

AGENDA

Special Meeting of the
CAPITOLA CITY COUNCIL
Friday, March 18, 2011 – 6:00 p.m.
City Hall Council Chambers

5:30 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE CAPITOLA CITY COUNCIL

An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council on closed session items only.

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9a)
Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park)
[Superior Court of the State of California for County of Santa Cruz, Case #CV
167716]
Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park)
[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

6:00 P.M. – OPEN SESSION

ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Harlan, Termini, Nicol, Storey and Mayor Norton

1. REPORT ON CLOSED SESSION

2. ORAL COMMUNICATIONS

Oral Communications allows time for members of the Public to address the City Council on any item not on the Agenda. Presentations will be limited to three minutes per speaker. All speakers must address the entire City Council and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the Minutes.

3. PUBLIC HEARING

Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is followed for each Public Hearing listed: 1) Staff Explanation; 2) Public Discussion; 3) Council Comments; 4) Close public portion of the Hearing; 5) City Council discussion; and 6) Decision.

NOTE: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes "final." Please be advised that in most instances the decision becomes "final" upon the City Council's announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

3. PUBLIC HEARING – Continued

- A. Public Hearing to consider an Ordinance Adding Subsection D. to Section 2.18.120 of the Capitola Municipal Code pertaining to Mobile Home Park Rent Stabilization. [1st Reading] Presentation: City Manager.

4. **ADJOURNMENT**

Adjourn to a Joint Regular Meeting of the City Council/Redevelopment Agency to be held on Thursday, March 24, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

If you require special assistance in order to attend the meeting, including needs addressed by ADA, please notify the City at 831-475-7300 at least 3 days prior to meeting.

**This meeting will be televised “live” on
Charter Communications Cable Community Channel 8
and streamed “live” on the City of Capitola Website at
www.ci.capitola.ca.us**



CITY COUNCIL AGENDA REPORT

SPECIAL MEETING OF MARCH 18, 2011

FROM: CITY MANAGER
DATE: MARCH 10, 2011
SUBJECT: CONSIDERATION OF AN ORDINANCE ADDING SUBSECTION D. TO SECTION 2.18.120 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO MOBILE HOME PARK RENT STABILIZATION

Recommended Action: By motion and roll call vote, that the City Council adopt a first reading of the proposed Ordinance Adding Subsection D. to Section 2.18.120 of the Capitola Municipal Code pertaining to Mobile Home Park Rent Stabilization, and passing the ordinance to a second reading at its Regular Meeting on March 24, 2011.

SUMMARY

On March 10, 2011 the City entered into an agreement to settle all litigation with the owner of Surf and Sand Mobile Home Park. The agreement calls for the City to hold a public hearing to consider the attached ordinance amendment. The ordinance amendment, if adopted, would add an exemption to the City's Rent Stabilization Ordinance for parks that offer residents a long term lease consistent with the terms of the ordinance.

BACKGROUND

The City is currently a party to two separate lawsuits in which the Surf and Sand Mobile Home Park owner has sued the City. In conjunction with those lawsuits the park owner is seeking seven-figure monetary damages and attorney fees. To date the City has spent more than \$1,175,000 of General Fund revenue defending mobile home litigation. This fiscal year's budget for mobile home litigation is \$500,000 of which \$376,000 has been expended through the end of January. It is projected the City will incur an additional \$500,000 next fiscal year to bring the two current Surf and Sand cases to trial, with further appeals and costs likely in later fiscal years. In addition, representatives for the park owner have indicated a future Fair Rate of Return application would likely be submitted to the City, as well as other legal challenges should the City not approve the attached ordinance.

To put these costs in perspective, this year's mobile home litigation expenditures, during the first seven months of the year, already exceed this year's combined General Fund allocation for recreation programs, Junior Guards, street improvements, the museum, and art and cultural programming. This level of funding is unsustainable for the City without cuts in basic services. Those cuts would likely impact police, recreation, administration, and park and street maintenance services.

It should be noted Surf and Sand residents have contributed approximately \$90,000 to help off-set some of the litigation expenses through the City's Mobile Home Administrative Service Fee.

In summary, those two lawsuits entail:

- A challenge to the City's denial of Surf and Sand's application to close the mobile home park, wherein Surf and Sand has alleged that the City's application of the closure ordinance and state law resulted in a regulatory taking of the park owner's private property (among other allegations).
- A challenge to the City's denial of Surf and Sand's application to subdivide the mobile home park, wherein Surf and Sand has alleged that the City's application of state law was improper (among other allegations).

As the Council is aware, having followed California and Federal case law over the last decade during which the City has been actively engaged in multiple lawsuits and appeals challenging the City's mobile home rent stabilization program, the decisional law interpreting the statutory and constitutional rights of parties impacted and benefitted by mobile home park rent stabilization programs has been inconsistent at best. Those decisions provide both sides to disputes of this nature with decisional case law to cite as precedent in support of their opposing legal arguments.

Trial courts often disagree with one another and lower court decisions are periodically reversed by appellate courts. Most recently an en banc panel of a Federal appellate court reversed one of that Federal court's own decisions. In light of this unsettled litigation climate, it cannot be predicted with any certainty how a court might ultimately resolve the currently pending Surf and Sand claims or how an appellate court might rule in reviewing that trial court's decision. With the owner seeking \$27 million in damages, a loss in one of these cases could be financially disastrous to the entire community and severely limit the City's ability to continue to provide services, including policing, recreation, and park and street maintenance. In addition, a loss in the park closure case could ultimately result in the displacement of all park residents and the loss of this valuable housing resource in the City.

HOUSING PROGRAMS & ASSISTANCE

The City of Capitola has established a tradition of support for affordable housing in the community. One element of the City's affordable housing program is the Redevelopment Agency Housing Fund. Over the years, this funding stream has enabled the City to partner with local and regional non-profit housing providers to produce and rehabilitate affordable housing units.

The City of Capitola has developed and successfully administered multiple affordable housing programs over the past two decades specifically geared towards rental and emergency housing assistance. These housing assistance programs have included:

- Rental assistance to eligible residents on an income basis
- Security Deposit Program
- Emergency Housing Assistance Program
- First Time Homebuyer Program
- Rental Subsidy Program for Loma Vista and Wharf Road Manor Mobile Home Parks

The 2010-2011 Fiscal Year Budget allocated \$205,000 out of the \$463,000 in Low and Moderate-income Housing Operating Funds to the programs listed above. Staff recommends the Agency develop a rental assistance program to assist income-eligible mobile home park residents that are adversely impacted by this ordinance. Staff is confident that through a restructuring of the City's housing assistance programs and through the periodic acquisition of coaches in mobile home parks on an "as available" basis, the Agency and City can address consequential financial hardship and duress to income-eligible park residents. Staff believes that by strategically restructuring the existing housing assistance programs, the Redevelopment Agency would be able to contribute up to \$150,000 in annual funding directed towards income-eligible rental assistance or acquisition programs. Additionally, these funds could be augmented with General Fund resources, as resolution of the mobile home litigation would relieve the General Fund from the ongoing financial stress attributable to legal expenses.

Additionally, the City has recently financially committed itself to assist in the acquisition of another privately owned park in the City, the 108 unit Castle Mobile Home Estates. The acquisition of these additional units, coupled with the recently completed senior housing project on Bay Ave, will create more local affordable housing inventory and capacity.

Staff is prepared to immediately implement Council direction in assisting income eligible park tenants to respond to this challenge, and will devote the time required to modify existing housing assistance programs or develop new programs for these residents.

ORDINANCE AMENDMENT

All Surf and Sand litigation would all be resolved if the City Council adopts the attached ordinance amendment. The attached ordinance exempts a mobile home park from the City's Rent Stabilization Ordinance if the park owner offers park tenants a long term lease, pursuant to the terms of the ordinance. Specifically:

- i. Very low income and low income (Exhibit B) residents in the park shall be offered a lease with a term of at least 34 years. Annual space rents those tenants in the park shall increase to no more than \$475 per month and thereafter increase at 100% of the CPI or 2% whichever is greater, for the duration of the lease. Upon termination of said tenancy during the lease term, the space rent may be raised to fair market rent.
- ii. Moderate income tenants shall be offered a minimum of an eight year lease, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of the lease term resulting in rent at a 2011 "fair market rent," in the eighth year of the lease term. In addition, each annual rent increase may include an additional rent increase equal to 100% CPI or 2%, whichever is greater. However, in no case shall the actual rent increase in any individual year over that seven year period exceed \$125. Upon termination of tenancy or commencing with the eighth year of tenancy, the space rent may be raised to fair market rent. The lease may be assigned by the tenant to a purchaser during the first 24 months of the lease term and shall thereafter not be assignable.
- iii. Above moderate income tenants shall be offered a minimum of an eight year lease, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of the lease term resulting in rent at a 2011 "fair market rent," in the eighth year of the lease term. In addition, each annual rent increase may include an additional rent increase equal to 100% CPI or 2%, whichever is greater. Upon termination of tenancy or commencing with the eighth year of tenancy, the space rent may be raised to fair market rent. The lease may be assigned by the tenant to purchaser during the first 24 months of the lease term and shall thereafter not be assignable. For the purposes of this provision, "fair market rent" shall mean fair market rent as determined by the park owner in the park owner's good faith.
- iv. As to tenants who are either not full time residents, or who as of January 1, 2010 own a legal or beneficial interest in residential real property, rent for those tenants' space may be immediately set at fair market rent subject to the California Mobilehome Residency Law.

All leases shall provide for alternate dispute resolution process by the American Arbitration Association (AAA).

CALIFORNIA ENVIRONMENTAL QUALITY ACT

No specific development is contemplated under the proposed ordinance and no change to the physical environment. As a result, the project is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) Pursuant to Section 15004(b)(2)(A) of the Guidelines for the implementation of the California Environmental Quality Act ("CEQA"), the ordinance is exempt from the requirements of CEQA because the ordinance does not approve, contemplate, or establish regulations for any future use or development.

Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the ordinance is exempt from the requirements of CEQA because it can be seen with certainty that there is no possibility that adoption of this ordinance may have a significant effect on the environment, in that the ordinance does not approve, contemplate, or establish regulations for any future use or development.


FISCAL IMPACT


Adoption of this ordinance will save an estimated \$100,000 in the current fiscal year, \$500,000 in the next fiscal year, and unknown costs in future fiscal years. These savings could be directed to provide housing assistance to qualified residents impacted by the ordinance. Further, adoption of the ordinance eliminates the risk of a multimillion dollar judgment in one or both of these cases which would jeopardize the ability of the City to continue providing services to the community including police recreation, parks and street maintenance.

ATTACHMENTS

- 1. Draft Ordinance
- 2. Settlement Agreement

Report Prepared By: Jamie Goldstein
City Manager

**Reviewed and Forwarded
By City Manager:** 

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CAPITOLA
ADDING SUBSECTION 2.18.120 D. TO THE CAPITOLA
MUNICIPAL CODE PERTAINING TO MOBILE HOME PARK RENT STABILIZATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS
FOLLOWS:

Section 1: Subsection 2.18.120 D is hereby added to the Capitola Municipal Code to
read as follows:

“2.18.120 Excluded parks—Homeowner owned spaces.

This chapter does not apply to the following mobile home parks:

D. Parks which, in compliance with all applicable provisions of the Mobilehome Residency Law of the State of California including Civil Code § 798.17, offer those tenants residing in their parks as of January 1, 2011, and whose residence in the park is full-time, and who as of January 1, 2010 own no legal or beneficial interest in residential real property, either individually or through an entity or other form of ownership which the tenant owns or controls, a long-term space lease which contains the following terms:

1. As to tenants who, since at least January 1, 2011, have been classified as very low income or low income in accordance with criteria promulgated by the State of California Housing and Community Development Department, annual space rent commencing at \$475 per month and thereafter subject to maximum annual increases of 100% CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor, Bureau of Labor Statistics) or two percent (2%), whichever is greater, for the duration of the lease term. The term of said lease shall be a minimum of 34 years.
2. As to tenants who, since at least January 1, 2011, have been classified as moderate income in accordance with criteria promulgated by the State of California Housing and Community Development Department, a long term lease with at least an eight year term, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of the lease term resulting in rent at a stated 2011 “fair market rent”, in the eighth year of the lease term. In addition, each annual rent increase may include a supplemental rent increase equal to 100% of the increase in CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor, Bureau of Labor Statistics) or two percent (2%) of the previous year’s rent, whichever is greater. However, in no case shall the actual rent increase in any individual year over that seven year period exceed \$125. Upon termination of said tenancy or commencing with the eighth year of said tenancy, the space rent may be raised to fair market rent.
3. As to tenants who, since at least January 1, 2011, have been classified as above moderate income in accordance with criteria promulgated by the State of California Housing and Community Development Department, a long term lease with at least an eight year term, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of

the lease term resulting in rent at a stated 2011 "fair market rent," in the eighth year of the lease term. In addition, each annual rent increase may include a supplemental rent increase equal to 100% of the increase in CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor, Bureau of Labor Statistics) or two percent (2%) of the previous year's rent, whichever is greater. Upon termination of said tenancy or the eighth year of said tenancy, the space rent may be raised to fair market rent. For the purposes of this provision, "fair market rent" shall mean fair market rent determined by the park owner in good faith.

4. In order to establish income eligibility for one of the leases referenced in subsections 1, 2, or 3, documentation shall be provided by the tenant to the Park within 21 days of a written request by the Park. Park shall advise tenant of its determination in writing within 14 days of receipt of documentation of the tenants' income. Income shall be documented, if in dispute, by use of verifiable documents including, but not limited to full and complete tax returns. Tenant income levels will be determined in accordance with the standards established by the Department of Housing and Development, as set forth in 24 Code of Federal Regulations Part 5 in effect March 1, 2011.
5. The leases called for in subsections 2 and 3 shall be assignable for the first 24 months of the lease to a full time tenant, determined by the park owner to be income qualified to pay fair market rent, purchasing the home on the space and thereafter need not be assignable. The lease called for in subsection 1 shall not be assignable.
6. Tenants who are either not full time residents, or who own a legal or beneficial interest in residential real property, or who commence a tenancy after this Agreement has been executed by the City and Surf and Sand for the tenant's space may be immediately set at fair market value. For the purposes of this provision, "fair market rent" shall mean fair market rent determined by the park owner in good faith.
7. For purposes of this subsection D, a park tenant will be considered a full time resident:
 - a) If, for tenants whose tenancy commenced prior to January 1, 2010, the tenant was a full time resident as of January 1, 2010.
 - b) If, for tenants whose tenancy commenced after January 1, 2010, the tenant was a full time resident as of the date his or her tenancy commenced.
8. For purposes of this subsection D, a tenant will be deemed to own no residential real property so long as he or she owned no legal or beneficial interest in residential real property, either individually or through an entity or other form of ownership which tenant owns or controls, as of January 1, 2010, or owns no legal or beneficial interest in residential real property either individually or through an entity or other form of ownership, on the date the long term space lease contemplated by this subsection D is offered.

- 9. Any dispute between the park owner and a tenant as to the issue of a tenant's eligibility to be offered one of the leases called for in subsections 1, 2, and 3 shall be resolved first through mediation if any party so elects and, if unsuccessful, through binding arbitration between the tenant and the landlord by American Arbitration Association (AAA) according to its Expedited Real Estate Procedures. In any such arbitration, each party shall bear its/his or her own attorney fees and costs

Section 2. Subsections A, B, and C of Capitola Municipal Code Section 2.18.120 shall remain in full force and effect.

Section 3. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 18th day of March, 2011, and was passed and adopted by the City Council of the City of Capitola on the _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DISQUALIFIED:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC

Pamela Greeninger, City Clerk

ATTACHMENT 2

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of March 10, 2011 ("Agreement Effective Date"), by and between Surf and Sand, LLC ("Surf and Sand") and the City of Capitola ("City") on its own behalf and that of the additionally named defendants in the litigation specified below, and shall be effective on the Amendment Effective Date, as defined in Section 2.1, below.

SECTION 1. RECITALS

A. WHEREAS, Surf and Sand owns the manufactured home community commonly known as Surf and Sand Mobilehome Park ("Park") located within the City of Capitola. The Park is currently subject to the provisions of the City's Mobile Home Park Rent Stabilization Ordinance, Title 2, Chapter 2.18 of the Capitola Municipal Code (the "Ordinance").

B. WHEREAS, the City is a general law city duly formed, operated and governed in accordance with state law and its own municipal code.

C. WHEREAS, on November 23, 2009, a complaint was filed in United States District Court, Northern District of California, Case No. C09-05542RS which was captioned *Surf and Sand, LLC, a California Limited Liability Company v. City of Capitola, et al.* Surf and Sand's complaint asserted claims for violation of civil rights, violation of the fifth amendment, inverse condemnation, mandamus, declaratory relief, fraud, breach of contract and rescission. This case is referred to as the "Federal Action."

D. WHEREAS, on June 2, 2010, a complaint, which was captioned *Surf and Sand, LLC v. City of Capitola, et al.*, Santa Cruz County Superior Court Case No. CV 167716, was filed in Santa Cruz County Superior Court seeking mandamus declaratory relief. This case is referred to as the "State Case."

WHEREFORE, it is therefore agreed, in exchange for the mutual covenants, obligations, and conditions set forth herein, by and between Surf and Sand and the City, as follows:

SECTION 2. AGREEMENT

In order to fully and finally resolve the litigation described above and all other claims present and future in any way related to the allegations and actions contained in the Federal Action and State Case, as well as any and all other claims and lawsuits which may be pending between Surf and Sand and City, ("Miscellaneous Matters"), Surf and Sand and the City agree as follows:

2.1 *Amendment of Ordinance and Lease.* Pursuant to and conditioned upon the terms and conditions of this Agreement, the City agrees to consider for adoption an amendment to the City's Ordinance at a duly noticed public hearing in accordance with the procedures set forth in the California Government Code for amendment of ordinances. The form of the ordinance that will be considered is set forth at Exhibit A, attached hereto and incorporated herein by this reference (the "Ordinance Amendment"). The City agrees to consider the Ordinance Amendment

for introduction at a special or regular meeting at the earliest available date and if the Ordinance Amendment is approved for introduction, to consider the Ordinance Amendment for final adoption at a regular meeting to be held at the next available date. The City Council's consideration of the Ordinance Amendment for introduction and final adoption shall all be in accordance with the required legal procedural and notice requirements and, if the Ordinance Amendment is approved for final adoption by the City Council, it shall become effective 30 days thereafter, in accordance with requirements of state law (the "Amendment Effective Date"). The parties acknowledge that the City, as a governmental entity, has informed Surf and Sand that it has no power to enter into binding contracts requiring the City Council to refrain from exercising its legislative authority in the future or requiring the City Council to exercise its legislative authority in any particular fashion. Accordingly, the parties understand and agree that nothing contained herein shall be deemed to contractually obligate the City to approve the Ordinance Amendment. If the Ordinance Amendment is approved for final adoption as of the date of the City Council's final adoption of the Ordinance Amendment, City and Surf and Sand agree to stay all litigation proceedings pending the dismissal of the Federal Action, State Case and any other litigation which may be currently pending between Surf and Sand and the City. If the City does not approve the Ordinance Amendment, this Agreement shall be of no further force and effect, and all parties shall be relieved of any further obligations hereunder.

2.1(a) After the Amendment Effective Date, Surf and Sand may impose after proper notice under the Mobilehome Residency Law ("MRL", California Civil Code sections 798 et seq.) a raise in each space rent within the park to \$475 per month.

2.1(b) In addition, or alternatively, Surf and Sand shall offer a long term space lease to the tenants of the park which must comport with the following:

(1) After proper notice under the MRL,

- i. As to tenants who, since January 1, 2011 or upon commencement of tenancy in the Park thereafter, have been classified as very low income or low income in accordance with criteria promulgated by the State of California Housing and Community Development Department, which currently is set forth in Exhibit B attached hereto and incorporated herein by reference, annual space rent shall be no greater than \$475 per month and thereafter subject only to maximum annual increases of one hundred percent (100%) CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor Statistics) or two percent (2%), whichever is greater, for the duration of the lease. The term of said lease is a minimum of thirty-four (34) years. Upon termination of said tenancy, the space rent may be raised to fair market rent.
- ii. Tenants who, since at least January 1, 2011, have been classified as moderate income in accordance with criteria promulgated by the State of California Housing and Community Development Department, which is currently set forth in Exhibit B attached hereto and incorporated herein, shall be offered a long term lease with at least an eight year term, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of the lease term resulting in rent at a stated 2011 "fair market rent", in the eighth year of the lease

term. In addition, each annual rent increase may include a supplemental rent increase equal to 100% of the increase in CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor, Bureau of Labor Statistics) or two percent (2%) of the previous year's rent, whichever is greater. However, in no case shall the actual rent increase in any individual year over that seven year period exceed \$125. Upon termination of said tenancy or commencing with the eighth year of said tenancy, the space rent may be raised to fair market rent. The lease may be assigned by the tenant to a mobilehome purchaser of the tenant's during the first 24 months of the lease term and thereafter need not be assignable.

- iii. Tenants who, since at least January 1, 2011, have been classified as above moderate income in accordance with criteria promulgated by the State of California Housing and Community Development Department, which is currently set forth in Exhibit B attached hereto and incorporated herein, shall be offered a long term lease with at least an eight year term, with monthly rent to commence at \$475 per month, with equal specified annual rent increases over the next seven years of the lease term resulting in rent at a stated 2011 "fair market rent," commencing as of the eighth year of the lease term. In addition, each annual rent increase may include a supplemental rent increase equal to 100% of the increase in CPI (All Urban Consumers Index for the San Francisco-Oakland-San Jose region published by the U.S. Department of Labor, Bureau of Labor Statistics) or two percent (2%) of the previous year's rent, whichever is greater. Upon termination of said tenancy or commencing with the eighth year of said tenancy, the space rent may be raised to fair market rent. The lease may be assigned by the tenant to a purchaser of the tenant's mobilehome during the first 24 months of the lease term and thereafter need not be assignable. For the purposes of this provision, "fair market rent" shall mean fair market rent as determined by the park owner in the park owner's good faith.
- iv. Notwithstanding subsections (i), (ii), and (iii) above, any tenants who are either not full/time residents, or who own a legal or beneficial interest in residential real property, or who commence a tenancy after this Agreement has been executed by the City and Surf and Sand rent for the tenant's space may be immediately set at fair market rent. A Park tenant will be considered a full time resident if, for tenants whose tenancy commenced prior to January 1, 2010, the tenant was a full time resident as of January 1, 2010. For tenants whose tenancy commenced after January 1, 2010, a tenant will be considered a full time resident if the tenant was a full time resident as of the date his or her tenancy commenced. In addition, if the tenant is not a full time resident as of the date the lease is offered, the tenant shall not be considered a full time tenant for the purposes of this agreement. A Park tenant will be deemed to own no legal or beneficial interest in residential real property so long as he or she owned no legal or beneficial interest in residential real property as of January 1, 2010 or owns no legal or beneficial interest in residential real property as of the date the lease is offered. For the purposes of this provision, "fair market rent" shall mean fair market rent as determined by the

park owner in the park owner's good faith.

(2) All leases shall provide for the following alternate dispute resolution process:

All arbitratable disputes shall be resolved by the American Arbitration Association (AAA) according to its Expedited Real Estate Procedures. The administrative fees of the AAA as well as the arbitrator's fees shall be split 50/50 between the moving parties and the defending parties. At the conclusion of the arbitration proceedings, it shall be ordered that each party bears its respective attorney's fees and costs. After a demand to arbitrate is made and prior to initiating an AAA arbitration, a dispute resolution party may elect to require non-binding mediation for the purpose of attempting to resolve a dispute prior to submitting it to a binding resolution through arbitration. In the event a party makes such an election, the other party or parties must agree to such non-binding mediation. Such mediation services shall be provided by an attorney or a retired judge who will be agreed upon by the parties. If the parties cannot agree, each party shall designate one attorney or retired judge and the designated individuals shall mutually select an attorney or a retired judge to serve as sole mediator. The fees for the mediator and any designated individuals shall be split 50/50 between the moving parties and the defending parties. Each party shall bear its respective attorney's fees and costs associated with such non-binding mediation.

2.2(a) *Release of Claims by Surf and Sand.* As of the Amendment Effective Date, Surf and Sand hereby releases, acquits and forever discharges the City and all its Councilmembers, staff, and attorneys from any and all claims, demands, causes of action, obligations, and claims for damages, losses, costs, attorneys' fees and expenses of every kind and nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, which Surf and Sand may now have, or may hereafter claim to have, against the City or any individual as a result of things undertaken, done, or omitted to be done to and including the date of this Agreement related to the subject matter of the afore-referenced litigation and Miscellaneous Matters. Said Release shall be rescinded and of no force and effect if within a period of 180 days of the Amendment Effective Date:

- (i) The City amends the Ordinance or adopts a new Rent Control Ordinance which materially affects Surf and Sand's economic rights under this Agreement; or
- (ii) A third party's legal challenge to the Ordinance Amendment is filed and becomes final and which serves to invalidate the Ordinance Amendment.

Notwithstanding the foregoing, in the event a legal challenge is filed but remains unresolved after the 180 day period and subsequently becomes final and serves to invalidate the Ordinance Amendment or materially affects Surf and Sand's economic rights under this Agreement, the Release shall be rescinded and of no force and effect. Absent any occurrence causing the rescinding of the Release, the Release shall be final and conclusively binding ("Final Release"). A legal challenge shall be deemed to include litigation or any initiative or referendum measure that would materially affect Surf and Sand's economic rights under this Agreement but excluding any Alternative Dispute Resolution proceedings between Surf and Sand and any tenant.

In this regard, Surf and Sand agrees to waive the general protections of California Civil Code section 1542 which provides as follows:

A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release which, if known to him, must have materially affected his settlement with the debtor.

Surf and Sand represents that it understands and acknowledges the significance and consequences of such specific waiver of section 1542, and hereby assumes full responsibility for all injuries, damages, or losses which it may incur by such waiver.

2.3 *Agreement Not to Challenge the Amendment to the Ordinance.* Surf and Sand agrees it will not seek to invalidate Chapter 2.18 once amended as set forth in Section 2.1 of this Agreement, in a lawsuit alleging that Chapter 2.18 is invalid on its face.

2.4 *Dismissal of Complaints.* Within five (5) business days after the Amendment Effective Date Surf and Sand will file a dismissal of the Federal Action and State Case, and any other litigation which is currently pending between Surf and Sand and the City, without prejudice. In the event the Release is rescinded, pursuant to Section 2.2(a), the parties agree that any action dismissed pursuant hereto may be refiled with all applicable statutes of limitations having been tolled since the filing of the dismissal(s) without prejudice. Within five (5) business days of the Final Release, Surf and Sand will file a dismissal of the Federal Action and State Case and any related litigation which may then be currently pending between Surf and Sand and the City with prejudice. Should any court refuse to file the dismissal with prejudice in view of the previously filed dismissal without prejudice, the parties agree, nevertheless, that Surf and Sand is forever barred from refiling any of the dismissed actions.

SECTION 3. MISCELLANEOUS AGREEMENTS

3.1 *Fees and costs.* Each party agrees to bear its own attorney's fees and costs, including legal costs incurred in all of the afore-referenced litigation and its resolution. The dismissals with or without prejudice to be filed by Surf and Sand as provided herein shall state that each party bears their respective attorneys' fees and costs.

3.2 *Authority to enter Agreement.* The persons signing this Agreement represent and warrant that they are duly authorized to enter into this Agreement and that their signatures on this Agreement shall be binding on them in their respective capacities and on the entities they represent.

3.3 *Binding on successors and related entities.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, officers, directors, principals, employees, subsidiaries, parent entities, affiliated agents and corporations, attorneys, and representatives.

3.4 *Merger.* This Agreement constitutes the entire agreement between the parties, and all other prior agreements, arrangements or understandings, written or oral, are merged into and superseded by the terms of this Agreement which may not be altered, modified, or otherwise

changed except by a writing signed by the duly authorized representatives of all of the parties to this Agreement.

3.5 *No Admissions.* As this Agreement is intended to be a compromise of disputed claims by all parties, nothing in this Agreement shall be construed to be an admission of liability by any party with respect to any of the issues raised in any of the proceedings specified in Section 1.

3.6 *Freely and voluntarily entered into.* Surf and Sand and the City have read and understand the terms of this Agreement. Surf and Sand and the City mutually warrant and represent that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto. Surf and Sand and the City acknowledge that they have been represented by counsel of their choice in negotiations for and in the preparation of this Agreement, that each has had this Agreement explained by counsel, and that Surf and Sand and the City are both fully aware of the contents of this Agreement and of its legal effect.

3.7 *Controlling law.* This Agreement shall be construed in accordance with, and all disputes governed by, the laws of the State of California.

3.8 *Headings.* Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text or as conveying substantive meaning or rights.

3.9 *Construction of this Agreement.* Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied to the interpretation of this Agreement.

3.10 *No waiver.* No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the parties-in-interest at the time of modification.

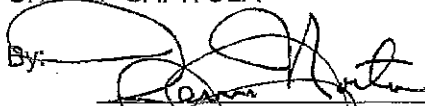
3.11 *Counterparts.* This Agreement may be executed in counterparts. Facsimile signatures shall be deemed to be as effective as originals for the purposes of this stipulation. **THIS AGREEMENT HAS BEEN ENTERED INTO AS OF THE DATE SET FORTH ABOVE.**

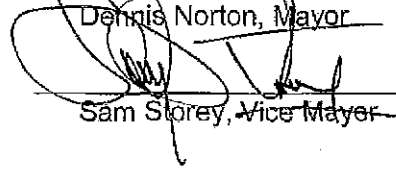
3.12 This agreement shall be binding upon the City upon its execution by a majority, i.e. three members, of the Capitola City Council.

Dated: March 10, 2011

CITY OF CAPITOLA

By:


Dennis Norton, Mayor


Sam Storey, Vice Mayor


Michael Ferrini, Council Member

Kirby Nicol, Council Member

Stephanie Harlan, Council Member

SURF and SAND, LLC, a California ~~Corporation~~ ^{LIMITED LIABILITY} ~~COMPANY~~ ^{COMPANY}

Dated: March 10, 2011

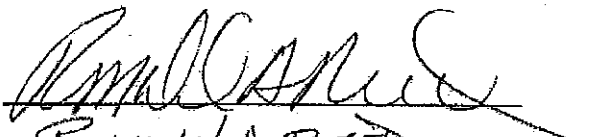
By: 
Name: RONALD A REED
Its: MANAGING MEMBER

EXHIBIT A

**ORDINANCE OF THE CITY OF CAPITOLA
ADDING SUBSECTION 2.18.120 D. TO THE CAPITOLA
MUNICIPAL CODE PERTAINING TO MOBILE HOME PARK RENT STABILIZATION**

(See Attachment 1)

EXHIBIT B

State Income Limits

Santa Cruz County - Effective June 2010

Established by State of California HOME Program HCD

		Number of Persons per Household			
		1	2	3	4
Very Low-Income	(<50%AMI)	33,800	38,600	43,450	48,250
Low-Income	(<80%AMI)	54,050	61,800	69,500	77,200
Moderate-Income	(<120%AMI)	70,750	80,850	90,950	101,050