DOWDALL LAW OFFICES
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
284 NORTH GLASSELL STREET
FIRST FLOOR
ORANGE, CALIFORNIA 92866-1409
WWW.DOWDALLLAW.COM

TERRY R. DOWDALL
trd@dowdalllaw.com
JAN D. BRESLAUER
jdb@dowdalllaw.com

MARVIN B. ADVIENTO
mba@dowdalllaw.com

Area Code 714
TELEPHONE 532.2222
FACSIMILE 532.3238

IN REPLY REFER TO:

10306

June 5, 2023

VIA ELECTRONIC MAIL

Peggy Flynn City Manager *pflynn@cityofpetaluma.org*
Mayor Kevin McDonnell *kmcdonnell@cityofpetaluma.org*
Council Member Brian Barnacle *bbarnacle@cityofpetaluma.org*
Vice Mayor Janice Cader Thompson *Jcaderthompson@cityofpetaluma.org*
Council Member Mike Healy *mhealy@cityofpetaluma.org*
Council Member Karen Nau *knau@cityofpetaluma.org*
Council Member Dennis Pocekay *dpocekay@cityofpetaluma.org*
Council Member John Shribbs *jshribbs@cityofpetaluma.org*

RE: Response to Staff Report re:
Workshop to Receive Stakeholder Input and Public Comment, and for Council Deliberation and Direction on Potential Amendments to Petaluma Municipal Code Chapter 6.50 Entitled "Mobilehome Park Rent Stabilization Program"

Dear Mayor and Honorable Councilmembers:

These offices represent mobilehome park owners and operators in the City of Petaluma and I write on their behalf. A staff report was issued June 1, 2023 respecting the above referenced Council deliberation, from Eric Danly, City Attorney, Dylan Brady, Assistant City Attorney and Karen Shimizu, Housing Director.

The park owners respectfully thank council and staff for consideration of these proposals for further study and exploration of facts. We seek common grounds of mutually acceptable terms and consensus between stakeholders and city. We invite a productive dialogue to maintain a quiescent status quo. Détente can be a "win-win."

This letter is purposed to identify factual errors and discrepancies precluding reliance or use as *"constitutional facts"* as required in order to support the rationale for amendments to a pre-existing rent control law as required by *Birkenfeld v. City of Berkeley* (1976) 130 Cal.Rptr.

465, and *Adamson Companies v. City of Malibu*, 854 F.Supp. 1476, 1487 (1994).[1] Comparing and contrasting the extent and form of regulation adopted by other local municipalities constitutes no justification whatsoever to find market dysfunction (rent-controlled justification) in Petaluma; this is not enough. The city is responsible to develop its own assessment of needs and exigencies. As the judge in *Adamson Companies* stated, "[T]he difficulty with the City's position is that no matter what conditions exist elsewhere, this Court is not bound to find that those same conditions necessarily exist in Malibu." *And no matter what conditions exist elsewhere, the Court is not bound to find that those same conditions necessarily exist in Petaluma.* We question the existence of any new "constitutional facts" to show the amendment of the ordinance would be valid.

Contrary to the content of the Staff Report, the Park owners have demonstrated the absence of any rational basis for the adoption of proposed rent control amendments. The sole reason postulated for the amendments is because *other cities are doing it*. "[A]lthough the existence of facts upon which the validity of an enactment depends is presumed, their *non-existence can properly be established by proof. United States v. Carolene Products Co.*, 304 U.S. 144, 152-54, 58 S.Ct. 778, 783-85, 82 L.Ed. 1234 (1938), *Birkenfeld v. City of Berkeley*, 130 Cal.Rptr. at 488, 550 P.2d at 1024.

The proof that has been brought to the attention of the Council includes absence of *any* evidence of gouging, irrefutable evidence of soaring mobile home values, and absence of widespread (or any) dislocations caused by excessive rents. Yet, the staff report is replete with

---

[1] "The difficulty with the City's position is that no matter what conditions exist elsewhere, this Court is not bound to find that those same conditions necessarily exist in Malibu. Although the existence of facts upon which the validity of an enactment depends is presumed, their non-existence can properly be established by proof. United States v. Carolene Products Co., 304 U.S. 144, 152-54, 58 S.Ct. 778, 783-85, 82 L.Ed. 1234 (1938); Birkenfeld v. City of Berkeley, 130 Cal.Rptr. at 488, 550 P.2d at 1024. Accordingly, if the park owners show that the alleged shortage-driven monopoly does not exist in Malibu, this rationale cannot justify the rent control ordinance. Birkenfeld, 130 Cal.Rptr. at 488, 550 P.2d at 1024 ("[T]he constitutionality of residential rent controls under the police power depends upon the actual existence of a housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure."); also see Lockary v. Kayfetz, 917 F.2d 1150, 1155 (9th Cir.1990) ("Although a water moratorium may be rationally related to a legitimate state interest in controlling a water shortage, [the plaintiffs] have raised triable issues of fact surrounding the very existence of a water shortage."). The record made at the Court's hearing on this issue leaves no doubt that the monopoly theory presented by the City is fundamentally flawed, and that any limited power disparity that might exist between the park owners and the tenants is not sufficient to justify a regulatory scheme as onerous as the one under review here."

false and untrue claims and representations. A representative summary for your review is as follows:

1. Staff Report, Page 2: The city interpretation is that the state law removes the long-term lease exemption.

> ". . . City's mobilehome rent regulations accommodated section 798.17 of the State's Mobilehome Residence Law, which exempted mobilehome rental agreements with terms longer than 12 months. However, AB-2782, adopted
> Page 1
> August 31, 2020, amended the State Mobilehome Residence Law to eliminate the exception for longer-term leases for leases entered beginning on February 13, 2020. As a result of AB-2782, mobilehome rental agreements entered after February 13, 2020 that have terms longer than 12 months are not exempt from local rent control and are now protected. Also, AB-2782 provides that Section 798.17 of the State Mobilehome Resident Law is repealed effective January 1, 2025, and that any exemptions from local mobilehome rent control regulations will expire at that time. As a result, longer-term leases entered prior to February 13, 2020 will no longer be exempt from local mobilehome rent control as of January 1, 2025. Accordingly, with AB 2782 now even long- term leases above 12 months will be protected under the City's mobilehome rent stabilization ordinance.

This statement is incorrect. *Long-term leases that are exempt or otherwise permitted by local ordinance remain valid and enforceable*. Only leases that were exempt by reason of the state law which forbid local cities from interfering with the freedom of contract between landlord and tenant are invalidated. If the city or county allows for long-term leases, those exemptions continue without regard to the impact of state law treatment of leasing.

The experience at local level is that leasing is the longest lasting and most stable relationship between Park owners and tenants available. The detente between owners, residents, cities, and each other was astonishing and continues today. The legislative sunsetting of state-exempt leasing has no effect on the power of the local city to secure long-term accords, model leasing, and memoranda of understanding to spare the taxpayer costs of enforcement of needless rent control. Even one of the original sponsors of long-term leasing, the GSMOL, recognized that mobilehome owners can benefit from a fair long-term lease. According to GSMOL, "[A] homeowner's biggest reason for signing a long-term lease is stability and continuity. The formula for rent increases cannot be changed until the lease expires." In preventing unknown rent adjustments, "[A] long-term lease can solve these uncertainties." GSMOL adds that "[T] he park

owner can also be contractually bound in a lease to provide a certain level of services to the homeowner, and any deviation can result in a breach of contract." Long-term leasing remains permissible. Many municipalities promote leasing. As was the case before January 1, 1986, leasing is still available where people are positively incentivized to find solutions by themselves, without the interloping hand of government. Cities and counties can still encourage owners and residents to engage in collaborative dialogue every day, to discuss lasting solutions to stability and a harmonious future. Only leasing can provide for that.

2. Staff Report, Page 3: the city misrepresents that the Petaluma ordinance has "no cap" on vacancy control. The law specifically states in §6.50.240:

> "In the absence of lawful vacancy, a park owner is prohibited from raising rent upon sale of a mobile home on sit to a tenant-to-be or a current tenant."

With regard to a true voluntary termination of tenancy (the truncation and severance of all legal interest in and to a mobile home space), there is no tenancy interest to protect in the space when the tenant forfeits all right and interest in and to the tenancy. Where a tenancy is transferred, assigned, or sold at market rates to a buyer, it is the restriction on rent adjustments which spikes housing costs and removes them from the realm of affordable housing. However, it appears city staff has taken the position on behalf of the city of Petaluma, officially, that vacancy decontrol is available whenever there is a transfer or assignment of any interest in a mobile home space without regard to the status of the outgoing resident.

The city also reports that there is no vacancy control provided in the rent control ordinance passed by the County of Sonoma ("none"). Firsthand ownership evidence proves that this is incorrect.

3. Staff Report, Page 3: the Park owners are provided the city with historical statistics for the Consumer Price Index (“CPI”) for June (the month used for the ordinance). Unfathomably, the city has included the wrong index for the August CPI. August CPI does not apply to the ordinance, and therefore cannot constitute a fact to be relied upon in the promulgation of amendments to the existing rent control law.

4. Staff Report, Page 4: the city claims to have attached a copy of the “Youngstown” arbitration decision: however, there was no attachment to review and no facts from which any inference can be drawn. More troubling is that a single arbitral dispute, of the many parks in the city, would be called to the attention of the Council for reasons that are unspecified and unarticulated. Mobilehome park owners are entitled to a clearly articulated and constitutionally mandated rate of return upon their properties in order to assure a fair return on investment. This

constitutional standard is not subject to change by the city of Petaluma. Examples of implementation of constitutional standards is the domain of the agency administrator and not subject to political interference. No proposed amendments to the rent control law may lawfully amend, impinge, or attenuate the constitutional guarantees owing to property owners in the city of Petaluma.

5. Staff Report, Page 5: the city has failed to disclose the actual and empirically established annual percentage change in the Consumer Price Index for the past 21 years as presented by the Park owners. The city fails to specifically disclose that the average CPI for the last 21 years was only 2.6%. This irrefutable finding undercuts any attempted assertion or inference that the Park owners in the city of Petaluma have increased rents at an excessive rate, exploited a housing shortage, or introduced circumstances resulting in a market dysfunction justifying the application and enforcement of rent controls.

The city has also failed to address the ephemeral and short-lived nature of an isolated marked change that was experienced in the year 2002. Then, CPI was 6.6%, but, the during the succeeding 4 year period, the CPI never exceeded 1.6%. This economic and irrefutable fact demonstrates the absence of any justification for change in permissive adjustments under the rent law.

6. Staff Report, Page 5: the staff report appears to have completely misrepresented the offers of assistance of the Park owners, agreed to as a group, for the provision of rental assistance for demonstrably needy mobile home residents. In fact, the Park owners represented an opportunity which can never be required of a local government, to assist the demonstrably needy with a program of rental assistance that would have been far more favorable to residents in need than the suggested lowering of the CPI. Instead of a broad-based vague reduction in adjustments on an annual basis, immediate and direct financial relief directly to affected tenants would be provided. Such assistance appears to have been omitted completely from presentation to the city Council. This action deprives the city Council of all facts relevant to governance and the opportunities available to assist its local citizens. The motivations for omission of such important information to the Council, and the underlying objectives to be achieved by staff remain unknown.

7. Staff Report, Page 5: the city staff states that "the tenants and affordable housing advocates (without revealing the identities of the actual persons consulted, how they were chosen to be consulted, and why others were not consulted) recommend capping new base rents to keep spaced affordable for future residents." This approach divests the city of Petaluma of the diversity necessary for fair government for all. Limiting the scope of presented alternatives deprives the city Council of its job to protect the entire voting populace from efforts to offer a

single voice in unison without considering the vast diversity of opinions and beliefs applicable to municipal decision-making.

The city staff informs the Council that "vacancy control CAN inflated the sale price of the mobile homes." Rather, the Park owners have provided empirical evidence that Petaluma sales data irrefutably reflects highly-inflated the sales price of mobile homes in the city by at least $75,000 and up to $250,000. The reason homes are expensive is because departing tenants are selling the mobile home tenancies with the home. It is a black market made lawful by the ordinance. It is the “key money” made illegal because it victimizes and punishes new homebuyers, new tenants, new residents. It only protects departing sellers who make an exorbitant profit off of rent control and moved out of town. To be fair, like the city of Santa Cruz, this should be controls on home prices to protect new buyers if rent control is offered at all.

8. Staff Report, Page 5: city staff offers the representation that "some owners" increase rent for lawful vacant spaces. It does not identify which owners, how much, or the circumstances involving the change in the tenancy. Nor does it represent the frequency of such changes. It is believed that such representation is a misrepresentation of actual facts and experience. If it be the case that staff has a colorable belief making it an accurate representation that mobile homes are removed on a regular basis or that terminations of tenancy for cause are a frequent ongoing occurrence, examples and illustrations would be necessary to substantiate any such claims. Ambiguous and rhetorical hyperbole failed to convey any information upon which a legislative decision can be predicated.

9. Staff Report, Page 6: city staff has misrepresented the relative status of vacancy control and decontrol in Sonoma County by claiming that Petaluma has the "least restrictive" vacancy control cap with “none.” The representation that the city of Petaluma permits unrestricted rental adjustments upon the sale of mobile homes should be documented before any further action is taken by the city in amending or further restricting the existing content of the ordinance.

Park owners now subsist each year pursuant to a rental adjustment program offering the minimum, basic, essential adjustment barely sufficient to avoid the need for administrative consideration of the discretionary rent adjustment for real park expense, maintenance, operations, government costs and of course inflation. The city has allowed the bare minimum necessary to provide an administrative "safety valve" to relieve the pressure of ever-increasing park costs of operation.

The city now considers direction to prepare amendments to destroy a long-standing and balanced equilibrium. Change to the ordinance may alter the formula, but it will not stop the

pressure for rent adjustments to account for real-world inflationary change. That "safety valve" contains 2 elements:

> (1) The administrative allowance of the bear is essential rental adjustment which has been successful for the city for decades; or
>
> (2) Petitions and applications for rental adjustments based upon real world presentation of evidence of operational burdens, general market conditions beginning from the very beginning of the ordinance, increased operating expenses during the time the ordinance has been in effect, inflation, and rate of return on the investment made in the mobile home park.

The costs of application, legal counsel, and experts become part of the application process due to the requirements of due process as determined in California judicial precedents. On the city side, it is the taxpayer who pays the enormous expenses for stringent rent control enforcement. Aggressive municipalities have budgets for rent control administration in virtually jaw-dropping sums. It is an economic certainty that rent control which forces owners and operators to apply for rent adjustments to merely seek fair treatment are far more expensive than the rent regulations that have been in effect in Petaluma for decades.

Partial indexing is a policy devoid of economic reality, because even 100% of the CPI does not begin to cover the real change in operating expense and cost of operation of a mobilehome park in Petaluma. An old adage holds that “50% indexing is, alone, 50% confiscation.” No one believes that partial indexing of CPI can sustain a status quo. Not even real estate rent control experts and consultants. It is imposed to punish, to interfere with and thwart business operations. The more difficult to earn fair returns, the more the rent petitions and applications will result. Such a draconian change may presuppose that previously placid owners will capitulate. But no, mistaking quiescence for pacifism is myopic misjudgment. The efficient operator will exercise the rights allowed by law to protect the investment. This means more applications, hearings, staff time, enforcement, litigation and tax payer unrest.

Introducing a new adversarial environment between owners and operators will deteriorate positive relations and degraded quality of life. Notice and seek the largest sustainable rent adjustments to try to avoid waiver or estoppel of rights, and to seek adjustments to last more than one year (avoid applications every year). A city telegraphs, by such stringent measures, to require owners to seek increases, hire experts, upset residents with rent notices, force residents to organize, destroy the calm time in a peaceful retirement with the anxiety, inconvenience and distress of the fractious unknown. Residents now spend time upset with the distress of rent issues in cold evening sessions at city hall. *Every year.*

Mobile home park operations cannot survive on less than inflation and continue for a long-term to sustain revenues necessary for operation. A decreasing return at a velocity that accelerates spells eventual confiscation. As the matter of loss becomes more disparate from year to year, the number of increase hearings likewise grows. Even rent control advocates have addressed this issue, recommending 100 per cent indexing. Eventually, as is reported to the state legislature, parks close.

According to the Report Issued May 20, 2020, "Assembly Committee on Housing and Community Development,", AB 2782 (Mark Stone),

> Threats to Affordable Housing in Mobilehome Parks: Information collected by the California Department of Housing and Community Development (HCD) shows that at least 565 mobile home and recreational vehicle parks had been converted to another use or closed in California between 3/22/1998 and 3/22/2019, causing the loss of approximately 17,000 spaces and the homes that were on them. There are also nearly 400 parks whose permits have expired. Assuming some of them are closed, the actual number of lost spaces is likely larger. Though some parks have added spaces, only a handful of mobilehome parks were created in the past 20 years.
> * * *
> With the current COVID-19 crisis many Californians, and particularly low-income families, are struggling to afford rent and basic necessities due to job losses, reduced hours, and increased care-taking demands with schools and childcare facilities closed. Additionally, older populations make up a large share of mobilehome owners in the state and they are also particularly susceptible to COVID-19. These factors may mean that mobilehome parks will see higher rates of unpaid rent than other types of housing. **As such, it is possible that this will subsequently lead to increasing numbers of mobilehome parks being closed, converted, or sold off to investors in the coming months and years as smaller owners are unable to keep up with expenses.**

The Parkowners have offered rental assistance to avoid this precise you will from occurring. The delicate balance today should be evaluated before changing course. The ordinance represents stability and changes are opposed, for the record. The relative stasis results from a balancing of rights and duties that has meant little administrative cost, time or inconvenience to residents, the city or park owners.

The park owners have at all times acted as responsible, concerned and accountable property owners who have never given reason for government intervention in the form of price

controls. Rental levels in all parks remain at levels well below general market levels, and there is no tangible basis on which to impose ceilings on rents. The Park owner's relationship with residents has and will always reflect good faith manifested by consistent fairness, equity, and reasonableness. In-place values of mobilehomes have soared to several multiples of book value based on park conditions, low rents, and the waning residential opportunities that have been provided to the City.

Very Truly Yours,

/s/

Terry R. Dowdall
For
DOWDALL LAW OFFICES, A.P.C.

cc: Western Manufactured Housing Communities Association, Inc.
Petaluma Park owners