres and Trailer Haven from rental facilities to resident-owned mobilehome parks.

I. County's Power Is Strictly Limited To Determining If Owners Have Complied With Specific Requirements Of Government Code Section 66427.5

Under California law, local governments are preempted from legislating in the area of mobilehome park conversions. In *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, the California Court of Appeal directly addressed the limitations on local government's authority in reviewing a mobile home conversion application and held that local governments **"only had the power to determine if [the applicant] had complied with the requirements of [Section 66427.5]."** 96 Cal. App. 4th 1153, 1163-64 (2002) (emphasis added).

In *El Dorado*, the City of Palm Springs ("Palm Springs") conditionally approved El Dorado's mobilehome park conversion application; however, the Palm Springs City Council imposed three conditions not found in Government Code section 66427.5. *See id.* at 1156-57. The Court of Appeal applied the plain and unambiguous language of the statute and held that Palm Springs had no power or authority to impose conditions on El Dorado's conversion application other than those found in Section 66427.5.

Although Palm Springs argued that the conditions it imposed were designed to prevent an abuse of the conversion process by a possible fraudulent or "sham" conversion intended only to avoid the local rent control ordinance, the Court found that "section 66427.5, subdivision (d) provides that 'The scope of the hearing shall be limited to the issue of compliance with this section.' Thus, **the City lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves the tentative or parcel map.**" *Id.* at 1165 (emphasis added).

Accordingly, under *El Dorado*, County's authority in is strictly limited to confirming that Carriage Acres and Trailer Haven's conversion applications comply with the requirements contained in Government Code section 66427.5. The *El Dorado* court conclusively determined that: (i) Government Code section 66427.5 controls a mobile home conversion from a rental park to a resident-owned park (*Id.* at 1158-63); (ii) the purpose of Government Code section

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66437.5 is to provide uniform statewide standards for converting rental parks into resident-owned parks, thereby promoting conversions to home ownership (*Id.* at 1169-1170); (iii) the requirements set out in Government Code section 66427.5 are exclusive and local government has no authority to impose additional conditions (*Id.* at 1164, 1166); (iv) if the requirements of Government Code section 66427.5 are met, the local agency must approve the conversion application (*Id.* at 1165, 1167); (v) local government does not have the ability or the authority to determine whether a conversion is “bona-fide” or not (*Id.* at 1165); and (vi) mobilehome park residents do not have and cannot have the ability to veto a conversion by withholding support for a conversion application (*Id.* at 1172, 1181-82).

11. The Conversion Of A Mobilehome Park From A Leasehold To Resident Ownership Does Not Constitute A Change Of Use Allowing For The Imposition Of An Interim Ordinance Under Government Code Section 65858.

Government Code section 65858(a) states that the local legislative body may “adopt as an urgency measure an interim ordinance **prohibiting any uses** that may be in conflict with a contemplated general plan, specific plan, or zoning proposal . . .” (emphasis added). However, the Ordinance does not purport (nor could it) to prohibit the mobilehome parks’ use as mobilehome parks. Rather, it attempts to prohibit temporarily the conversion of mobilehome parks to resident ownership. As the court made clear in *El Dorado* however, “[A] change in form of ownership is not a change in use. After the change of ownership, the mobilehome park will remain a mobilehome park.” 96 Cal. App. 4th at 1162.

Furthermore, it is well established that a local agency cannot enact a moratorium on the filing or processing of subdivision applications. See *Building Indus. Legal Def. Fund. v. Superior Court*, 72 Cal. App. 4th 1410. In *Building Industry*, the court held, “[n]othing in [Section 65858] permits a city to prohibit the formal processing of development applications, such as a tentative subdivision map.” *Id.* at 1420. The court also found that “[t]he Subdivision Map Act has established a comprehensive procedure for processing development applications, and **nothing in it allows a city to prohibit the processing of a tentative subdivision map that is complete, a city cannot use an interim ordinance as a backdoor method to modify the rules.**” *Id.* at 1417 (emphasis added).

111. The Ordinance Is Not Supported By Factual Findings Constituting An Urgency.

It is also well-established that unless the ordinance “recites facts that constitute the urgency and those facts may reasonably be held to constitute an urgency,” an interim urgency ordinance will be held invalid. *216 Sutter Bay Assoc. v. County of Sutter*, 58 Cal. App. 4th 860,

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868 (1997). The Board of Supervisors may not use its power to pass interim urgency measures to further public policy goals where there is no finding of “a current and immediate threat.” Gov’t Code § 65858(c).

This Ordinance clearly does not contain the requisite findings of “an existing and immediate threat to the public health, safety, and welfare...” Rather, it merely makes conclusions without providing any factual support:

- “When initiated by residents of a mobilehome park, the conversion of the park to resident ownership may provide the residents with the security and advantages of full homeownership.”
- “Local experiences indicate that when local rent control is removed, space rents and the sales value of mobilehomes are destabilized.”
- “Although state law provides some protection for certain mobilehome park residents, the protection may be inadequate for residents who do not qualify as a lower income household.
- “While Government Code 866427.5 [sic] establishes certain parameters for the processing of an application for conversion of a mobilehome park to resident ownership, it appears to permit some level of local regulation . . . as may be essential to avoid the current and immediate loss of a significant portion of the County’s vital affordable housing stock.”

Nowhere in these purported findings is there any support for the purported “immediate threat” to public health, safety and welfare. The findings state that County local regulation of mobilehome park conversions may be essential to avoid the loss of affordable housing, but fail to note the availability of other affordable forms of housing in the County, only that mobilehome units are among those affordable housing forms. Nor do the findings consider that a state program under the Department of Housing and Community Development is in existence for the sole purpose of providing financial assistance to low-income residents who choose to purchase their lot, thus encouraging local agencies and residents to support conversions to resident ownership. Nor do the findings address the fact that mobile home park residents *may continue to*

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rent their units even after conversion to resident-ownership, thus calling into question whether any threat exists at all, let alone the immediacy of any alleged threat.

To the contrary, the statements contained in this Ordinance have been made in total disregard for the elaborate state legislative scheme that is designed to both encourage conversions and protect affordable housing. The Subdivision Map Act, and in particular Government Code section 66427.5, provide a comprehensive structure for mobile home conversions while also providing mitigation measures. It is settled law that section 66427.5 establishes a uniform statewide approach for converting mobile home parks to resident-owned facilities. *See EL Dorado*, 96 Cal. App. 4th at 1168-69. In short, the County has no authority, let alone legal grounds, upon which it may “comprehensively address mobile home park conversions,” which result in a change of ownership method.

Thus, the unsubstantiated findings set forth in this Ordinance fall far short of showing “existing and immediate threats to the public health, safety, or welfare.” Gov’t Code § 65858(c). Approval of this Ordinance by the Board of Supervisors without the requisite findings would constitute an improper use of its authority.

IV. Owners Will Seek Damages Against The County For A Delay In The Approval Of Their Conversion Applications.

The Court of Appeal’s holding in *El Dorado* and decisions by other courts have made very clear that local governments are pre-empted from attempting to legislate in the area of mobile home park conversions. Because the holding of *EL Dorado* makes very clear that the County does not have the authority to enact this sort of ordinance, the County is clearly imposing the moratorium in order to delay of the conversions of Carriage Acres and Trailer Haven.

Any delay caused by the County to the Conversions will cause the County to be liable for inverse condemnation, or “takings,” damages. The proper measure of damages for a taking would award the landowner “the return on the portion of fair market value that is lost as a result of regulatory restriction,” or “the market rate return computed over the period of the temporary taking on the difference between the property’s fair market value without the regulatory restriction and its fair market value with the restriction.” *Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 270-71 (11th Cir. 1987). Courts are in agreement that appreciation of the property during a taking must not be factored into the inverse condemnation damages calculation. *See Wheeler v. County of Pleasant Grove*, 833 F.2d 267, 271 (11th Cir. 1987); *Herrington v. County of Sonoma*, 790 F. Supp. 909, 914 (N.D. Cal. 1991), *aff’d*, 12 F.3d 901 (9th Cir. 1993). The

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United States Supreme Court has expressly held that because the market value of a property frequently appreciates during the period of a temporary taking, compensation is not measured by comparing the value of the property before and after its taking, because to do so would often result in no compensation being awarded the property owner despite having lost the use or value of its property during the taking. *Wheeler*, 833 F.2d at 271, citing *Kimball Laundry Co. v. United States*, 338 U.S. 1, 7 (1949)).

Owners hopes that the Board of Supervisors will refrain from approving this Ordinance. But if the County imposes an illegal moratorium and delays the Conversion, we will be forced to bring claims against the County for inverse condemnation and other wrongful acts. Damages will undoubtedly run into the millions. This firm is currently prosecuting three multi-millions dollar claims against cities and counties that have delayed conversions.

Very truly yours,

GILCHRIST & RUTTER
Professional Corporation



Richard H. Close
Of the Firm

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cc: Dana McRae, County Counsel (Via Fax, Email & U.S. Mail)

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 05, 2007 1:02 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/6/2007

Item Number : 30

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Comments :

As a 10 year resident of Carriage Acres Mobile Home Park and for the benefit of all mobile park residents, County and State wide, I urge the Board of Supervisors to adopt a moratorium on Mobile Home Park Conversions pursuant to a loophole in Section 66427.5 of the California Government Code, and the continued extension of the moratorium, if needed, until the State Legislature can ammend the code to close the loophole.

We here at Carriage Acres thank Supervisor Janet Beautz for her support in this issue and urge the Board of Supervisors to adopt last week's Resolution(2/27/2007 Agenda 65.1).

Respectfully submitted,

Chuck G. Bondi
Home owner and park resident
Carriage Acres Mobile Home Park