

ORDINANCE NO. 1060

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA ADDING CHAPTER 2.18 TO THE CAPITOLA MUNICIPAL CODE ESTABLISHING MOBILE HOME PARK RENT STABILIZATION

WHEREAS, mobile home parks are a key source of affordable housing in the City;

WHEREAS, residents have recently reported receiving notices of rent increases of over fifty (50) percent in some instances;

WHEREAS, the City of Capitola currently does not regulate rental amounts or rent increases on mobile homeowners to ensure that that rents remain affordable;

WHEREAS, the potential for rents to increase within mobile home parks within the City could cause hardship to a substantial number of mobile homeowners and residents of the parks;

WHEREAS, residents at mobile home parks are uniquely vulnerable to displacement when sudden rent increases occur, and sudden, large rent increases creates undue hardship for residents through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing;

WHEREAS, the City Council of the City of Capitola desires to establish a rent stabilization program to prevent excessive rent increases on mobile home residents and to ensure that park owners receive a just and reasonable return.

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

SECTION 1: Chapter 2.18 Added. Chapter 2.18 of the Capitola Municipal Code is hereby added, to read in its entirety as shown on Attachment A, attached hereto and incorporated herein by reference.

Section 2: Effective and Expiration Dates. This ordinance shall take effect and be in force (thirty) 30 days after its adoption, and shall be posted as required by State law. This Ordinance shall automatically expire, and no longer be effective in the event that the State enacts any law that operates to stabilize rents for mobile home park residents in Capitola, and is more protective than this Ordinance.

Section 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4: Codification. This ordinance shall be codified in the Capitola Municipal Code.

Section 5: CEQA. The City Council hereby finds that the action to adopt this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

This ordinance was introduced at the meeting of the City Council on the 25th day of May, 2023, and was passed and adopted by the City Council of the City of Capitola on the 8th day of June, 2023, by the following vote:

AYES: BROOKS, CLARKE, PEDERSEN, BROWN

NOES: NONE

ABSENT: NONE

ABSTAIN: KEISER

DISQUALIFIED: NONE

DocuSigned by:
Margaux Keiser
49F294CAF17F40B...

Margaux Keiser, Mayor

DocuSigned by:
Julia Moss
062A33A128F1485...

Attest: Julia Moss, City Clerk

Approved as to form:
DocuSigned by:
Samantha W. Zutler
8ACC12B54AFB4B4...

Samantha W. Zutler, City Attorney

ATTACHMENT A

Chapter 2.18

Mobile Home Park Rent Stabilization Ordinance

2.18.010 Purpose and Findings.

A. The purpose of this Chapter is to stabilize Mobile Home Space rents by preventing excessive and unreasonable rent increases, and to assure that Mobile Home Park Owners receive a fair and reasonable return on their investment.

B. The City Council finds and declares the following:

1. Mobile homes provide an important alternative form of housing; and
2. Based on the most recent available data, within Capitola City limits there are mobile home parks with a total of 681 spaces. Approximately 674 of those spaces are occupied, thus resulting in a vacancy rate of just 1 percent, and market conditions suggest that the high demand for mobile home spaces is likely to persist; and
3. Capitola does not currently regulate rental amounts or rent increases on mobile homeowners to ensure that that rents remain affordable; and
4. Residents of mobile home parks, unlike apartment tenants or residents of other rental properties, are in a unique position in that they have made a substantial investment in a residence for which space is rented or leased; and
5. Some residents of mobile home parks own their coaches, and rent space from the park owner; and
6. The imposition of sudden and excessive rent increases that are beyond the reach of mobile home park residents require such residents to identify alternative sites for the relocation of mobile homes, which is difficult to do given the shortage of vacant mobile home spaces, and restrictions on the age, size or style of mobile homes permitted in many mobile-home parks; and
7. The potential for rents to increase within mobile home parks within the City could cause hardship to a substantial number of mobile homeowners and residents of the parks, many of who are elderly, on fixed incomes, or are persons of low or moderate income, and these residents would be vulnerable to displacement; and
8. It is necessary to protect mobile homeowners and residents of mobile home parks from unreasonable rent increases and at the same time recognize the rights of mobile home park owners to receive a reasonable return on their investments.

2.18.020 Definitions.

A. “Administrator” means the Administrator of the City’s Mobile Home Space Rent Stabilization Program. The Administrator shall be the Community Development Director, or such other City employee as the City Manager may appoint to serve as Administrator.

B. “Affected Homeowners” means those Mobile Homeowners who are subject to a Rent Increase. For purposes of providing notice of any Rent Increase and copies pursuant to this Chapter and calculating the number of Affected Homeowners in support of a rent arbitration petition, each Mobile Home Space subject to a Rent Increase shall be deemed to have only one Affected Homeowner. Reference to “All Affected Homeowners” shall mean one Homeowner from each Mobile Home Space subject to the proposed Rent Increase.

C. “Arbitrator” refers to a person who is appointed by the Administrator, and is neither a Homeowner, nor has an interest in a Mobile Home Park of a nature that would require disqualification under the provisions of the Political Reform Act.

D. “Arms-Length Transaction” shall refer to a transaction negotiated by unrelated parties, each acting in his or her own self-interest, which serves as a basis for a fair return determination in this Chapter.

E. “Base Rent” means the authorized Rent calculated pursuant to the provisions of Section 2.18.040, plus any Rent Increase allowed under this Chapter, unless it is expressly excluded from Base Rent, plus any adjustment attributable to vacancy control as provided in Section 2.18.050.

F. “Capital Improvements” means those new improvements, replacements, upgrades, or remodeling, which directly and primarily benefit and serve Mobile Home Park Homeowners by materially adding to the value of the property and appreciably prolonging its useful life or adapting it to new uses. Capital Improvements consist of more than ordinary maintenance and/or repairs, and may be amortized over the useful remaining life of the improvement to the property. Capital Improvement costs shall include all costs reasonably and necessarily related to the planning, engineering, and construction of the improvement or replacement and shall include debt service costs, if any, incurred as a direct result of the Capital Improvement or replacement.

G. “City Information Sheet” is prepared by the City, and will provide information about the Mobile Home Park Rent Stabilization Ordinance and include the Administrator’s contact information.

H “Comparable Space” means a Mobile Home Space in the same Mobile Home Park that is suitable for comparison, taking into account such characteristics as the location and size of the space, lot size, landscaping, adjacency to freeways, ocean views or amenities.

H. "Consumer Price Index" or "CPI" shall mean the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose region.

I. "Gross Income" shall have the meaning set forth in Section 2.18.130.

J. "Homeowner" shall mean an existing Mobile Homeowner.

K. "Homeowner Representative" shall mean a designated homeowner association (HOA) or its designee who shall have the authority to represent the interest of, negotiate on behalf of, and bind the Homeowners.

L. "Housing Service" shall mean a service or facility provided by the Mobile Home Park Owner related to the use or occupancy of a Mobile Home Space, which is neither a Capital Improvement nor a Substantial Rehabilitation. "Housing Service" includes, but is not limited to, repairs (including street repairs), replacement, maintenance, landscaping, painting, lighting, heat, water, utilities, laundry facilities, refuse removal, recreational and meeting facilities, parking, security service, and employee services.

M "Mobile Home" has the same meaning as the definition of "mobilehome" defined in Civil Code section 798.3, as it may be amended from time to time, or a successor code provision..

N. "Mobile Homeowner" means a person who owns a Mobile Home and also rents a Mobile Home Space in a Mobile Home Park pursuant to a rental agreement that is not otherwise exempt from regulation under this Chapter.

O. "Mobile Home Park" has the same meaning as the definition of "mobilehome park" defined in Civil Code section 798.4, as it may be amended from time to time, or successor code section.

P. "Mobile Home Park Owner" means a park owner, lessor, or sublessor of a Mobile Home Park in the City who receives or is entitled to receive Rent for the use or occupancy of any Mobile Home Space thereof and who reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

Q. "Mobile Home Space" means any site within a Mobile Home Park located in the City intended, designed, or used for the location or accommodation of a mobile home. "Mobile Home Space" includes any accessory structures or appurtenances attached to the mobile home or used in conjunction therewith.

R. "Net Operating Income" shall have the meaning set forth in Section 2.18.120.

S. "Operating Expenses" shall have the meaning set forth in Section 2.18.140.

T. "Rent" means the total consideration, including any bonus, benefit, or gratuity, demanded or received by a Mobile Home Park Owner for or in connection with the use occupancy of a Mobile Home dwelling unit.

U. "Rent Increase" means any additional Rent demanded of, or paid by, a Homeowner for Mobile Home Space. "Rent Increase" includes any reduction in Housing Services without a corresponding reduction in the amount demanded or paid for Rent.

V. "Rent Stabilization Administration Fee" means a fee established by resolution of the City Council in accordance with the provisions of Section 2.18.190.

W. "Substantial Rehabilitation" means that work done by a Mobile Home Park Owner to a Mobile Home Space or to the common areas of the Mobile Home Park, exclusive of Capital Improvements, which has a value in excess of \$20,000.00, and is performed either to secure compliance with any State or local law, or to repair damage result from fire, earthquake, or other casualty or natural disaster, to the extent such work is not reimbursed by insurance or other benefits. Costs of substantial rehabilitation include all costs reasonably and necessarily related to the planning, engineering, and construction of the work. Such costs shall also include debt service costs incurred as a direct result of the substantial rehabilitation work, if any.

2.18.030 Applicability.

A. This Chapter applies to every Mobile Home Park within the City, except those to which an exemption applies.

2.18.031 Exemptions.

A. This Chapter shall not apply to Mobile Home Spaces that are subject to a written rental agreement exempt from regulation pursuant to Civil Code section 798.17. This Chapter shall also not apply to a newly constructed space exempt from regulation pursuant to Civil Code sections 798.45 and 798.7.

B. These exceptions shall be effective only until the expiration or other termination of the rental agreement subject to the exception, whereupon all provisions of this Chapter shall immediately be applicable to the Mobile Home Space, unless the rental agreement meets the criteria of Civil Code section 798.17.

C. This ordinance shall not apply to any Mobile Home Spaces that are exempt from local mobile home rent stabilization ordinances as required by law, including, but not limited to, Civil Code sections 798.21, and including but not limited to Mobile Home Spaces that are not the principle residence of the Mobile Homeowner and Mobile Homeowner has not rented the Mobile Home to another party.

D. This ordinance shall not apply to any Mobile Home Parks that are owned by the Mobile Homeowners in the Mobile Home Park, pursuant to Civil Code section 799.1(a).

E. This ordinance shall not apply to any Mobile Home Space subject to any agreement that restricts rent increases in a manner that is more protective than this Ordinance.

2.18.040 Stabilization of Rents.

A. It shall be unlawful to demand, accept, receive, or retain Rent for a Mobile Home Space in excess of the Base Rent plus any increases that are authorized by this Chapter, unless an exemption applies.

B. Base Rent Calculation

1. Except as provided herein, a Mobile Home Park Owner shall not demand, accept, or retain Rent for a Mobile Home Space exceeding the Rent in effect for that space on May 25, 2023. In the event that a Mobile Home Space was not occupied on May 25, 2023, the Base Rent for that Mobile Home Space shall be the highest Mobile Home Space Rent charged by the Mobile Home Park Owner for a Comparable Space in the Mobile Home Park on May 25, 2023, plus any Rent Increases allowed thereafter pursuant to this Chapter.

2. If a Mobile Home Space is exempted from the provisions of this Chapter because it is the subject of a rental agreement pursuant to California Civil Code Section 798.17, and that agreement expires or is terminated by operation of law and is not renewed, then the Base Rent, until the next annual adjustment pursuant to this Chapter, shall be the average of the three highest rents of Comparable Spaces on May 25, 2023, plus any Rent Increases allowed thereafter pursuant to this Chapter.

3. It shall be presumed that the Base Rent yields a fair return.

C. A Mobile Home Park Owner may seek an adjustment to the initial Base Rent if it can be clearly established that an adjustment is necessary for the Mobile Home Park Owner to receive a fair return. In seeking an adjustment to the initial Base Rent under this section, the procedures set forth in Sections 2.18.080 and 2.18.090 shall apply. The guidelines for determining an adjustment to the initial Base Rent are set forth in Section 2.18.150.

2.18.050 Vacancy Control – Establishment of a New Base Rent.

A. A Mobile Home Park Owner shall be permitted to increase the Space Rent by up to 15 percent whenever a lawful vacancy occurs, and this amount shall be considered the new Base Rent for a Mobile Home Space. For purposes of this Chapter, “lawful space vacancy” shall mean:

1. A vacancy occurring because of the termination of the tenancy of a Mobile Home Homeowner in accordance with California Civil Code sections 798.56 through 798.58; or

2. A vacancy occurring because of the abandonment of a Mobile Home pursuant to California Civil Code section 798.61; or

3. A vacancy occurring due to sale of a Mobile Home onsite to any Mobile Home Park Owner approved purchaser, pursuant to California Civil Code section 798.74.

B. Any alleged violation of this Section 2.18.050 shall be subject to arbitration pursuant to Section 2.18.090.

2.18.060 Anniversary Date.

The anniversary date for all Rent Increases in the Mobile Home Park Owner's park shall be established by City Council resolution. Rent Increases, if any, except as specified below, shall be enacted only on the anniversary date. The Mobile Home Park Owner shall post the anniversary date in the park office or areas where it can easily be seen by Homeowners.

2.18.070 Rent Increase Limitations.

A. As of the effective date of this Chapter, no Rent Increases may be implemented within 12 months of the effective date of the preceding Rent Increase unless otherwise authorized under this Chapter. The permissible annual increase shall be the lesser of:

1. 5 percent of the Base Rent plus one hundred (100) percent of the preceding year's annual average change in the Consumer Price Index; or

2. 10 percent of the Base Rent.

B. A Mobile Home Park Owner shall not implement any additional Rent Increase within a 12-month period above the authorized amount pursuant to 2.18.070(A), unless otherwise provided in this Ordinance.

C. In the event that a Mobile Home Park Owner wishes to implement a Rent Increase on the anniversary date or within a 12-month period more than the amount permitted in subsection (A) of this Section 2.18.070 the procedures set forth in Section 2.18.080 and 2.18.090 shall apply.

D. The Arbitrator may reduce the proposed Rent Increases pursuant to Section 2.18.070(B) or (C) to a figure based on the evidence submitted by the Mobile Home Park Owner or the Park Owner Representative to be a fair return.

F. Any notice of a Rent Increase shall be provided in writing to Affected Homeowners at least 90 days before any Rent Increase is to take effect.

2.18.080 Information Required From Mobile Home Park Owner.

A. Within 30 days after the effective date of this Chapter and upon the re-renting of each Mobile Home Space thereafter, the Mobile Home Park Owner shall supply each Affected Homeowner or prospective Homeowner with a copy of the City Information Sheet.

B. Whenever the Mobile Home Park Owner serves a notice of a proposed Rent Increase, except a notice of proposed Rent Increase implemented pursuant to Section 2.18.070(A), the Mobile Home Park Owner shall simultaneously serve a written notice that sets forth the following:

1. The amount of the Rent Increase both in dollars and as a percentage of existing Rent and documentation supporting the proposed increase, including but not limited to: a summary of the unavoidable increases in maintenance and Operating Expenses; a statement of the cost, nature, amortization, and allocation among Mobile Home Spaces of any Substantial Rehabilitation or Capital Improvement; a summary of the increased cost of the Mobile Home Park Owner's debt service and the date and nature of the sale or refinancing transaction; a summary of the Mobile Home Park Owner's Net Operating Income of the preceding 24 months and other relevant information that supports the level of Rent Increase desired;

2. The availability of a current listing of all other Affected Homeowners and the spaces which they rent;

3. The address and telephone number of the Administrator and statement that the Homeowner is encouraged to contact the Administrator for an explanation of this Chapter;

4. A copy of the petition form prepared and provided by the Administrator that initiates the rent review process established by this Chapter;

5. The time and place for of a mandatory meeting with the Mobile Home Park Owner and Homeowners to be held on the Mobile Home Park premises. The meeting shall be held within 10 days from the service of the notice of proposed Rent Increase. The Mobile Home Park Owner and Homeowner shall endeavor to resolve the dispute informally.

6. In the event the dispute is not resolved informally, the Mobile Home Park Owner shall, within 10 days of the meeting required in Section 2.18.080(B)(5), file with the Administrator two copies of the notice and summary of expenses required in Section 2.18.080(B)(1), along with two copies of all relevant financial records, bills or documents that substantiate the proposed increase. This financial information shall be verified in

writing by an auditor or certified public accountant or certified in writing as true and correct under penalty of perjury by the Mobile Home Park Owner. This information will be made available at City Hall for inspection and copying by the Affected Homeowners.

D. A Mobile Home Park Owner's failure to provide any information, documents, or notices required by this Section shall not be entitled to collect any Rent Increase that might otherwise be awarded by an Arbitrator. Such failure shall also be a defense in any action brought by the Mobile Home Park Owner to recover possession of a Mobile Home Space or to collect any Rent Increase from the Homeowner.

E. An Affected Homeowner who is given notice of a Rent Increase is entitled to file a petition for rent review as provided in Section 2.18.090 regardless of whether the Mobile Home Park Owner has provided the Affected Homeowner with all the information, documents and notices required by this Chapter.

2.18.090 Rent Dispute Resolution Process.

A. If a Rent Increase is proposed pursuant to Section 2.18.070(B)-(C), then after service of the Rent Increase notice and the production of the accompanying information required by Section 2.18.080, the Mobile Home Park Owner shall set a time and place for an informational meeting with the Homeowners on the Mobile Home Park premises, or an alternative location with the agreement of the Homeowners' Representative. The informational meeting shall be held within 20 days from the service of the notice of proposed Rent Increase. The Mobile Home Park Owner shall give Affected Homeowners and the Administrator at least 10 days' advance written notice of this meeting.

B. Petition Procedures.

1. If discussions between the Mobile Home Park Owner and Affected Homeowners do not resolve the dispute, the Homeowners or Homeowner Representative may file with the Administrator a petition for rent review with a copy of the notice of Rent Increase within 30 days after receipt of the Rent Increase notice.

2. As soon as possible after a petition has been filed with respect to Mobile Home Spaces that are within a Mobile Home Park, the Administrator shall, to the extent possible, consistent with the time limitations provided herein, consolidate petitions involving similarly situated Affected Homeowners.

3. Upon the filing of a petition, the Rent Increase shall not be implemented until and to the extent it is awarded by an Arbitrator or until the petition is abandoned by the Affected Homeowners or the Homeowner Representative. "Abandoned" as used herein shall mean a failure to actively pursue the necessary steps to prepare the Homeowners' case for the arbitration.

D. Contents of Petition.

1. The petition for rent review shall: a) set forth the total number of affected Mobile Home Spaces in the Mobile Home Park; b) identify the name of the Homeowners who occupy each space; and 3) state the date upon which the notice of the Rent Increase was received by the Homeowner.

2. After obtaining the required signatures of Affected Homeowners, the Homeowners shall deliver the petition or mail it by certified mail to the Administrator at the following address: City of Capitola, 420 Capitola Avenue, Capitola, California 95010. No petition shall be accepted unless it is accompanied by the requisite number of signatures and is received in the office of the Administrator within the 30-day period set forth in subsection (C) of this Section 2.18.090. The Administrator shall provide a copy of the completed petition to the Mobile Home Park Owner and the Arbitrator.

E. After the Administrator has accepted a petition for rent review, the Administrator shall remit to the Mobile Home Park Owner and petitioning Homeowners or the Homeowner Representative an information questionnaire in such form as the Administrator may prescribe. The completed information questionnaire must be returned to the Administrator at least five business days prior to the date scheduled for hearing of the petition by the Arbitrator. The Administrator shall provide copies of the completed information questionnaire to the Arbitrator, the Mobile Home Park Owner, and the Affected Homeowners or the Homeowner Representative.

F. Upon receipt of a petition, or upon an Affected Homeowner's claim of a vacancy control rent increase violation pursuant to Section 2.18.050, the Administrator shall assign an Arbitrator. The Administrator shall set a date for the arbitration hearing. The Mobile Home Park Owner and All Affected Homeowners shall be notified immediately in writing by the Administrator of the date, time, and place of the hearing either in person or by ordinary mail. Any documents to be presented at the hearing by either the park owner or the Affected Homeowners, shall be served on the other party, the Administrator, and the Arbitrator at least 10 working days before the hearing by mail or in-person delivery. All financial documents submitted shall be verified in writing by an auditor or certified public accountant, or certified in writing as true and correct under penalty of perjury by the Mobile Home Park Owner.

G. Arbitration Hearing.

1. The Mobile Home Park Owner and any Affected Homeowners, or their representatives, may appear at the hearing and offer oral and documentary evidence. The burden of proving that the amount of Rent Increase is reasonable shall be on the Mobile Home Park Owner by a preponderance of the evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses.

2. Any jurisdictional or procedural dispute regarding the process set forth herein may be decided by the Arbitrator.

3. The Arbitrator shall, within 14 days of the conclusion of the hearing, submit by mail a written statement of decision and the reasons for the decision to the Administrator. The Administrator shall mail copies of the decision to the Mobile Home Park Owner and Affected Homeowners.

4. The decision of the Arbitrator shall be final and binding upon the Mobile Home Park Owner and Affected Homeowners, and subject to the provisions of California Code of Civil Procedure Section 1094.5.

H. It is the intent of the Council to have a final decision rendered within 90 days of the initial notice of the Rent Increase. The Administrator or the Arbitrator may, however, modify the time periods set forth herein at his or her discretion to promote the purposes of this Chapter.

2.18.110 Standards of Review.

A. The Arbitrator shall determine whether Rent Increases proposed or imposed by the Mobile Home Park Owner are reasonable based upon the circumstances and this Chapter. The Arbitrator shall take into consideration that the purpose of this Chapter is to permit Mobile Home Park Owners a just and reasonable return, while protecting Homeowners from unnecessary or unreasonable Rent Increases.

B. The Arbitrator shall not allow more than one Rent Increase per Mobile Home Space per 12-month period, unless a Mobile Home Park Owner can clearly establish that the Rent Increase is necessary to cover costs of operation, maintenance, Capital Improvements, and/or Substantial Rehabilitation not reasonably foreseeable at the time notice of the preceding Rent Increase was given.

C. Maintenance of Net Operating Income.

1. It shall be presumed that the base year Net Operating Income adjusted by 75 percent of the increase or decrease in the CPI since the base year yields a fair return. Mobile Home Park Owners shall be entitled to maintain and increase their Net Operating Income in accordance with this Section 2.18.110. The Arbitrator shall make a determination of whether the Mobile Home Park Owner's Net Operating Income yields a fair return under this standard.

2. The formula for calculating the fair NOI return shall be as follows:

Fair NOI = Base Year NOI × (1 + .75) % preceding years' annual average change in CPI

3. Except as provided in Section 2.18.150, it shall be presumed that the Net Operating Income produced by the Mobile Home Park during the base year provided a fair return.

4. Calendar year 2022 shall be established as the base year for purposes of determining whether a Mobile Home Park Owner's Net Operating Income provides a fair return. If a satisfactory base year is, in the Arbitrator's opinion, not otherwise available, such as where a Mobile Home Park Owner did not own the subject property in the base year and/or the 2022 Operating Expenses are not available, the Arbitrator may take any relevant evidence into account to construct a base year.

5. The base year CPI shall be the CPI level in May 2022.

6. The percentage change in the CPI shall be calculated by using the preceding year's average CPI prior to the noticed increase.

7. The comparison NOI year shall be the most recent calendar or fiscal year, unless another period is found by the Arbitrator to be more appropriate.

D. A park owner may seek a Rent Increase based on the cost of a completed new Capital Improvement, as defined in Section 2.18.020, together with a reasonable return upon the Capital Improvement investment, only if the Mobile Home Park Owner has:

1. Established by written verification or other competent evidence to the satisfaction of the Arbitrator that the costs of the new Capital Improvement are factually correct as claimed;

2. Cost factored and amortized the costs of the Capital Improvement over the good faith estimate of the remaining life of the improvement, but in no event for a period of less than 60 months; and

3. Allocated the increase among Affected Homeowners on a per space basis and separately itemized such increase on the Rent bill. Such increases shall not be considered included in the Base Rent for purposes of the annual permissible Rent Increases pursuant to Section 2.18.070(A).

E. Mitigating Factors. In evaluating a Rent Increase, the Arbitrator shall also consider the following factors in addition to any other factors the Arbitrator deems relevant in order to determine whether there are any circumstances that may justify a reduction in a proposed Rent Increase:

1. In the event the Mobile Home Park Owner reduces or eliminates any Housing Services, a proportionate share of the cost savings due to such reduction or elimination shall be passed on in the form of a decrease in existing Rent or a decrease in the amount of a Rent Increase otherwise proposed or permitted by this Chapter.

2. The physical condition of the Mobile Home Space or Park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding 12 months.

F. Notwithstanding any other provision to the contrary, no provision of this Chapter shall be applied to prohibit the granting of a Rent Increase that is demonstrated to be necessary to provide a Mobile Home Park Owner with a fair and reasonable return.

2.18.120 Net Operating Income.

In evaluating a Rent Increase imposed by a Mobile Home Park Owner to maintain the Mobile Home Park Owner's Net Operating Income, "Net Operating Income" (NOI) shall mean the Gross Income as defined in Section 2.18.130 of the Mobile Home Park less the Operating Expenses as defined in Section 2.18.140.

2.18.130 Gross Income.

For purposes of calculating the Net Operating Income pursuant to Section 2.18.120, "Gross Income" shall mean the sum of the following:

A. Gross Mobile Home Space rents, computed as gross space rental income at 100 percent occupancy; plus

B. Other income generated as a result of the operation of the Mobile Home Park, including, but not limited to, fees for services actually rendered; plus

C. Revenue received by a Mobile Home Park Owner from the sale of water, sewer, refuse collection, gas, and electricity to Homeowners where such utilities or services are billed individually to the Homeowners by the Mobile Home Park Owner. Such revenue shall equal the total cost of the utilities or services to the Homeowners minus the amount paid by the Mobile Home Park Owner for such utilities or services to the utility or service provider; minus

D. Uncollected Mobile Home Space Rents due to vacancy and bad debts to the extent that the same are beyond a Mobile Home Park Owner's control. Uncollected Mobile Home Space Rents in excess of three percent of gross Mobile Home Space Rents shall be presumed to be unreasonable unless established otherwise and shall not be included in computing Gross Income. If uncollected Mobile Home Space Rents must be estimated, then the average of the preceding three years' experience shall be used.

2.18.140 Operating Expenses.

A. For purposes of calculating Net Operating Income pursuant to Section 2.18.120, "Operating Expenses" may include:

1. Real property taxes and assessments.

2. Utility costs to the extent that they represent costs to the Mobile Home Park Owner which are not passed through to Homeowners of the Mobile Home Park.

3. Management expenses (including the compensation of administrative personnel, including the value of any Mobile Home Space offered as part of compensation for such services), reasonable and necessary advertising to ensure occupancy, legal and accounting services as permitted herein, and other managerial expenses. Management expenses are presumed to be not more than five percent of Gross Income, unless established otherwise.

4. In addition to the management expenses listed above, if the Mobile Home Park Owner performs managerial or maintenance services which are uncompensated, the Mobile Home Park Owner may include the reasonable value of such services or Operating Expenses. Mobile Home Park Owner-performed labor shall be limited to five percent of Gross Income unless the Arbitrator finds that such a limitation would be substantially unfair in a given case. A Mobile Home Park Owner must devote substantially all of the Mobile Home Park Owner's time, that is, at least 40 hours per week, to performing such managerial or maintenance services in order to warrant the full five percent credit as an Operating Expense. No credit for such services shall be authorized unless a Mobile Home Park Owner documents the hours utilized in performing such services and the nature of the services provided.

5. Normal repair and maintenance expenses for the grounds and common facilities, including but not limited to landscaping, cleaning, and repair of equipment and facilities.

6. Operating supplies such as janitorial supplies, gardening supplies, and stationery.

7. Insurance premiums prorated over the life of the policy.

8. Other taxes, fees, and permits, except as provided in Section 2.18.190.

9. Reserves for replacement of long-term improvements or facilities, provided that accumulated reserves shall not exceed five percent of Gross Income.

10. A Mobile Home Park Owner may include the cost of necessary Capital Improvement or Substantial Rehabilitation expenditures which would exceed existing reserves for replacement. A necessary Capital Improvement shall be an improvement required to maintain the common facilities and areas of the Mobile Home Park in a decent, safe, and sanitary condition or to maintain the existing level of Mobile Home Park amenities and services. In the event that the necessary Capital Improvement or Substantial Rehabilitation expenditure is necessitated as the result of an accident, disaster, or other event for which the Mobile Home Park Owner received insurance or other benefits, only those costs otherwise allowable and exceeding such benefits may be calculated as Operating Expenses.

Expenditures for necessary Capital Improvements to upgrade existing facilities, together with a reasonable return upon the Capital Improvement investment made by the Mobile Home Park Owner, shall be an allowable Operating Expense only if the park owner has:

a. Informed the Affected Homeowners prior to initiating construction or implementation of the Capital Improvement regarding the nature, purpose and estimated cost of the improvement; and

b. Established by written verification or other competent evidence to the satisfaction of the Arbitrator that the costs of Capital Improvement provided to the Homeowners for their general use are factually correct as claimed; and

c. Cost factored and amortized the costs of the improvement over the good faith estimate of the remaining life of the improvement, but in no event for a period of less than 60 months; and

d. Allocated the increase among Affected Homeowners on a per space basis and separately itemized such increase on the Rent bill. Such increases shall not be considered included in the Base Rent for purposes of the annual permissible Rent Increases pursuant to Section 2.18.070(A).

11. Increases in interest payments which result from one of the following situations or the equivalent thereof:

a. Refinancing of the outstanding principal owed for the acquisition of a park where such refinancing is mandated by the terms of a financing transaction entered into prior to May 25, 2023, for instance, termination of a loan with a balloon payment; or

b. Increased interest costs incurred as a result of a variable interest rate loan used to finance the acquisition of the park and entered into prior to May 25, 2023.

c. In the event that the Mobile Home Park is financed as part of a multi-asset portfolio, the allowable increase in interest costs shall be limited to the amount reasonably attributable to the Mobile Home Park or Mobile Home Parks located in the City, based on the percentage of total asset value or such allocation established in loan documents.

d. In refinancing, increased interest shall be permitted to be considered as an Operating Expense only where the Mobile Home Park Owner can show that the terms of the refinancing were reasonable and consistent with prudent business practices under the circumstances.

B. "Operating Expenses" shall not include the following:

1. Debt service expenses, except as provided in subsection (A)(11) of this Section 2.18.140;
2. Depreciation;
3. Any expense for which the Mobile Home Park Owner is reimbursed; or
4. Attorneys' fees and costs (except printing costs and documentation as required by Section 2.18.080) incurred in proceedings before an Arbitrator or in connection with legal proceedings challenging the decision of an Arbitrator or the validity or applicability of this Chapter.

C. Whenever a particular expense exceeds the normal industry or other comparable standard, the Mobile Home Park Owner shall bear the burden of proving the reasonableness of the expense. To the extent that the Arbitrator finds any such expense to be unreasonable, the Arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.

2.18.150 Special Base Year NOI/Base Rent Adjustments.

A. Mobile Home Park Owners may obtain a one-time special adjustment to the base year NOI and/or Base Rent dates if the Mobile Home Park Owner rebuts the presumption that the base year NOI and/or Base Rent date yielded a fair return. The Arbitrator shall not make such a determination unless the Arbitrator has first made at least one of the following findings:

1. That the Mobile Home Park Owner's Operating Expenses in the base year were unusually high or low in comparison to the three years prior to the base year. The average expenses for this period shall be presumed to reflect reasonable average annual expenses and the average of such expenses shall be used to calculate and adjust the base year NOI.

In determining whether the park owner's Operating Expenses were unusually high or low, the Arbitrator shall consider whether:

- a. The park owner made substantial Capital Improvements during the base year, which were not reflected in the Rent levels on the Base Rent date.

- b. Substantial repairs were made due to uninsured damage caused by fire, natural disaster or vandalism.

- c. Maintenance and repair were below accepted standards so as to cause significant deterioration in the quality of Housing Services.

- d. Other expenses were unreasonably high or low notwithstanding the following of prudent business practice.

2. That the Rent was disproportionate due to one of the enumerated factors below:

a. The Rent on the base date was exceptionally high or low due to the fact that the Rent was not established in an Arms-Length Transaction.

b. The Rent on the Base Rent date was substantially higher or lower than at other times of the year by reason of premiums being charged or rebates given for reasons unique to particular spaces.

B. If the circumstances specified in subsection (A)(2) of this Section 2.18.150 are demonstrated, the Base Rent date shall be adjusted to reflect the Rent that would have been received if the Base Rent date had been set under general market conditions. In making this adjustment, the Arbitrator shall utilize the median rent in effect on the Base Rent date, or a good faith estimate of such median rent, for Comparable Spaces within the Mobile Home Park or, if necessary, other comparable parks. Comparability shall be judged based on the location of the park, services, amenities provided, ocean views, lot size, landscaping, and other relevant factors.

2.18.160 Obligations of the Parties.

A. After the Mobile Home Park Owner's proposed effective date of a noticed Rent Increase, if the Arbitrator finds that the proposed increase or any portion thereof that was previously inoperative is justified, All Affected Homeowners shall pay the amount found justified to the Mobile Home Park within 30 days after the decision is made.

B. If the Arbitrator finds that an increase or any portion thereof is not justified, the Mobile Home Park Owner shall refund any amount found to be unjustified, but that had been paid, to All Affected Homeowners within 90 days of the Arbitrator's decision. In the event that the tenancy of an Affected Homeowner is terminated for any reason prior to receipt of a refund, the balance of the credit due the Homeowner shall be paid by the Mobile Home Park Owner within 30 days from the date of the termination of the tenancy.

C. Any sum of money that under the provisions of this Section 2.18.160 is the obligation of the Mobile Home Park Owner or Homeowner to pay, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts.

2.18.170 Homeowner's Right of Refusal.

An Affected Homeowner may refuse to pay any increase in Rent which is in violation of this Chapter, provided a petition has been filed and either no final decision has been reached by an Arbitrator or the increase has been determined to violate the provisions of this Chapter. Such right of refusal to pay shall be a defense in any action brought to recover possession of a Mobile Home Space or to collect the Rent Increase.

2.18.180 Retaliatory Acts – Homeowner’s Right to Organize.

No Mobile Home Park Owner may retaliate against a Homeowner, Homeowner Representative, or prospective Homeowner for the assertion or exercise of rights under this Chapter in any manner. This includes, but is not limited to, threatening to bring or bringing an action to recover possession of a Mobile Home Space, engaging in any form of harassment that causes a Homeowner to quit the premises, dissuading a prospective Homeowner from freely exercising the Homeowner’s legal option to choose a tenancy of a shorter term, decreasing Housing Services, increasing the Mobile Home Space Rent, or imposing or increasing a security deposit or any other charge payable by a Homeowner.

2.18.190 Fees.

A. The City is authorized to impose a Rent Stabilization Administration Fee (“Fee”) chargeable against each Mobile Home Space in the City subject to this Ordinance. The Administrator may recommend to the City from time to time the amount of the Fee and the Council may adopt such Fee by resolution at a public hearing.

B. Within sixty (60) days of the adoption of this Ordinance, each Mobile Home Park Owner in the City shall register with the City. The Mobile Home Park Owner shall provide the name and address of the Mobile Home Park Owner, the current rent roll for all spaces which shall identify: 1) the length of the lease term for each space; 2) the expiration of the lease term for each space; 3) current rents and other fees or charges that are received by the Mobile Home Park Owner itemized per Mobile Home Space; 4) the number of Mobile Home Spaces, including both occupied and unoccupied spaces, contained in that Mobile Home Park Owner’s Mobile Home Park; and 5) The Mobile Home Park Owner’s determination of Comparable Spaces in the Mobile Home Park, along with a description of how the spaces are comparable. The provision of the information required by this Section 2.18.190(C) must also be made immediately upon change of ownership of the Mobile Home Park, or an increase or a decrease in the number of spaces available at a Mobile Home Park Owner’s Mobile Home Park.

2.18.200 Remedies And Waiver of Rights.

A. In the event that a Mobile Home Park Owner demands, accepts, receives, or retains any payment in excess of the amounts allowed under this Chapter, the Homeowner may file a civil suit against the Mobile Home Park Owner. A Mobile Home Park Owner who demands, accepts, receives, or retains any payment of Rent in excess of the amounts allowed under this Chapter shall be liable to the Homeowner in the amount by which the payment or payments have exceeded the allowable Rent. In such a case, the Rent shall be adjusted to reflect the lawful Rent pursuant to this Chapter.

B. A Mobile Home Park Owner who willfully demands, accepts, or retains any payment of Rent in violation of the provisions of this Chapter shall be liable in a civil action

to the person from whom payment is demanded, accepted or retained for damages in the sum of three times the amount by which payment or payments demanded, accepted or retained exceed the maximum Rent which could lawfully be demanded, accepted or retained. A prevailing Homeowner in a civil action brought to enforce this Chapter shall be awarded reasonable attorneys' fees and costs as determined by the court. No administrative remedy need be exhausted prior to filing suit pursuant to this Section 2.18.200.

C. The remedies available in this Chapter are not exclusive and may be used cumulatively with any other remedies available in this Chapter or at law.

D. Waiver of Rights.

1. Any waiver or purported waiver by a Homeowner of rights granted under this Chapter prior to the time when said rights may be exercised shall be void as contrary to public policy, except as provided in this Section 2.18.200. It shall be unlawful for a Mobile Home Park Owner to require or attempt to require, as a condition of tenancy in a Mobile Home Park, a Homeowner, or prospective Homeowner, to waive, in a lease or rental agreement, the rights granted to a Homeowner by this Chapter.

2. It shall be unlawful for a Mobile Home Park Owner to deny or threaten to deny a tenancy in a Mobile Home Park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a tenant by this Chapter.

3. Nothing in this Section 2.18.200 shall preclude a Mobile Home Owner or tenant, or prospective Homeowner, from entering into a lease or rental agreement; provided, that such lease or rental agreement is not procured by a requirement that it be entered into as a condition of tenancy in the Mobile Home Park, and is not procured under a threat of denial of tenancy in the Mobile Home Park.

2.18.210 Rights of Affected Parties Reserved.

A. This Chapter shall not be construed to limit or curtail any other action or proceeding which may be pursued by an Affected Homeowner or Mobile Home Park Owner before any court or other body having jurisdiction thereof.

B. Defense to Action for Recovery of Possession.

1. A Mobile Home Park Owner's failure to comply with any of the provisions of this Chapter or any regulations promulgated hereunder shall serve as a complete affirmative defense in any action brought to recover possession of a Mobile Home Space.

2. A Homeowner's refusal to pay Rent in excess of the amount allowed under this Chapter shall be a complete affirmative defense in any action brought to: a) recover

possession of a Mobile Home Space for nonpayment of Rent; or b) collect Rent in excess of the amount allowed under this Chapter.

2.18.220 Extension of Time Limits.

By written agreement of the parties, or for good cause shown to the Arbitrator, the timeframes provided for under this Chapter may be extended.

2.18.230 Regulations.

The City Council may issue rules and regulations as necessary to further the purpose of this Chapter. If any portion of this Chapter is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by law, the City Council shall have the authority to enact replacement regulations consistent with the intent and purpose of the invalidated or unenforceable provisions of this Chapter to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to the matters addressed in this Chapter.