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**COUNTY OF SONOMA/CITY OF PETALUMA  
MOBILEHOME PARK SPACE RENT STABILIZATION PROGRAM  
ARBITRATION**

In the matter of:	)	
	)	
Youngstown Mobile Home Park,	)	<b>Final Arbitration Award</b>
Applicant	)	
	)	
And	)	
	)	
<u>Affected Tenants</u>	)	

**I. INTRODUCTION AND PROCEDURAL STATEMENT**

This matter was heard on January 12 and 13, 2022, via video conference, before Frances C. Fort, Arbitrator for California Hearing Officers, LLP.

This arbitration was commenced pursuant to Chapter 6.50 of the Petaluma Municipal Code, Mobilehome Park Rent Stabilization Program (Ordinance) by the owner of Youngstown Mobile Home Park, Youngstown MHP LLC (Park Owner). Youngstown Mobile Home Park (Youngstown or Park) is a mobile home<sup>1</sup> park with 103 spaces, 74 of which are subject to the Ordinance. Park Owner seeks a space rent increase for these 74 spaces under the Ordinance that exceeds 300 percent of the change in the Consumer Price Index (CPI), thereby triggering an automatic arbitration under Section 6.50.040 of the Ordinance.<sup>2</sup>

On or about November 9, 2021, Park Owner sent a notice to all Affected Tenants<sup>3</sup> of its proposed rent increase. Included with Park Owner's notice was its Brief and Supporting

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<sup>1</sup> "Mobilehome" and "mobile home" are used interchangeably herein. Section 6.50.20(I) of the Ordinance defines "mobilehome."

<sup>2</sup> All references to "Section" herein, unless otherwise indicated, are to Sections of the Ordinance.

<sup>3</sup> "Affected Tenants" is defined in the Ordinance as "those tenants whose space is not covered by a valid lease meeting the requirements as outlined in Section 798.17(b) of the California Civil Code or otherwise legally exempt from local rent control regulation. Such tenants are to be notified that a space rent increase is to become effective. For purposes of providing notice of the increase, providing copies of the rent stabilization ordinance, and support of a rent arbitration petition, each space subject to a rental increase shall be deemed to have only one 'affected tenant' for administrative convenience to the park owners. The reference to 'all affected tenants' will refer to one representative tenant from each space subject to the proposed rental increase." At the hearing, counsel for the Affected Tenants asked that they be referred to as "Affected Residents" since they own their mobile homes and rent the space and thus are not truly tenants. (Hearing, January 12, 2022, Livingstone Opening Comments.) The Arbitrator will herein refer to Affected Tenants as "Affected Residents."

Evidence in Support of Proposed Rent Increase and other information outlined in Section 6.50.050 of the Ordinance.<sup>4</sup> On November 18, 2021, the Arbitrator was appointed by the Clerk of the Petaluma Mobilehome Space Rent Stabilization Program to hear this matter pursuant to Sections 6.50.060(E) and 6.50.020(B) and (E) of the Ordinance.<sup>5</sup> Also on November 18, 2021, Ray Tovar, presumably on behalf of Clerk, sent Park Owner and all Affected Residents notice that an automatic arbitration regarding the proposed space rent increase would be held virtually on Monday, December 6, 2021. On Tuesday, November 23, 2021, counsel for some of the Affected Residents sent an email to the Arbitrator requesting a continuance of the December 6, 2021, hearing to the third or fourth week of January 2022. This request was joined by multiple unrepresented Affected Residents and was opposed by Park Owner.

On November 30, 2021, the Arbitrator issued an Order Re Request for Continuance, granting the continuance to no later than January 14, 2022, and setting a Scheduling Conference for December 6, 2021. A Scheduling Conference was held via Zoom on December 6, 2021.

On December 7, 2021, the Arbitrator issued an Order Re Scheduling, which included a briefing schedule and set an arbitration hearing date of January 12, 2022.

In addition, on December 16, 2021, the Arbitrator issued an Order Re Discovery Requests, and on January 6, 2022, an order denying a second request for a continuance, captioned Order Re December 15, 2021, Request for Continuance.

The matter commenced via Zoom on January 12, 2022, at 9:00 a.m. On January 13, 2022, the second hearing day, the matter ended at approximately 4:30 p.m.

## **II. APPEARANCES AND ADMITTED EVIDENCE**

Mark D. Alpert, Esq., of Gregory Beam & Associates, Inc. appeared on behalf of Park Owner. Evan Livingstone, Esq., of California Rural Legal Assistance, Inc., Richard L. Reynolds, Esq., Attorney at Law, and Garrison Boyd, Esq., of Legal Aid of Sonoma County appeared on behalf of Affected Residents.<sup>6</sup> Some Affected Residents were not represented by counsel in this matter and chose not to actively participate in the proceedings.

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<sup>4</sup> The Affected Residents do not dispute that Park Owner included all information required by Section 6.50.050 of the Ordinance with its November 9, 2021, notice.

<sup>5</sup> At the commencement of the hearing, Park Owner questioned the impartiality of the Arbitrator, stating that California Hearing Officers, LLP (CHO) has a contract with the County of Sonoma and Mr. Ray Tovar, Sonoma County Senior Community Development Specialist, has allegedly made comments to the press stating that he hoped the residents would win this arbitration. The Arbitrator was appointed pursuant to the Ordinance and has no knowledge of Mr. Tovar's statements beyond Mr. Alpert's statements on the record. Moreover, the County is not the real party in interest in this proceeding. And finally, Mr. Alpert made no formal motion to disqualify the Arbitrator or CHO from hearing this matter.

<sup>6</sup> Mr. Livingstone represents the following Affected Residents: Mary Scagliola, Byron Stevens, Paula Stevens, Christina Zapata, Donna Grady, and Christian Parker. Mr. Reynolds represents the following Affected Residents: Catherine Miller and Daralyn Ruchalski. Mr. Boyd represents the following Affected Residents: Bert and Janeth Botta, Devra Cirimeli, Donna Brady, Elizabeth Ruggio, Gennadiy and Tatyana Shklyar, Gloria Robison, Helena Zenia, Jennifer Boyle, John Robbins, Judith Tomich, Karen Mallon, Karen Weissberg, Kristine Kavanaugh, Maria

At the hearing, the following reports included with Park Owner's Petition were admitted into evidence: Report of Edward F. Gogin, Certified Public Account, dated October 28, 2021, (Residents Bates Stamp 0049-0094)<sup>7</sup>; Report of John P. Neet, MAI, dated September 20, 2021, (Residents 0095-0108).

At the hearing, the following reports included with the Affected Residents' Opposition to Park Owner's Petition were admitted into evidence: Analysis of the Youngstown Mobile Home Park Rent Increase Application by Kenneth K. Baar, PhD, dated December 29, 2021 (Residents 0109-0205); Report of Deane F. Sargent, PMC Financial Services, dated December 29, 2021 (Residents 0206-0456); Lease Analysis of Vanessa J. Hill, CPA of Evidentia Consulting, LLP, dated December 19, 2021 (Residents 0457-0476); and Report of Terry Bell, Realtor, Better Homes & Garden Wine Country Group, dated December 29, 2021 (Residents 0477-0481).

At the hearing, the following rebuttal reports were submitted with Park Owner's reply brief and admitted into evidence: John P. Neet, MAI, response to report of Kenneth Baar, dated January 3, 2022; John P. Neet, MAI, response to report of Terry Bell, dated January 3, 2022; John P. Neet, MAI, response to report of Deane F. Sargent, dated January 3, 2022; and Edward F. Gogin, CPA, response to report of Kenneth Baar, dated January 3, 2022.

In addition to the above listed reports, three additional documents were admitted into evidence during the hearing: Affected Residents' "Flood Map of Cottages" and "Terry Bell Comparable," and Park Owner's "Average Sales Price of New Manufactured Homes" chart, testified to by Mr. Neet. The record was kept open until January 14, 2022, to allow the parties to submit these additional three documents to the Arbitrator's office. On January 14, 2022, the Record was closed and the matter was submitted for decision.

Having been appointed as the Arbitrator in this matter, having considered the testimony of the witnesses at the arbitration proceedings on January 12 and 13, 2022, and having considered the presentation of evidence by counsel, and all arguments made, and having reviewed the recording of the proceedings, and for good cause appearing, the Arbitrator hereby issues this Final Arbitration Award as follows.

### **III. BURDEN OF PROOF**

Section 6.50.060(F)(A) of the Ordinance provides that "[t]he burden of proving that the amount of rent increase is reasonable shall be on the owner by a preponderance of the evidence." Under this provision, Park Owner has the burden of proof.

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Moraga, Marie Cuneo, Mark and Olga Burlyga, Mary Ruppenthal, Michael Goldfinger, Mirna Paredes De Curto, Mitchell Park, Pamela Phipps, Richard Pera, Sheri Feinstein, Tim and Mia Harriman, Kelly Drake, Deborah Pate, Jim and Loraine Erwin, Merlene Denee Cruz, and Lucila Carbajal.

<sup>7</sup> The Affected Residents submitted Bates stamped copies of the expert reports submitted with Park Owner's Opening Brief and the Affected Residents' Opposition Brief, and labeled them, "Residents 0001," et seq. The rebuttal expert reports and the three one-page documents submitted at the hearing were not Bates stamped. Citations to evidence in this Award will cross reference the "Residents" Bates stamp number where applicable.

#### **IV. PURPOSES OF THE ORDINANCE**

Section 6.50.010 of the Ordinance is titled "Findings and purpose." This section sets forth multiple findings and culminates in subsection (O) which states as follows:

O. The purpose of this Chapter is to:

1. Prevent the imposition of exploitive, excessive and unreasonable mobilehome space rent increases;
2. Assist in alleviating the unequal bargaining power which exists between mobilehome park residents and mobilehome park owners;
3. Provide mobilehome park owners with a guaranteed rate of annual space rent increase which accurately reflects the rate of inflation;
4. Provide an efficient and speedy process to ensure mobilehome park owners receive a fair, just and reasonable rate of return in cases where the guaranteed annual space rent increases provided by this chapter prove insufficient;
5. In the absence of a lawful vacancy, prevent excessive or exploitive rent increases upon the transfer of a mobilehome-on-site (i.e., on the mobilehome pad) to a new mobile-home owner while at the same time providing a process whereby mobile-home park owners are assured of receiving a fair and reasonable return.

Section 6.50.010(F) of the Ordinance states:

The city recognizes the right of the park owners to obtain a fair and reasonable rate of return and for their property to generate income to cover costs of operation and servicing of reasonable financing and to have under the auspices of the city an administrative procedure which will operate effectively and expeditiously to approve rent increases as are reasonable to meet said ends. At the same time there is a need to establish a means which if followed can provide protection to tenants from unreasonable rent increases resulting in loss of value to their property.

And finally, Section 6.50.010(N) of the Ordinance states:

The city council intends that this chapter be interpreted and enforced fairly and equitably, in a nondiscriminatory manner, and in accordance with constitutional requirements. For these reasons it is intended that the respective provisions of the ordinance be liberally construed and be considered severable, and that if any portion



of it is declared unconstitutional or unenforceable, the remaining portions shall remain valid and in effect.<sup>8</sup>

## **V. STANDARDS OF REVIEW AND DEFINITIONS UNDER THE ORDINANCE**

Section 6.50.100 of the Ordinance sets forth “Standards of Review” that are to be used “[i]n evaluating the space increase proposed or imposed by the owner.” It provides in relevant part as follows:

In evaluating the space increase proposed or imposed by the owner, the following factors or any other factors deemed relevant to the arbitrator may be considered:

- A. Beneficial increases in maintenance and operating expenses, including but not limited to the reasonable value of the owner’s labor and any increased costs for services provided by a public agency, public utility, or quasi-public agency or utility, provided, however, that any increased costs in rent stabilization administration fees shall be subject to the provisions of Section 6.50.040(B) and 6.50.160 herein. . . . [¶]
- C. Increased costs of debt service due to a sale or involuntary refinancing of the park within twelve months of the increases provided that:
  - 1. The sale or refinancing is found to have been an arm’s length transaction;
  - 2. The proceeds of such refinancing is found to have been used for park improvements or similar park related uses;
  - 3. The aggregate amount from which total debt service costs arise constitutes no more than seventy percent of the value of the property as established by a lender’s appraisal.
- D. The rental history of the space or the park of which it is a part, including:
  - 1. The presence or absence of past increases;
  - 2. The frequency of past rent increases;
  - 3. The occupancy rate of the park in comparison to comparable parks in the same general area.
- E. The physical condition of the mobilehome space or park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding twelve months.
- F. Any increase or reduction of housing services since the last rent increase.
- G. Existing space rents for comparable spaces in comparable parks.
- H. A decrease in “net operating income” as defined in Section 6.50.110(A).

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<sup>8</sup> See also Section 6.50.230 providing in part that “[t]his chapter shall be liberally construed to achieve its purpose and preserve its validity.”

- I. A fair return on the property prorated among the spaces of the park.
- J. Other financial information which the owner is willing to provide. . . . [¶]
- L. Notwithstanding any other provision to the contrary, no provision of this section or this chapter shall be applied to prohibit the granting of a rent increase that is demonstrated to be necessary to provide owner with a fair and reasonable return.

In addition, and relevant to these proceedings, Section 6.50.110 of the Ordinance states in relevant part:

In evaluating a space rent increase imposed by an owner to maintain the owner's net operating income from the park, the following definitions and provisions shall apply:

- A. "Net operating income" of a mobilehome park means the gross income of the park less the operating expenses of the park.
- B. "Gross income" means the sum of the following:
  - 1. Gross space rents, computed as gross space rental income at 100% occupancy; plus
  - 2. Other income generated as a result of the operating of the park, including, but not limited to, fees for services actually rendered; plus
  - 3. Revenue received by the park owner from the sale of gas and electricity to park residents where such utilities are billed individually to the park residents by the park owner. . . .
  - 4. Uncollected space rents due to vacancy and bad debts . . . .
- C. "Operating Expenses" means:
  - 1. Real property taxes and assessments.
  - 2. Utility costs to the extent that they are included in space rent.
  - 3. Management expenses . . . .
  - 4. Normal repair and maintenance expenses for the grounds and common facilities . . . .
  - 5. Owner-performed labor in operating and maintaining the park. . . .
  - 6. Operating supplies . . . .
  - 7. Insurance premiums . . . .
  - 8. Other taxes, fees, and permits . . . .
  - 9. Reserves . . . .
  - 10. Necessary capital improvement costs exceeding existing reserves for replacement. . . . [¶¶]

11. Involuntary refinancing of mortgage or debt principal. A park owner may, under the provision of this subsection, be able to include certain debt service costs as an operating expense. . . . [¶¶]

D. Operating expenses shall not include the following:

1. Debt service expenses, except as provided in subsection C,11 above.
2. Depreciation.
3. Any expense for which the park owner is reimbursed.
4. Attorneys' fees and costs, except printing costs and documentation as required by Section 6.50.050 only, incurred in proceedings before an arbitrator or in connection with the legal proceedings challenging the decision of an arbitrator or the validity of applicability of this chapter.

E. All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that an arbitrator finds any such expense to be unreasonable, the arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.

## **VI. SUMMARY OF RELIEF SOUGHT BY PARK OWNER**

Park Owner seeks a rent increase of \$286.22 per space per month for twelve months, and then asks that this rent increase be reduced by \$35.30 per space per month thereafter, resulting in a \$250.92 rent increase per space per month after twelve months. This increase is more than 300 percent of the CPI increase that is automatically allowed under Section 6.50.04(A)(1)-(2) of the Ordinance, and represents an increase of between 40 and 42 percent of the Affected Residents' existing rents.

Park Owner bases its requested rent increase on an increase in property taxes totaling \$116,112.76 which includes a \$72,477.32 ongoing annual increase and a one-time supplemental tax bill of \$43,635.44 for the 2020/2021 tax year, as well as annual debt service payments totaling \$237,655.56 (Gogin Report, dated October 28, 2021, at 4-6, Residents 0052-0054, 0072).<sup>9</sup>

Park Owner purchased the Park in November 2020 for \$14 million, putting \$6 million down, and financing \$8 million of the purchase price. As a result of the sale, the assessed value of the property went up causing an increase in property taxes from \$72,952.82 for the 2020/2021 tax year for the prior owner to \$145,430.14 for the 2021/2022 tax year for Park Owner,

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<sup>9</sup> Park Owner initially sought a rent increase based on taxes totaling \$116,112.76 per year, but in its reply and at the hearing, recognized that the annual taxes will not continue to include the supplemental tax bill amount of \$43,635.44. At the hearing, Park Owner admitted that the original request related to the increase in taxes was a mistake. Thus, Park Owner clarified in its Reply Brief and at the hearing that it is seeking a rent increase based on \$116,112.76 of increased taxes for one year only, and thereafter seeks a rent increase based on \$72,477.32 of ongoing increased taxes. (See Youngstown Mobile Home Park's Reply Brief in Support of Requested Rent Increase, as Modified, dated January 5, 2022, ("Reply"), at 19-20; Hearing, January 12, 2022, Weisfield Testimony (stating that a "mistake" was made)).

representing a \$72,477.32 increase (Gogin Report, dated October 28, 2021, Exs. 3, 3-A, Residents 0071-0079). Park Owner seeks a rent increase based on this tax increase of \$58.64 per space per month going forward, and an additional \$35.30 per space per month for the next twelve months.<sup>10</sup>

Also, as a result of its purchase of the Park, Park Owner pays \$237,655.56 per year in interest on its \$8 million loan. (Gogin Report, dated October 28, 2021, at 5 and Ex. 2, Residents 0053, 0058-0059). Park Owner seeks to recoup this debt servicing expense from Affected Residents through a rent increase of \$192.28 per space per month (\$237,655.56 divided by 103 spaces, divided by 12 equals \$192.28). (Gogin Report, dated October 28, 2021 at 5-6, and Ex. 2, Residents 0053-0054, 0058-0059).

Park Owner cites the “multi-factor” approach in the Ordinance for evaluating requested rent increases, stating that the Arbitrator “may consider” the factors set forth in the Standards of Review found in Section 6.50.100 of the Ordinance, “or any other factors deemed relevant.” (Park Owner Opening Brief, dated November 9, 2021, at 4, (“Opening Brief”). Park Owner bases its requested rent increase on Section 6.50.100, subsections (A), (C), (E), (G), (H), (I) and (L), Section 6.50.050(B)(1), and Section 6.50.010(O). (*Id.* at 5-8.)

Specifically, Park Owner bases the increased taxes component of its requested rent increase on Section 6.50.100(A) and (H), and Section 6.50.050(B)(1) of the Ordinance. Park Owner argues that the increase in taxes is “directly relevant to three separate factors listed in the Ordinance. It represents an increase in expenses, referenced in Section 6.50.100(A) of the Ordinance. It likewise would result in an equivalent decrease in Net Operating Income (See Section 6.50.100(H)). Finally, these increased expenses meet the definition of an unavoidable increase in expenses, reference in Section 6.50.050 of the Ordinance.” (Opening Brief at 5).

Park Owner bases the debt service component of its requested rent increase on Section 6.50.100(C)(1) and (3) of the Ordinance. Park Owner argues that “financing expenses are an indispensable aspect of most substantial real estate transactions. The Ordinance recognizes this reality in Section 6.50.100(C), which provides for a rent increase based on increased costs of debt service due to sale.” (Opening Brief at 5). Park Owner argues that the Ordinance specifies only two conditions relating to debt service due to a sale. “First, there is the requirement that the sale was an arm’s length transaction. . . . Second, the aggregate debt as a result of the transaction cannot exceed 70 percent of the property’s value.” (*Id.*) Park Owner argues that both of these conditions are met here, and that the third condition set forth in Section 6.50.100(C)(2) does not apply to financing related to a sale. (*Id.*)

In addition to the above factors specific to the tax and debt service components of Park Owner’s requested rent increase, Park Owner generally relies on Sections 6.50.100(E) and (G),

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<sup>10</sup> These numbers are based on simple math. A \$72,477.32 increase in taxes, divided by 103 spaces and divided by 12 months, results in \$58.64 per space per month requested increase. The one-time supplemental tax paid by Park Owner for the tax year 2020/2021 of \$43,635.44, divided by 103 spaces and divided by 12 months, results in an additional \$35.30 per space per month for the first twelve months (Reply at 19-20). Because Park Owner changed its request in its Reply brief and at the hearing, these numbers do not appear in the Gogin Report dated October 28, 2021, but instead are supported by pages 19 and 20 of Park Owner’s Reply.

as well as Section 6.50.010(O) of the Ordinance in support of its requested rent increase. Park Owner cites to Section 6.50.100(E), arguing that it is maintaining the Park in good condition. (Opening Brief at 6; Neet Report, dated September 20, 2021, Comparable Rental Data chart, Residents 0102). Park Owner cites to Section 6.50.100(G), arguing that the comparable rent analysis done by Mr. Neet shows that the current “prevailing rent” in comparable parks ranges between \$900 and \$1,625 per month, and that the “fair market space rents” are \$1,625 per month. (Opening Brief at 6; Neet Report, dated September 20, 2021, Residents 0103). Fundamentally, Park Owner states that its rent increase request must be evaluated against the backdrop of the purposes of the Ordinance as set forth in Section 6.50.010(O), arguing that “[r]ents must be set at levels which are consistent with the purpose of the Ordinance to avoid becoming unconstitutionally confiscatory.” (Opening Brief at 7; *see also* Reply at 2-3). Park Owner argues that the Ordinance cannot and should not be construed “to force park owners to subsidize below market rents.” (Opening Brief at 7).

In addition to its request for a \$286.22 per space per month rent increase for twelve months, reduced by \$35.30 per space per month thereafter, Park Owner also seeks an order granting it a 3.2 percent rent increase based on the increase in the CPI. (Reply at 24, 26).

Finally, Park Owner seeks a temporary rent increase of \$15.45 per space per month for a period of 60 months to recover the costs of this application. (Opening Brief at 10; Reply at 26).

## **VII. SUMMARY OF AFFECTED RESIDENTS’ ARGUMENTS**

The Affected Residents dispute Park Owner’s entitlement to a rent increase, and argue that no rent increase should be granted based on Park Owner’s Petition.

The Affected Residents argue that the property tax component of Park Owner’s requested rent increase should not be considered because Park Owner has not presented any evidence that it has a corresponding decrease in net operating income. (Youngstown Residents’ Brief in Opposition to Rent Increase by Youngstown MHP, LLC (“Opposition Brief”) at 7-9). They argue that while an increase in “operating expenses” is a factor that may be considered in evaluating Park Owner’s requested rent increase under Section 6.50.100(A), and property taxes are included as an “operating expense” under Section 6.50.110(C)(1), such “an increase in operating expenses under these sections may only be considered as part of an analysis of Standard of Review H [Section 6.50.100(H)], a decrease in net operating income.” (Opposition Brief at 8). The Affected Residents argue that because Park Owner has “not provided any evidence that there has been a decrease in net operating income . . . a rent increase based on an increase in property taxes may not be considered under any of the standards of review enumerated in Section 6.50.100.” (Opposition Brief at 8).

The Affected Residents also argue that Section 6.50.100(A) allows consideration of “beneficial” increases in operating expenses and that Park Owner has not demonstrated that the Park’s increased property taxes are a “beneficial” expense to the residents. (Opposition Brief at 6, 7). In addition, Affected Residents argue that Park Owner’s failure to appeal the property tax increases is a failure to exhaust their administrative remedies and precludes a rent increase based on the increased property taxes. (Opposition Brief at 7).

In their Opposition, Affected Residents also take issue with Park Owner's attempt to pass through a supplemental tax bill of \$43,635.44 for the tax year 2020/2021 in perpetuity. (Opposition Brief at 5-6). In its Reply and at the hearing, Park Owner has withdrawn this request, and now asks for a temporary rent increase for twelve months to recoup the cost of this supplemental tax bill. (Reply at 19-20; Hearing, January 12, 2022, Weisfield Testimony).

The Affected Residents also dispute Park Owner's entitlement to a rent increase based on debt service costs. They first argue that debt service is not an operating expense, except under limited circumstances not relevant here, and therefore cannot be a factor when determining whether Park Owner's net operating income has decreased. (Opposition Brief at 8-9).<sup>11</sup>

The Affected Residents admit that under Section 6.50.100(C), debt service is a listed factor that may be considered in evaluating a rent increase under the Ordinance. (Opposition Brief at 9). They argue, however, that Section 6.50.100(C) has three prongs, and that Park Owner only attempts to satisfy two of the three prongs, and has not shown prong (2), that "proceeds of such refinancing is found to have been used for park improvements or similar park related uses." (Opposition Brief at 9, quoting Section 6.50.100(C)(2)). More significantly, Affected Residents argue that notwithstanding the inclusion of debt service as a factor listed under "Standards of Review" in the Ordinance, courts have held in at least two cases that "consideration of debt service in determining allowable rent levels has no rational basis." (Opposition Brief at 10; Baar Report at 7-8, Residents 0117-0118). Based on the cited authority in their brief and the testimony of Dr. Kenneth Baar at the hearing, Affected Residents argue that debt service should not be considered in evaluating Park Owner's requested rent increase.

Affected Residents also rely on Section 6.50.100(D), arguing that the history of rent increases at the Park show that since 1993, the year before the adoption of the Ordinance, the rent has increased by 144 percent, while CPI has increased just 110 percent and therefore no rent increase is justified here. (Opposition Brief at 11).

Much of Affected Residents' Opposition Brief, and significant testimony at the hearing, is devoted to a fair return analysis using a "Maintenance of Net Operating Income" or "MNOI" methodology. (Opposition Brief at 14-21). Constitutional requirements as well as the stated purpose of the Ordinance in Section 6.50.010(O) require a fair return analysis. In addition, Section 6.50.100(I) lists "fair return" as a factor the Arbitrator can consider in evaluating a requested rent increase. Relying on Dr. Baar's report and testimony, as well as case law, Affected Residents argue that "the most objective metric used to determine whether the park owner enjoys a fair rate of return, is the maintenance of net operating income (MNOI) formula." (Opposition Brief at 14). Affected Residents argue that using projections outlined in Dr. Baar's report related to operating expenses dating back to 1993, under the MNOI formula, "growth in net operating income from the base year (1993) to the current year is in the range of \$390,000, an increase from \$261,866 in 1993 to \$653,617 in 2020, an increase of 150% compared to the 110%

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<sup>11</sup> Affected Residents argue that under Section 6.50.110(D), only costs of debt service that fit the limited definition set forth in Section 6.50.110(C)(11) may be considered as an "operating expense" and therefore calculated as part of NOI or a decrease in NOI under Section 6.50.100(H). (Opposition Brief at 7-8). Here, Park Owner does not contend that its debt service costs are an operating expense under Section 6.50.110(C)(11), but asks the Arbitrator to consider its debt service costs under Section 6.50.100(C).



increase in the CPI.” (Opposition Brief at 21). Because net operating income as calculated by Dr. Baar has outpaced inflation, Affected Residents argue that Park Owner is getting a fair return on the Park and no rent increase is justified.

Affected Residents also argue that the rent charged at Youngstown is similar to the rent charged for comparable spaces at comparable parks and thus Section 6.50.100(G), “[e]xisting space rents for comparable spaces in comparable parks,” does not support the rent increase sought by Park Owner. (Opposition Brief at 21). Affected Residents dispute Park Owner’s reliance on Mr. Neet’s opinion that the Cottages of Petaluma are comparable to Youngstown. (Opposition Brief at 22). Affected Residents also dispute Mr. Neet’s testimony and his report that a rent increase of \$286.22 will leave the Youngstown spaces “deeply affordable.” (Opposition Brief at 22). They argue that consideration of market rent is not a factor in the Ordinance and that even if it were, Mr. Neet fails to consider the mortgage payments that many residents have on their mobile homes. (Opposition Brief at 22, citing Report of Terry Bell at 2, Residents 0478).

In addition, and as with the increase in property taxes, the Affected Residents argue that the increased debt service is not “beneficial” to Affected Residents and therefore cannot be considered under Section 6.50.100(A) of the Ordinance. (Opposition Brief at 6-7).<sup>12</sup>

And finally, the Affected Residents dispute Park Owner’s claimed entitlement to recoup attorneys’ fees and costs incurred in arbitration, arguing that under Section 6.50.110(D)(4) of the Ordinance these expenses are specifically excluded from the definition of operating expenses, and that case law relied upon by Park Owner does not support Park Owner’s request. (Opposition Brief at 22-24).

## **VIII. ANALYSIS**

### **A. The Ordinance’s Multi-Factor Test**

The Petaluma Ordinance allows for annual rent increases equal to the lesser of “1. One hundred percent of the change in the CPI; or 2. Six percent.” (Section 6.50.040(A)). When a mobile home park owner seeks a rent increase in excess of the change in the CPI or six percent, residents can dispute the rent increase through the arbitration process outlined in the Ordinance, (Section 6.50.060(B)). If the rent increase sought exceeds 300 percent of the increase in the CPI, arbitration is automatically triggered. (Section 6.50.060(B)).

The Petaluma Ordinance sets forth a multi-factor test for determining whether a rent increase in excess of the increase in the CPI should be allowed. These factors are set forth in

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<sup>12</sup> Section 6.50.100(A) states that “[b]eneficial increases in maintenance and operating expenses” may be considered when evaluating a rent increase. Debt Service is expressly excluded as an operating expense, unless it meets the criteria set forth in Section 6.50.110(C)(11) not relevant here. Thus, the increase in debt service will not be considered under Section 6.50.100(A). Whether or not the debt service is “beneficial” is not at issue in this proceeding.

Section 6.50.100, “Standards of Review.” The Ordinance makes no attempt to weigh the different factors in importance, nor does it set forth any particular formula for determining when a rent increase might be justified. As testified by Mr. Gogin, “[t]here are some cities that are quite mechanical with respect to the way they approach a rent increase and how you calculate it. This city is just the opposite . . . after reading many other ordinances, this is probably the least definitive with respect to using any particular approach. It was the least cookbook, you might say, whereas other cities can be quite cookbook in the way you go and calculate the rent increases.” (Hearing, January 12, 2022, Gogin Testimony). In closing, counsel for Affected Residents called the Ordinance a “Rorschach Test,” stating, “everybody agrees, this ordinance is a Rorschach test. It means whatever, whatever you want it to mean.” (Hearing, January 13, 2022, Reynolds Closing Argument).

Notwithstanding the lack of definition, the Arbitrator will evaluate the requested rent increase using the factors set forth in Section 6.50.100 against the backdrop of the purpose of the Ordinance as set forth in Section 6.50.010(O): Park Owner must be allowed a “fair, just and reasonable rate of return in cases where the guaranteed annual space rent increases provided by this chapter prove insufficient; . . .” and that “exploitive, excessive and unreasonable mobilehome space rent increases” must be prevented. (Section 6.50.010(O)(1), (4)).

## **B. Fair Return Overview**

The right of cities and counties to regulate mobile home space rent increases is subject to the constitutional requirement that park owners must be permitted a “fair return.” (Baar Report, Appendix G, “Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches,” 29 Real Property Law Reporter 333 (Sept. 2006, CEB); Residents 0184); *see also Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165 (holding that local governments may enact rent control if it “provide[s] landlords with a just and reasonable return on their property.”) “[T]o be ‘just and reasonable’ a rate of return must be high enough to encourage good management including adequate maintenance of services, to furnish a reward for efficiency, to discourage the flight of capital from the rental housing market, and to enable operators to maintain and support their credit.” *Concord Communities v City of Concord* (2001) 91 Cal.App.4th 1407, 1415 (quoting *Oceanside Mobilehome Park Owners’ Ass’n v. City of Oceanside* (1984) 157 Cal.App.3d 887, 907); *see also Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 771 (in determining fair return, the court focuses on whether the regulatory agency took relevant investor interests into account). In a fair return analysis, net operating income must be allowed to grow; indefinitely freezing net operating income is considered confiscatory. *Fisher v. Berkeley*, (1984) 37 Cal.3d 644, 683.

There is no particular method required to meet the constitutional requirement of “fair return.” “Rent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula.” *Carson Mobilehome Park Owners’ Ass’n v. City of Carson* (1983) 35 Cal.3d 184, 191. “[T]he actual method utilized to regulate rents is immaterial so long as the result achieved is constitutionally acceptable.” *Carson Mobilehome Park Owners’ Ass’n v. City of Carson* (1999) 70 Cal.App.4th 281, 290, *citing Pennell v. City of San Jose* (1986) 42 Cal. 3d 365, 370-372; *see also Birkenfeld, supra*, 17 Cal.3d

at 165 (rejecting the notion that any particular formula must be used in determining a just and reasonable return).

Here, it is undisputed that the Petaluma Ordinance does not set forth a methodology for determining “fair return.” *See* Hearing, January 12, 2022, Barr Testimony (the Ordinance includes “fair return” as a factor under Section 6.50.100(I), but does not define it or indicate what type of fair return standard should be used).

Fair Return is one of the factors listed in the Standards of Review that may be considered in evaluating a requested rent increase (Section 6.50.100(I)). Providing a fair return is also set forth as a primary purpose of the Ordinance and the arbitration process (Section 6.50.010(O)). The Ordinance also essentially underscores the importance of fair return, providing: “[n]otwithstanding any other provision to the contrary, no provision of this section or this chapter shall be applied to prohibit the granting of a rent increase that is demonstrated to be necessary to provide owner with a fair and reasonable return.” (Section 6.50.100(L)).

### **C. Maintenance of Net Operating Income, “MNOI”**

The Affected Residents argue that the Maintenance of Net Operating Income (MNOI) methodology should be used to determine fair return. (Opposition Brief at 14-21). They argue that application of the MNOI methodology in this case shows that since 1993 the net operating income of the Park has grown well in excess of the growth in the CPI, and therefore provides Park Owner with a fair return. (Barr Report at 18-19, Residents 0129-0130). The Affected Residents argue that analysis using the MNOI methodology shows that Park Owner does not need a rent increase to get a fair return. (*Id.*)

Park Owner opposes the application of the MNOI methodology in this case.

Under the MNOI standard, fair return is defined as base year net operating income adjusted by a CPI factor. The “base year” is “[g]enerally, a year just before the adoption of rent regulations . . . based on the concept the rents in that year were set based on market conditions and, therefore, provided a net operating income that was a fair return to the [P]ark [O]wner.” (Barr Report at 13; Residents 0124). Under the MNOI methodology, park owners have a right to rent increases which cover increases in operating expenses and provide for an increase in net operating income based on the percentage increase in the CPI since the “base year.” Debt service is not considered as an operating expense and is not a part of the MNOI formula.

Here, the Ordinance was adopted in 1994, and Dr. Barr uses 1993 as a “base year,” estimating the net operating income in 1993 and comparing the growth in net operating income from 1993 to 2021 with the growth in the CPI during the same time period. He concludes that because the growth in net operating income has outpaced the growth in the CPI, Park Owner is getting a “fair return” and no rent increase is needed. (Baar Report at 18-19, Residents 0129-0130).

The MNOI methodology has been adopted by multiple local governments through rent boards or other local government arms charged with enacting rent control. In his report, Dr. Barr

states that “[a]t least 20 of California’s local mobilehome park rent stabilization ordinances contain an MNOI standard.” (Barr Report at 13-14, Residents 0124-0125). Citing the cities of Carson, Escondido, and San Marcos, Dr. Barr goes on to state that “cities with ordinances that do not specify the use of a particular fair return standard, commonly use an MNOI standard to make their fair return determinations.” (Barr Report at 14, Residents 0125).

Multiple court decisions have found the MNOI formula a reasonable method of determining “fair return.” See *Rainbow Disposal v. Mobilehome Park Rental Review Board* (1998) 64 Cal.App.4th 1159, 1172 (concluding the MNOI formula is a “fairly constructed formula” which provides a “just and reasonable return”); *Oceanside Mobilehome Park Owners’ Ass’n v. City of Oceanside*, *supra*, 157 Cal.App.3d at 902-905 (finding MNOI standard reasonable because it allowed an owner to maintain prior levels of profit); *Palomar Mobilehome Park Ass’n v Mobile Home Rent Review Com.* (1993) 16 Cal.App.4th 481, 486 (“the [MNOI] approach has been praised by commentators for both its fairness and ease of administration”).

It is undisputed that Petaluma has not adopted the MNOI methodology. The Ordinance does allow for consideration of a decrease in net operating income as a factor to consider when evaluating a rent increase (Section 6.50.100(H)), but there is nothing in the Ordinance suggesting that either a decrease or increase in net operating income should be examined going back to 1993, before the Ordinance was enacted. Nor is there anything in the Ordinance establishing 1993 as the “base year.” See *Kavanau*, *supra*, 16 Cal.4th at 772 (discussing rent control ordinances that expressly establish a “base year”). Instead, the Ordinance requires Park Owner to provide, with its notice of a rent increase, evidence of the Park’s net operating income for the prior 24 months (Section 6.50.050(B)(1)). This suggests that the relevant time period for evaluating requested rent increases is the last 24 months, and not almost thirty years.

Moreover, the Standards of Review in Section 6.50.100(C) provide for consideration of “[i]ncreased costs of debt service” when evaluating a request for a rent increase. Fair return analysis under the MNOI methodology does not include consideration of debt servicing costs. While “fair return” is listed as a factor under the Standards of Review in Section 6.50.100(I), it is also part of the overall purpose of the Ordinance under Section 6.50.010(O). The Ordinance must be read to provide a “fair return” to Park Owner, and the factors to determine whether the purposes of the Ordinance, including “fair return” have been met include increased costs of debt service.

When asked whether the MNOI methodology could be used when an ordinance expressly allows for consideration of debt service, Dr. Barr replied that at least two courts have found consideration of debt service to be “irrational,” suggesting that it should be ignored here. He ultimately testified that his analysis does not disregard increases in debt service. (Hearing, January 12, 2022, Barr Testimony). He testified that he did look to see that the net operating income was “adequate to cover” debt service, and concluded by stating, “I’m not saying that the hearing officer should only consider the fair return analysis. I’m saying it’s a factor.” (Hearing, January 12, 2022, Barr Testimony).

The testimony at the hearing also created doubt as to whether the underlying assumptions related to the net operating income in the base year of 1993 were accurate and reliable. Mr. Neet

testified that if you are going to compare the “base year” NOI, with the NOI in 2021, you “have to know what the 1993 [net operating] income was in this case. We don’t. Dr. Barr does not. None of the assembled attorneys do. I do not. The Arbitrator doesn’t. None of the residents do. Park Owner doesn’t. Nobody knows what the base year net operating income was.” (Hearing, January 12, 2022, Neet Testimony). Mr. Neet testified that because Dr. Baar “doesn’t know what the net operating income was in the base year . . . he cannot do a maintenance of net operating income analysis.” (Hearing, January 12, 2022, Neet Testimony). For example, Mr. Neet suggested that Dr. Baar’s assumptions regarding the 1993 property taxes were not accurate because they were higher than the 2017 property tax as stated in the Colliers Appraisal. (Hearing, January 12, 2022, Neet Testimony).

Dr. Baar testified that he “didn’t give an opinion” about whether the base year rents in 1993 used in his analysis reflected market rent. (Hearing, January 12, 2022, Barr Testimony). He testified that in fair return cases, the “burden is on the Park Owner to show that [the base year rent] doesn’t reflect market conditions. There was no evidence of that presented in this case. And generally, there’s a presumption that it reflected market conditions, unless you provide evidence it didn’t.” (Hearing, January 12, 2022, Barr Testimony). He testified that he took the base year rent from the Connerly Report, commissioned by the city of Petaluma before passing the Ordinance, and that there was nothing to indicate the numbers were off. (Hearing, January 12, 2022, Barr Testimony). Those numbers were put in Dr. Baar’s report. (Baar Report at 17, Table 3, Residents 0128). Dr. Baar also explained how he came up with numbers for 1993 management expenses, water, sewer, trash rates, and other operating expenses to use to determine total 1993 operating expenses, and ultimately estimate the 1993 NOI. (Hearing, January 12, 2022, Barr Testimony). Dr. Baar does not deny that he made assumptions using the limited data and time he had to estimate the 1993 net operating income. He testified that MNOI and the need to reconstruct net operating income for a “base year” is “not a perfect method,” but that it is the most reliable method available. (Hearing, January 12, 2022, Barr Testimony).

While it may be tempting to impose the MNOI construct on the fair return analysis under Petaluma’s Ordinance, to do so here would be contrary to the multi-factor test set forth in Section 6.50.100 that must be used to meet the overall purpose of the Ordinance. As stated by our California Supreme Court, the selection of an administrative rent ceiling standard “is a task for local governments . . . and not the courts.” *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644, 681. Here, MNOI has not been adopted by Petaluma as a way to determine fair return, its application is contrary to the multi-factor test set forth in the Ordinance, and the assumptions on which it is based in this case are not all credible.

#### **D. Consideration of Park Owner’s Increase in Operating Expenses**

Park Owner’s requested rent increase is based in part on an increase in property taxes as a result of reassessment following its purchase of the Park in November 2020. Affected Residents argue that Park Owner’s increased taxes should not be considered in determining fair return.

The Ordinance provides that in evaluating a requested rent increase in excess of the increase in the CPI, the Arbitrator may consider “[b]eneficial increases in . . . operating expenses



...” (Section 6.50.100(A)). The Ordinance defines operating expenses to include “[r]eal property taxes and assessments” (Section 6.50.110(C)(1)).

As set forth above, as a result of the sale, the assessed value of the property went up causing an increase in property taxes. Park Owner seeks a rent increase based on this increase of \$58.64 per space per month going forward, and an additional \$35.30 per space per month for the next twelve months. (Reply at 19-20).

The Affected Residents first argue that the increase in taxes is not “beneficial” and therefore cannot be considered. (Opposition Brief at 6-7). With property taxes come county services and they are therefore beneficial. In addition, the Ordinance expressly provides that real property taxes are an operating expense that may be considered in a petition for a discretionary rent increase. The Arbitrator will not decline to consider the increased taxes in the fair return analysis based on the argument that they are not “beneficial.”

The Affected Residents also argue that Park Owner’s failure to appeal the property tax increases is a failure to exhaust their administrative remedies and precludes a rent increase based on the increased property taxes. (Opposition Brief at 7). If Park Owner were seeking court review of its tax increase, this argument might be applicable. The Ordinance has no requirement that the property tax increase resulting from reassessment due to sale must be appealed before it can be considered in a petition for a rent increase.

The Affected Residents argue that the property tax component of Park Owner’s requested rent increase should not be considered because Park Owner has not presented any evidence that it has a corresponding decrease in net operating income. (Opposition Brief at 7-9). They argue that while an increase in “operating expenses” is a factor that may be considered in evaluating Park Owner’s requested rent increase under Section 6.50.100(A), and property taxes are included as an “operating expense” under Section 6.50.110(C)(1), such “an increase in operating expenses under these sections may only be considered as part of an analysis of Standard of Review H [Section 6.50.100(H)], a decrease in net operating income.” (Opposition Brief at 8). The Affected Residents argue that because Park Owner has “not provided any evidence that there has been a decrease in net operating income . . . a rent increase based on an increase in property taxes may not be considered under any of the standards of review enumerated in Section 6.50.100.” (Opposition Brief at 8).

There is nothing in the Ordinance that precludes the consideration of an increase in property taxes (which is an increase in operating expenses) unless there is also evidence showing a decrease in NOI under Section 650.100(H). However, the Ordinance does require that Park Owner establish that the requested rent increase is “necessary to provide owner with a fair and reasonable return” (Section 6.50.100(L) and that the guaranteed annual space rent increases based on the CPI are “insufficient” (Section 6.50.010(O)(4)).

Based on the foregoing, the Arbitrator will consider the increase in property taxes when evaluating Park Owner’s petition.



## **E. Consideration of Park Owner's Cost of Debt Service**

Park Owner's requested rent increase is also based on an increase in debt service costs following its purchase of the Park in November 2020. Affected Residents argue that Park Owner's debt servicing costs should not be considered in determining fair return.

Pursuant to Section 6.50.100(C) of the Ordinance, in evaluating a requested rent increase in excess of the CPI, the Arbitrator may consider:

Increased costs of debt service due to a sale or involuntary refinancing of the park within twelve months of the increases provided that:

1. The sale of refinancing is found to have been an arm's length transaction;
2. The proceeds of such refinancing is found to have been used for park improvements or similar park-related uses;
3. The aggregate amount from which total debt service costs arise constitutes no more than seventy percent of the value of the property as established by a lender's appraisal.

Park Owner argues that, as a result of its purchase of Youngstown in November 2020, it pays \$237,655.56 per year in interest on its \$8 million loan. (Gogin Report, dated October 28, 2021, at 5 and Ex. 2, Residents 0053, 0058-0059). Park Owner seeks to recoup this debt servicing expense from Affected Residents through a rent increase of \$192.28 per space per month (\$237,655.56 divided by 103 spaces, divided by 12 months, equals \$192.28). (Gogin Report, dated October 28, 2021 at 5-6, and Ex. 2, Residents 0053-0054, 0058-0059).

The Affected Residents did not present any evidence disputing that the sale of the Park was "an arm's length transaction" (Section 6.50.100(C)(1)), or that "[t]he aggregate amount from which total debt service costs arise constitutes no more than seventy percent of the value of the property as established by a lender's appraisal" (Section 6.50.100(C)(1)). Mr. Gogin testified and his report states that the acquisition was an arm's length transaction, and "the loan to value is 6 to 14, or 57 percent, well below the 70 percent threshold set forth in the Ordinance." (Hearing, January 12, 2022, Gogin Testimony; *see also* Gogin Report at 5, Residents 0053-0054).

The Affected Residents argue that Park Owner has not established that "[t]he proceeds of such refinancing is found to have been used for park improvements or similar park-related uses" (Section 6.50.100(C)(2)). They argue that because Park Owner has not established all three elements of Section 6.50.100(C), increases in debt service should not be considered in the fair return analysis.<sup>13</sup>

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<sup>13</sup> To be fair, the Affected Residents state that the Ordinance is "ambiguous" as to whether Section 6.50.100(C)(2) applies in a sale. (Opposition Brief at 10).

Section 6.50.100(C)(2) does not apply when the property has been sold. This Section clearly states that “[t]he proceeds of such *refinancing* . . .” must be used for park improvements, not the proceeds of a purchase money loan [italics added]. As provided in Section 6.50.100, the Arbitrator may consider “increased costs of debt service due to sale” in determining whether the requested rent increase should be approved.

The Arbitrator will consider Park Owner’s debt servicing costs when evaluating Park Owner’s petition.

#### **F. Fair Rate of Return in this Case**

As stated above, Park Owner’s requested rent increase is based on an increase in property taxes as a result of reassessment and an increase in debt service, both following its purchase of the Park in November 2020. In support of its Petition, Park Owner asks the Arbitrator to consider the following factors: increase in operating expenses (Section 6.50.100(A)), increase in costs of debt service (Section 6.50.100(C)), the physical condition of the property (Section 6.50.100(E)), existing space rents for comparable spaces in comparable parks (Section 6.50.100(G)), a decrease in net operating income (Section 6.50.100(H)), and a fair return on the property (Sections 6.50.100(I), (L)). Throughout these proceedings, Park Owner has appropriately emphasized that all factors in the Ordinance must be applied consistently with the purposes of the Ordinance, summarizing that purpose as “preventing the park owners from charging unfair or abusively high rents, while assuring the park owner earns at least the Constitutionally required ‘fair return.’” (Reply at 2).

Park Owner presented the expert reports and testimony of CPA Edward F. Gogin, and MAI appraiser John Neet, and the testimony of Park Owner’s Manager, Daniel Weisfield, in support of its petition for a rent increase.

Mr. Weisfield testified on direct that he reviewed the Ordinance prior to purchasing the Park and specifically relied on two provisions in the Ordinance allowing for, first, a “pass-through” of an increase in property taxes through a discretionary rent increase application, and, second, the owner’s ability to “pass on” acquisition debt financing expenses in a discretionary rent increase application as long as the factors in Section 6.50.100(C)(1) and (3) were met. (Hearing, January 12, 2022, Weisfield Testimony). On cross-examination, Mr. Weisfield clarified that he did not believe that the “pass-through” of increased debt service and taxes was automatic under the Ordinance, but instead increased taxes and debt service were factors that were to be included in evaluating a discretionary rent increase under the Ordinance. (*Id.*)

The Ordinance does not provide for a “pass-through” of increased taxes or debt service. Instead, as set forth herein, it provides for a multi-factor test which includes consideration of these two factors. The increase in taxes and debt service must be evaluated in the context of the Ordinance as a whole, to determine whether the requested rent increase based on these two factors is “demonstrated to be necessary to provide [Park Owner] with a fair and reasonable return” (Section 6.50.100(L)), and to “ensure [Park Owner] receive[s] a fair, just and reasonable rate of return in cases where the guaranteed annual space rent increases provided by this chapter prove insufficient” (Section 6.50.010(O)(4)).

In his report, Mr. Gogin summarizes the Ordinance, sets forth the increased taxes and the debt service that will be paid by Park Owner, and concludes that under the Ordinance, these factors justify the requested rent increase of \$286.22 per month.<sup>14</sup> He concludes that the requested rent increase will “assist” Park Owner “with maintaining a ‘fair and reasonable return’” as required by the Ordinance. (Gogin Report, dated October 28, 2021, at 7, Residents 0055). Mr. Gogin testified that he was retained “for a specific purpose to address the two increases in expenses that were solely attributed to [Park Owner’s] acquisition.” (Hearing, January 12, 2022, Gogin Testimony). He testified that he did not look at net operating income or the projected profit and loss for Park Owner prepared by Colliers in its Appraisal; he only looked at two factors “directly attributable to acquisition.” (*Id.*)

The record shows that Mr. Gogin did not do a fair return analysis. (Hearing, January 12, 2022, Barr Testimony (Park Owner “didn’t do a fair return analysis. They didn’t submit one.”)). On cross-examination, Mr. Gogin testified that he assumed that the prior owner was getting a fair return on investment because it never sought a rent increase beyond the CPI. (Hearing, January 12, 2022, Gogin Testimony). Mr. Gogin then testified that he assumed that Park Owner could only continue to get a fair return by increasing the rent by the amount of increased property taxes and debt service - the costs of acquisition. (Hearing, January 12, 2022, Gogin Testimony). He testified that properties have to turn over at some point; they will sell eventually, and that unless the new owner is permitted to recoup their acquisition costs, their return will go down. (Hearing, January 12, 2022, Gogin Testimony).

When pressed as to whether he did any calculations of whether the increased property tax and debt service expenses would prevent Park Owner from obtaining a fair return, Mr. Gogin testified as follows: “I did not do a return-on-investment analysis. That is what he’s referring to, I strictly kept it at the change in expenses . . . the two things that were caused by the change in ownership that the current owner is experiencing.” (Hearing, January 12, 2022, Gogin Testimony).

Dr. Baar testified that Park Owner’s rent increase petition is “not typical.” (Hearing, January 12, 2022, Barr Testimony). He testified that usually a petition would include calculations of overall income and expenses, and not just two items. (*Id.*) He testified that if just two items are sought, it would be “pursuant to a cost pass-through ordinance, but this is not a cost pass-through ordinance.” (*Id.*) Mr. Sargent offered a consistent analysis to that of Dr. Baar. He testified that “the only way that the current owner could pass through the property taxes and the debt service under this particular ordinance was if he could somehow make the case that the net operating income . . . had declined.” (Hearing, January 13, 2022, Sargent Testimony). He testified that there is no evidence to show that Park Owner’s net operating income declined, stating, “[i]n my judgment . . . the new owner isn’t making the case that their net operating income went down . . . so I don’t think they have a justification for passing through debt service or property tax because they don’t have a justification.” (*Id.*)

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<sup>14</sup> Mr. Gogin’s Report, dated October 28, 2021, was done before Park Owner modified its requested rent increase at the hearing and in its Reply (*see* Footnote 9, *supra*).

The Arbitrator finds that Park Owner's evidence does not establish that it cannot get a fair return short of the rent increase sought. Park Owner has failed to demonstrate by a preponderance of the evidence that the rent increase sought is necessary to provide Park Owner with a fair and reasonable return (Section 6.50.100(L)), or that the guaranteed annual space rent increase is insufficient (Section 6.50.010(O)(4)). Park Owner may accurately set forth its increased taxes, and its debt service costs, but it fails to put these two factors in the context that it repeatedly argues the Ordinance requires. That is, it fails to provide any evidence showing that these increased costs will cause it to *not* get a fair return unless the rent increase is granted. Park Owner wants us to assume that it cannot get a fair return because these two costs went up and asks us to assume that its net operating income decreased. But it did not provide evidence of this.

Nor did Park Owner present evidence showing that investors would not buy the property absent a rent increase. Park Owner cites to multiple cases for the proposition that a fair return requires more than breaking even, it must allow for a profit to be made on the investment and attract investment. *See Guaranty National Insurance Co. v. Gates* (9th Cir. 1990) 916 F.2d 508, 515 (breaking even is not enough; the law must provide for a profit on one's investment); *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1021 (fair return requires consideration of relevant investor interests, and whether the rents will allow for the maintenance of financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed); *see also Kavanau, supra*, 16 Cal. 4th at pp. 771-772 (same). While Mr. Weisfield testified that Youngstown MHP, LLC bought the property intending that Park Owner would seek a rent increase based on the increased costs, he admitted that the Ordinance does not provide for an automatic pass-through of these increased costs. He did not testify that Park Owner would not have bought the Park with existing rents subject to rent control, and in fact Park Owner did just that. Park Owner argues correctly that under case law cited herein, the fair return analysis must be done with an eye on encouraging investment and that investors in rent-controlled properties must be permitted to make a rate of return similar to other types of investment. But Park Owner did not offer evidence showing what its rate of return on the property is, much less compare that with the rate of return on other investments. Park Owner's evidence does not establish that the existing rents are insufficient to attract investment.

Mr. Dean Sargent did do an analysis of return based on information in the Colliers Appraisal and Park Owner's financials since it has owned the property. (Sargent Report, at Exs. 3A, 3B, Residents 0454-0456). The Colliers Appraisal projected net operating income of between \$654,419 and \$696,889 before debt service for the new Park Owner in 2021. (Colliers Appraisal, at 83, (attached to Sargent Report), Residents 0310). After debt service of \$237,556<sup>15</sup> per year, this number would be reduced to between \$416,863 and \$459,333. (Sargent Report, Exhibit 3A, Residents 0454). Using actual data from the new Park Owner for the first nine months of 2021, Mr. Sargent shows that the annualized net operating income for 2021 would be \$705,134, and after debt service Park Owner would be netting \$470,735. (Sargent Report, Exhibit 3B, Residents 0455). Mr. Sargent also compared this to the net operating income of the prior owner, both before and after debt servicing costs of the prior owner. (Sargent Report,

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<sup>15</sup> Mr. Sargent used \$234,400 as Park Owner's debt service amount, rather than the debt service as set forth in Mr. Gogin's report of \$237,556.56. (Compare Sargent Report, Exhibit 3A, Residents 0454, with Gogin Report, at 5, Residents 053). The Arbitrator is using Mr. Gogin's debt service number since that is the amount Park Owner is seeking in its petition.

Exhibit 3A, Residents 0454). Mr. Sargent's chart shows that the new Park Owner is making more than the prior owner. (*Id.*)

Park Owner argues that expenses incurred by the prior owner were removed by Mr. Sargent suggesting that the numbers in Mr. Sargent's report are not accurate. (Hearing, January 13, 2022, Sargent Testimony). But the evidence showed that these expenses were removed by Colliers in their Budget and Proforma Forecast prepared prior to the sale, not by Mr. Sargent. (*Id.*) Mr. Sargent testified that he used Colliers' numbers.<sup>16</sup> (*Id.*)

Mr. Sargent's analysis was the only evidence presented by either side showing what kind of return Park Owner is getting or could get given existing rents. There was nothing from Park Owner that would establish by a preponderance of the evidence that it cannot get a fair return short of the rent increase sought. It has therefore failed to demonstrate by a preponderance of the evidence that the rent increase sought is necessary to provide Park Owner with a fair and reasonable return (Section 6.50.100(L)), or that the guaranteed annual space rent increase based on the CPI is insufficient (Section 6.50.010(O)(4)).

### **G. Comparable Space Rents in Comparable Parks**

Section 6.50.100(G) states that "[e]xisting space rents for comparable spaces in comparable parks" may be considered in evaluating a requested rent increase. Both Park Owner and the Affected Residents presented evidence on this factor.

Park Owner submitted the report and testimony of John Neet, MAI. Mr. Neet has expertise in appraisal of mobile home parks, testifying that over his career he has appraised in excess of 7,000 mobile home parks. (Hearing, January 12, 2022, Neet Testimony). Mr. Neet testified that he surveyed all the mobile home parks in Petaluma including Youngstown, Petaluma Estates, Capri Mobile Villa, Leisure Lake, Littlewoods Mobile Villa, Royal Oaks, and the Cottages of Petaluma. (Hearing, January 12, 2022, Neet Testimony; Neet Report, dated September 20, 2021, Comparable Rental Data chart, Residents 0102.) He concluded that only three of the five other mobile home parks in Petaluma were comparable to Youngstown: Petaluma Estates, Royal Oaks, and the Cottages. (Hearing, January 12, 2022, Neet Testimony; Neet Report, Comparable Rental Data chart, Residents 0102). Mr. Neet's Report shows that the average rents at Youngstown are \$794 per space per month, at Petaluma Estates they are \$837 per space per month, at Royal Oaks they are \$800 per space per month, and at the Cottages of Petaluma they are \$1,123 per space per month. (Neet Report, dated September 20, 2021, Comparable Rental Data chart, Residents 0102). Mr. Neet's Report shows that "[o]n a utility adjusted basis, the average rental rates reported at these properties were \$705/month [for Petaluma Estates], \$800/month [for Royal Oaks] and \$1,123/month [for the Cottages]" (Neet Report, dated September 20, 2021, Residents 0103).

Mr. Neet concluded that the market rent for spaces at Youngstown is \$1,625 per month, and that the prevailing rent ranged between \$900 and \$1,625 per month. (Hearing, January 12,

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<sup>16</sup> Park Owner has argued in this proceeding that the Colliers Appraisal is reliable. (Hearing, January 13, 2022, Alpert).



2022, Neet Testimony; Neet Report, Prevailing Rent Analysis and Market Rent Analysis, Residents 0103). Mr. Neet testified that his analysis shows that the rent increase of \$286.22 per space per month sought by Park Owner here would put the rents at Youngstown “at or below market levels,” and because they are well below the market rate, they would not be “exploitative, excessive and unreasonable” under Section 6.50.010(O)(1). (Hearing, January 12, 2022, Neet Testimony).

Mr. Neet testified that in preparing his report, he looked at the Colliers Appraisal that was used for the CapitalOne loan to Park Owner in the purchase, as well as published data on rent surveys of mobile home parks by JLT Surveys or Data Comp, and local listings on MLS and Zillow. (Hearing, January 12, 2022, Neet Testimony). On rebuttal, he specifically testified regarding the Rent Summation Table that is part of the Colliers Appraisal. (Hearing, January 13, 2022, Neet Testimony, Colliers Appraisal, at 72 (attached to Sargent Report), Residents 0299). Colliers rated Youngstown as “Average/Good” on the factors of location, appeal, quality, and condition, and rated the Cottages on these same factors as only “Average.” (*Id.*) Park Owner argues that the fact that Mr. Neet finds Youngstown comparable to the Cottages, and not superior as Colliers did in its appraisal, underscores the credibility of Mr. Neet’s opinion. (Hearing, January 13, 2022, Neet Testimony).

The Affected Residents dispute Mr. Neet’s opinion that the Cottages are comparable to Youngstown, and argue that the Cottages is an outlier and space rents at the Cottages are not representative of comparable space rents in mobile home parks in Petaluma. They also dispute Mr. Neet’s claim that the rent increase sought is not “exploitative, excessive and unreasonable.” The Affected Residents offered the testimony of Terry Bell, a realtor who specializes in mobile home sales in Sonoma County, as well as that of longtime residents of Youngstown who are familiar with both Youngstown and the Cottages, and one longtime resident of the Cottages.

Terry Bell, a licensed real estate broker in Sonoma County, testified that she sells approximately ten mobile homes per year, and has sold approximately 140 mobile homes in Sonoma County over the course of her career. (Hearing, January 13, 2022, Bell Testimony).<sup>17</sup> She also testified that before making a sale, she generally shows potential buyers about ten different mobile homes. (*Id.*) She testified that the high space rents in the Cottages cause some of her potential buyers to not look there. She also testified regarding the qualitative differences between the Cottages and Youngstown, both as to surrounding area, space, and the amenities, including an updated clubhouse and green spaces, as well as the age and look of the homes. (*Id.*) She testified, and her report states, that in her opinion as a realtor, the Cottages are not comparable to Youngstown, and she believes that the Cottages should be “eliminated from [Mr. Neet’s] comparison data.” (Hearing, January 13, 2022, Bell Testimony, Bell Report at 2-4, Residents 0478-0480). She testified that the Cottages markets itself as having a “country club style of living,” while she would consider Youngstown “to be similar to most other senior mobile

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<sup>17</sup> Park Owner objected to Ms. Bell’s testimony as an appraiser (Hearing, January 13, 2022, Bell Testimony). Ms. Bell was not offered as a licensed appraiser, but as a realtor with extensive experience in the mobile home market in Sonoma County.



home parks in Sonoma County as trying to attract affordable housing for seniors.” (Hearing, January 13, 2022, Bell Testimony).

Several of the Affected Residents testified regarding their personal knowledge of the Park. Mary Ruppenthal is a longtime resident of Youngstown, having lived there since 1987. She testified that Youngstown is bordered on three sides by non-residential development. (Hearing, January 12, 2022, Ruppenthal Testimony). She testified that on one side is the highway, which creates noise and soot. (*Id.*) She testified that CalTrans put in a sound barrier wall, but that it has done little to reduce the noise or the soot level. (*Id.*) She also testified that Youngstown is bordered on two other sides by a PG&E plant and auto repair shop and that across the freeway is a stockyard. (*Id.*) She testified regarding the loud noises from the PG&E plant and the stench of manure from the stockyard. (*Id.*) She also testified that her property flooded in the recent rainstorm. In addition, she testified that semi-trucks are stored between the auto repair shop and PG&E. (*Id.*) She testified that she is familiar with the Cottages and, based on her personal knowledge, does not believe it is comparable to Youngstown, citing the superior amenities at the Cottages, including a new clubhouse, BBQ area, and exercise room. (*Id.*)

Paula Stevens also testified for the Affected Residents. She has lived at Youngstown since 1982. (Hearing, January 13, 2022, Stevens Testimony). Her testimony was similar to Ms. Ruppenthal’s. She testified to the noise and soot from the freeway, stating that she and her husband pressure wash their home two to three times per year to remove the soot from the freeway. (*Id.*) She also testified that the PG&E substation is “very noisy” and that the razor wire around the substation is visible from Youngstown. (*Id.*) She further testified regarding the stockyard across the freeway from Youngstown and to the smell of manure and offal deposited there. (*Id.*) Finally, she testified regarding a homeless encampment about 200-400 feet from the closest mobile home in Youngstown and to flooding in 2006 and fall of 2021. (*Id.*)

The Affected Residents also called Bill Donahue. Mr. Donahue is a longtime resident of the Cottages, having lived there since 1999. He testified that there is no traffic noise at the Cottages, and that he hears “birds.” (Hearing, January 12, 2022, Donahue Testimony). He testified that the overall appearance of the Cottages is a country-club type atmosphere. (*Id.*) He testified that he is the president of the Homeowner’s Association at the Cottages, and that he personally pays \$700 a month for his rent-controlled space and that Cottages’ residents in rent-controlled spaces pay between \$500 and \$700 per month. (*Id.*) He further testified that he is aware of residents at the Cottages who pay \$1,500 per space, and is further aware that new buyers are being offered rent of \$1,625 per space per month. (*Id.*)

Mr. Neet was the only qualified appraiser that testified. However, the testimony based on the personal and professional knowledge of Ms. Bell, the personal knowledge of Youngstown residents Mary Ruppenthal and Paula Stevens, as well as that of Mr. Donahue, combined with an analysis of Mr. Neet’s Comparables Chart, overwhelmingly suggests that the Cottages are not similar to Youngstown. (*See* Neet Report, dated September 20, 2021, Comparable Rental Data chart, Residents 0102).

Mr. Neet testified that he was aware that Youngstown bordered the freeway and was next to a PG&E substation, an auto repair shop, and a stockyard, and that the Cottages had none of

this, as it is located in a residential area. (Hearing, January 12, 2022, Neet Testimony). The aerial maps of both Youngstown and the Cottages confirm this testimony, showing that while the Cottages is bordered by other residential property, Youngstown is bordered on three sides by industrial uses, and only has other residents on one side of the property. (Colliers Appraisal, at 33 (attached to Sargent Report), Residents 0260; Flood Map of the Cottages, admitted into evidence on January 12, 2022). Mr. Neet also admitted that Youngstown is in a flood zone, while the Cottages is not. (Hearing, January 12, 2022, Neet Testimony; Colliers Appraisal, at 30, 35 (attached to Sargent Report), Residents 0257, 0262; Flood Map of the Cottages, admitted into evidence on January 12, 2022). He testified that he was not aware of homeless encampments and did not believe that the livestock across the freeway from Youngstown would have any effect on value, so he did not consider it. (Hearing, January 13, 2022, Neet Testimony). The weight of the evidence showed that that Cottages is in a better location than Youngstown.

Even more compelling was the description of the amenities at each of the parks. No one disputed that Youngstown has nice amenities, but the Cottages amenities were consistently described as superior. Ms. Bell, Ms. Ruppenthal, and Mr. Donahue all testified that amenities were better at the Cottages. (Hearing, January 12, 2022, Ruppenthal and Donahue Testimony; Hearing, January 13, 2022, Bell Testimony).

Mr. Neet's Report shows that the average rent at Youngstown is comparable to that at Petaluma Estates and Royal Oaks, the two other mobilehome parks he considered in his analysis. (Neet Report, dated September 20, 2021, Comparable Rental Data chart, Residents 0102). The average rent at Youngstown is \$794, compared with \$837 at Petaluma Estates, and \$800 at Royal Oaks, and even lower when adjusted for utilities. (*Id.*) The Cottages is an outlier at \$1,123 per space per month rent. (*Id.*)<sup>18</sup>

The evidence offered by Park Owner that comparable rents at the Cottages support the requested rent increase here is not convincing, and does not shift the scales sufficiently to warrant the requested rent increase sought.

#### **H. Rent Increase Based on the CPI**

Park Owner also seeks an order granting it the right to implement an annual rent increase of 3.2 percent in accord with the CPI in addition to and simultaneously with implementing the rent increase set forth above. Park Owner argues that it withdrew its notice of a CPI rent increase that would have taken effect on January 1, 2022, because Sections 6.50.040(A) and 6.50.060(F)(3) of the Ordinance only allow one increase per year, unless the "owner can clearly establish that the rental increase is necessary to cover costs of operation, maintenance, capital improvements or substantial rehabilitation not reasonably foreseeable at the time notice of the

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<sup>18</sup> The evidence shows that most of the spaces at the Cottages are not subject to the rent control ordinance. (Colliers Appraisal at 79, attached to the Sargent Report, Residents 0306). However, under the Ordinance, non rent-controlled spaces are not precluded from consideration as comparable under the Ordinance (Section 6.50.100(G)). *See also* Baar Report at 8, Residents 0119 ("The standard in the ordinance provides for consideration of 'existing space rents.' Existing space rents include all of the rents in comparable parks rather than only the rent-controlled spaces or only the spaces with new tenants and/or exempt leases.")

preceding rent increase was given.” (Section 6.50.060(F)(3)). Park Owner argues that unless it is allowed a CPI increase in addition to the increase sought through this petition, there will be no CPI increase reflecting inflation for over three years, stating that the last CPI increase went into effect in February 2020.

In support of this request, Park Owner argues that it could not have combined its two increases in one petition because it had to notice the CPI increase by October 1, 2021, and did not have tax information until later in October 2021 that it needed to support the instant rent increase request. (Reply at 24). Park Owner also argues that to “the extent that the Ordinance modified the burden of proof for a rent increase application, it frustrates the overall purposes of the Ordinance and would deny the [P]ark [O]wner a fair return.” (Reply at 23). Park Owner argues that under *Fisher v. City of Berkeley*, *supra*, 37 Cal.3d at 694-699, and the Evidence Code, the City did not have the legal right to apply a higher burden of proof for a second rent increase. (*Id.*) And finally, Park Owner argues that even if the “illegal” higher burden of proof is applied, Park Owner has met that burden because it did not have the information necessary to combine the two rent increases into one petition in a timely manner for the reasons set forth above. (Reply at 24-25).

Under Section 6.50.040(C), “[t]he arbitrator may reduce [the] proposed [rent] increase to a figure determined upon the evidence submitted by the park owner or his/her representative to be a fair return upon investment.” Under this provision, the Arbitrator will allow Park Owner to apply a 3.2 percent CPI increase.

### **I. Temporary Rent Increase Based on Costs of Bringing Petition**

Finally, Park Owner argues that it has incurred substantial expenses in preparing its petition for a rent increase and is entitled to recover such costs both under prevailing California law and under the application for a fair rent return. Citing *Galland v. City of Clovis*, *supra*, 24 Cal.4th at 1040, Park Owner argues that without a separate mechanism to recover the cost of preparing its petition, it will be denied a fair return. (Opening Brief at 10). In its Reply, Park Owner quantified this request at \$15.45 per space per month for 60 months. (Reply at 26). Although Park Owner does not state the total recovery it is seeking, \$15.45 x 73 spaces x 60 months totals \$67,671.

Affected Residents oppose Park Owner’s request under Section 6.50.110(D)(4) and the *Galland* case.

Section 6.50.110(D)(4) of the Ordinance specifically excludes attorneys’ fees and costs incurred in arbitrating or litigating a rent increase petition from the definition of “operating expenses.” Whether or not this provision is unconstitutionally confiscatory depends on the facts. As stated by the court in *Galland*, it is the “overall result of the rent-setting process, not the method employed or any particular exemption legislated, that determines whether a rent control regime is confiscatory.” *Galland*, 157 Cal.App.3d at 1028, *citing Kavanau*, *supra*, 16 Cal.4th at 771-72. An ordinance could be found to be confiscatory if it “operates to impose large and unnecessary costs on landlords, and if as a result of that imposition a landlord is only able to garner a rate of return that is deemed confiscatory.” *Id.*

In *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside*, *supra*, 157 Cal.App.3d at 909-910, cited in *Galland*, the court considered a facial challenge to a rent control ordinance, including a challenge to a provision excluding attorneys' fees from operating expenses and declined to find it per se unconstitutional or confiscatory. The court in *Oceanside Mobilehome Park Owners' Ass'n* stated that:

The trial court incorrectly determined this provision [excluding recoupment of attorneys' fees] unconstitutionally impedes park owners from seeking legal redress and representation to protect their property interests. The provision only prevents park owners from passing the burden of those fees to their tenants in the form of higher rents regardless of the outcome of the proceedings. The exclusion has no more of a "chilling effect" on park owners' rights to pursue their legal remedies than does the traditional American rule denying litigant attorney fees in the absence of express authority. Further, the burden on park owners is likely to be less than on the tenants, because the park owners are able to treat these attorney fees as business deductions for income tax purposes.  
157 Cal.App.3d at 909-910.

Here, there is no evidence to support the fees and costs for which Park Owner seeks reimbursement. There are no bills, or declarations or statements, only a request in their Reply brief that they should be able to recoup \$15.45 per space per month for 60 months. For this reason alone, the Arbitrator denies this request.

But even if there were evidence to support this request, the Arbitrator does not find that the Ordinance operates to impose large and unnecessary costs on landlords under *Galland*, *supra*, 157 Cal.App.3d at 1028, or that denial of an award of attorneys' fees and costs would be confiscatory. Here, the arbitration process is only automatically triggered when a park owner seeks an increase at or above 300 percent of the CPI. The arbitration process itself is designed to be an "efficient and speedy process to ensure mobilehome park owners receive a fair, just and reasonable rate of return in cases where the guaranteed annual space rent increases provided by this chapter prove insufficient" (Section 6.50.010(O)(4)). In contrast to the facts in *Galland*, where the court found that the city's agency caused numerous delays and made burdensome requests for additional information on the mobile home owner who sought a rent increase and caused the proceedings to last over three years, here, Park Owner's petition will be resolved within 90 days of its notice. *Galland* does not support Park Owner's request to recoup costs of bringing its petition and that request is denied.

## **IX. ORDER**


In accord with the foregoing, the Arbitrator hereby orders as follows:

- (1) Park Owner's request for a rent increase of \$286.22 per space per month, to be reduced by \$35.30 after twelve months is DENIED.
- (2) Park Owner's request to implement an annual CPI adjustment of 3.2 percent is GRANTED.

- (3) Park Owner's request for a temporary rent increase of \$15.45 per space per month for a period of 60 months to recover the cost of this application is DENIED.
- (4) The decision of the Arbitrator, rendered in accordance with this section, shall be final and binding upon the owner and all affected tenants. The decision of the Arbitrator will be subject to the provision of California Code of Civil Procedure Section 1094.5. (Section 650.060(F)(4)).

IT IS SO ORDERED.

Date: February 1, 2022

  
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Frances C. Fort, Arbitrator  
California Hearing Officers, LLP



## Cal Code Civ Proc § 1094.5

### **§ 1094.5. Inquiry into validity of administrative order or decision**

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(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to the Local Health Care District Law (Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code) or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.



(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)

(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (c) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 of the Government Code.

### **Proof of Service**

I, Lynette McPherson, am over 18 years of age and not a party to this action. I am employed in the county where the emailing took place.

My business address is P.O. Box 279560, Sacramento, California, 95827, which is located in the County of Sacramento.

On **February 1, 2022**, I served the following document(s) via email:

**Document Title: Final Arbitration Award**

**Applicant: Youngstown MHP, LLC**

**Park Location: Petaluma, California**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Lynette McPherson  
Paralegal