

ORDINANCE NO. 95- 20

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF AMERICAN CANYON
AMENDING THE MOBILEHOME PARK RENT STABILIZATION PROGRAM**

The City Council of the City of American Canyon ordains as follows:

SECTION 1. Chapter ____ of the _____ of the City of American Canyon Municipal Code is amended to read in full as follows:

CHAPTER _____ MOBILEHOME PARK RENT STABILIZATION

- Sec. 100. Purpose and Findings
- Sec. 101. Definitions
- Sec. 102. Applicability
- Sec. 103. Base Rent
- Sec. 104. Vacancy Control -- Establishment of New Base Rent
- Sec. 105. Anniversary Date
- Sec. 106. Rent Increase Limitations
- Sec. 107. Information to be Supplied by Park Owner
- Sec. 108. The Rent Dispute Resolution Process
- Sec. 109. Subpoena Power
- Sec. 110. Standards of Review
- Sec. 111. Net Operating Income
- Sec. 112. Gross Income
- Sec. 113. Operating Expenses
- Sec. 114. Special NOI/Base Rent Adjustments
- Sec. 115. Obligations of the Parties
- Sec. 116. Homeowner's Right of Refusal
- Sec. 117. Retaliatory Acts; Homeowner's Right to Organize
- Sec. 118. Fees
- Sec. 119. Exemption from Fees
- Sec. 120. When Recreational Vehicle Space Tenants Are To Be Treated As Prospective Tenants
- Sec. 121. Nonwaivable Obligations
- Sec. 122. Penalties and Remedies
- Sec. 123. Rights of Affected Homeowners Reserved
- Sec. 124. Review by the City Council
- Sec. 125. Severability

SECTION 100. Purpose and Findings.

A. Residents of mobilehome parks, unlike apartment tenants or residents of other rental properties, are in a unique position in that prior to occupation of a mobilehome space they are required to make substantial investments in a mobilehome residence and incur the expense of placing their mobilehome on the rented mobilehome site. In addition, the removal or relocation of a tenant's mobilehome from a given space can be accomplished only at substantial costs, such relocation may cause extensive damage to the mobilehome, and many older mobilehomes cannot, in fact, be relocated to newer mobilehome parks due to permit, landscaping and site preparation requirements and restrictions that many newer mobilehome parks impose on renters.

B. There is presently within the City of American Canyon a shortage of mobilehome spaces on which there are not currently located mobilehomes and which are therefore available for occupancy. This shortage of empty spaces, which currently approximates one percent (1%) of all mobilehome spaces within the City of American Canyon, has resulted in an extreme shortage of decent, safe and sanitary mobilehome housing in the City of American Canyon.

C. Mobilehomes constitute an important source of housing for persons of low and moderate income. Because of the present shortage of empty mobilehome spaces, there is a low vacancy rate and rents are rapidly rising and have been for several years in mobilehome parks in the City of American Canyon, causing concern, anguish and stress to a substantial numbers of the mobilehome owners and residents of mobilehome parks within the City of American Canyon, many of whom are retired persons on fixed incomes, elderly persons on fixed incomes, or persons with relatively low incomes.

D. Alternative sites for the relocation of mobilehomes within the City of American Canyon and surrounding areas are difficult to find due to the shortage of vacant spaces, restrictions on the age, size or style of mobilehomes permitted in many parks, and requirements related to the installation of mobilehomes, including permits, landscaping and site preparation.

E. The result of the conditions identified above has been the creation of a captive audience of mobilehome owners. This in turn has contributed to the creation of a great imbalance in the bargaining positions of the park owners and mobilehome owners in favor of the park owners.

F. Mobilehome owners are property owners with sizable investments in their homes and appurtenances and would incur significant costs in the event of relocation.

G. The continuing possibility of unreasonable space rental increases in mobilehome parks within the City of American Canyon threatens to diminish the value of the investment of the mobilehome owner in his or her mobilehome and contributes to unreasonably suppressed resale rates. Therefore, it is desirable to provide vacancy control in the rent stabilization program.

H. Existing state law permits mobilehome park owners to require mobilehome owners to make modifications to their homes for reasons of aesthetics or conformity to park standards that amount to capital improvements which accrue to the benefit of the park owner by potentially increasing the market value of the park itself.

I. Because of the low vacancy rate, it is necessary to encourage the development of mobilehome parks within the City of American Canyon to the extent permitted by state and local law by exempting newly constructed mobilehome spaces from the provisions of this Chapter.

J. It is the purpose of this ordinance to protect the owners and occupiers of mobilehomes within the City of American Canyon from unreasonable space rent increases or assessments, while at the same time providing the mobilehome park owners with a just and reasonable rate of return on their property.

K. There is no possibility that the adoption of this ordinance may have a significant effect on the environment in that there will be no deviation from the General Plan and no change in the present use of property within the City and therefore, its enactment is exempt from the California Environmental Quality Act.

SECTION 101. Definitions.

A. "Administrator" shall mean the Administrator of the City's Mobilehome Space Rent Stabilization Program. The "Administrator" shall be the Executive Director of the Napa Valley Housing Authority or his or her designee, subject to the approval of the City Manager, or such other person as the City Manager may in the Manager's discretion appoint to serve as Administrator.

B. "Affected Tenants" shall mean those mobilehome tenants as defined in subsection (M) who are subject to a rent increase (as defined in subsection (U)). For purposes of providing notice of rent increases and copies of this Chapter, and calculating the number of affected tenants in support of a rent arbitration petition, each mobilehome space subject to a rent increase shall be deemed to have only one affected tenant. Reference to "all affected tenants" shall mean one representative tenant from each space subject to the proposed rent increase.

C. "Arbitrator" shall mean a person (1) who is neither a tenant (as defined in subsection (Z)) nor has an interest in a mobilehome park of a nature that would require disqualification under the provisions of the Political Reform Act if the person were an elected state official, and (2) who the Administrator (as defined in subsection (A)) determines meets one of the following criteria:

1. Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Administrator, provides that person with the knowledge and skills

to conduct a space rent dispute arbitration in a professional and successful manner; or

2. Completion of at least three arbitration proceedings for a Superior Court or other public entity that involved issues the Administrator finds similar to those raised in space rent dispute arbitrations; or

3. Prior service as a California Municipal or Superior Court pro tempore judge.

D. "Base Rent" shall mean the authorized rent calculated pursuant to the provisions of section 103, plus any rent increase allowed under this Chapter, unless it is expressly excluded from base rent, plus any rent adjustment attributable to vacancy decontrol as provided in section 104.

E. "Capital Improvements" shall mean those new improvements or replacements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new uses, consist of more than ordinary maintenance and/or repairs, and which may be amortized over the useful remaining life of the improvement to the property. Capital improvements 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.

F. "Consumer Price Index" shall mean the Consumer Price Index for all Urban Consumers San Francisco-Oakland Area, published by the U.S. Department of Labor, Bureau of Labor Statistics.

G. "Gross Income" shall have the meaning set forth in section 112.

H. "Housing Service" shall mean a service or facility provided by the park owner related to the use or occupancy of a mobilehome space, which is neither a capital improvement nor substantial rehabilitation as those terms are defined herein. Housing Service includes but is not limited to repairs, replacement, maintenance, landscaping, painting, lighting, heat, water, utilities, laundry facilities, refuse removal, recreational and meeting facilities, parking, security service, and employee services.

I. "Mobilehome" shall mean a structure designed for human habitation and for being moved on a street under permit pursuant to California Vehicle Code section 35790. "Mobilehome" includes a manufactured home, as defined in California Health and Safety Code section 18007, and a mobilehome, as defined in California Health and Safety Code section 18008. Mobilehome does not include a recreational vehicle, as defined in Section 799.24 of the California Civil Code and Section 18010 of the California Health and Safety Code, or a commercial coach, as defined in Section 18001.8 of the California Health and Safety Code, except when such a vehicle has continuously remained within a mobilehome park for a period in excess of nine (9) months.

J. "Mobilehome Park" shall mean any area of land within the City where two (2) or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

K. "Mobilehome Park Owner" shall mean any park owner, lessor, or sublessor of a mobilehome park in the City who receives or is entitled to receive rent for the use or occupancy of any mobilehome 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, and the representative, agent, or successor of such park owner, lessor, or sublessor.

L. "Mobilehome Space" shall mean any site within a mobilehome park located in the City intended, designed, or used for the location or accommodation of a mobilehome. "Mobilehome Space" includes any accessory structures or appurtenances attached to the mobilehome or used in conjunction therewith. "Mobilehome Space" does not include (1) sites rented together and concurrently with a mobilehome provided by the mobilehome park owner and (2) "new construction" as defined by California Civil Code section 798.45. The term "Mobilehome Space" shall also include, for purposes of this Chapter, rentable spaces within mobilehome parks which have been occupied by a "recreational vehicle" as defined by Civil Code Section 799.24 or a "commercial coach" as defined by Health and Safety Code Section 18001.8 for a period of nine (9) months or more.

M. "Mobilehome Tenant" shall mean a person who has a tenancy in a mobilehome park under a rental agreement that is not otherwise exempt from regulation under this Chapter pursuant to California Civil Code sections 798.17 or 798.45.

N. "Net Operating Income" shall have the meaning set forth in section 111.

O. "Operating Expenses" shall have the meaning set forth in section 113.

P. "Park Owner" shall mean a mobilehome park owner.

Q. "Party" shall refer to any affected tenant and/or park owner involved in proceedings under this Chapter.

R. "Percent Change in Consumer Price Index" shall mean the annual percent change in the Consumer Price Index ("CPI"), calculated to the nearest tenth, published for the month of July, issued in the month of August. In the event that an index is not published for the month of July, the closest preceding month for which an index is published shall be used. It is the intent of the City to fix the CPI in the beginning of the fiscal year, for the rest of the fiscal year barring an unforeseen failure to publish a CPI for the month of July.

S. "Prospective Tenant" shall mean: (1) a person who is not currently a tenant in a mobilehome park but is a prospective mobilehome tenant who desires the use of a mobilehome space as defined in this Chapter and has approached the mobilehome park owner as such, or (2) a person who is a party to a rental agreement pursuant to California Civil Code sections 798.17(a) and (b), which has terminated or expired, or is being considered for renewal or extension.

T. "Rent" shall mean mobilehome space rent.

U. "Rent Increase" shall mean any additional space rent demanded of or paid by a tenant for a mobilehome 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" shall mean the fee established from time to time by resolution of the Council in accordance with the provisions of section 118.

W. "Section," unless otherwise indicated, shall mean a section of this chapter.

X. "Space Rent" shall mean the total consideration, including any bonus, benefit, or gratuity, demanded or received by a mobilehome park owner for or in connection with the use or occupancy of a mobilehome space or any housing services provided with the mobilehome space. "Space rent" shall not include any amount paid for the acquisition, use or occupancy of a mobilehome dwelling unit.

Y. "Substantial Rehabilitation" shall mean that work done by a park owner to a mobilehome space or to the common areas of the mobilehome park, exclusive of a capital improvement (as defined in subsection (E)), which has a value in excess of \$200.00, and is performed either to secure compliance with any state or local law or to repair damage resulting 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, if any, incurred as a direct result of the substantial rehabilitation work.

Z. "Tenant" shall mean a mobilehome tenant.

AA. "Tenant Representative" shall mean a person appointed in writing by a group of tenants to represent the interest of, negotiate on behalf of, and bind the appointing parties.

SECTION 102. Applicability.

A. The provisions of this Chapter shall apply to every mobilehome park within the City, except that the provisions of this Chapter shall not apply to mobilehome

spaces which are subject to a written rental agreement that is for more than a 12-month duration. Such spaces are exempt from regulation under this Chapter pursuant to Civil Code section 798.17. The provisions of this Chapter shall also not apply to a newly-constructed space initially held out for rent after January 1, 1990, in accordance with Civil Code section 798.45.

B. The exception provided in subsection (A) for spaces subject to long term rental agreements shall be effective only until the expiration or other termination of the rental agreement whereupon all provisions of this Chapter shall immediately be applicable to the mobilehome space, unless such rental agreement meets the exemption criteria of Civil Code section 798.17.

C. Before any rental agreement or lease in excess of 12 months is executed by a tenant or prospective tenant, the park owner must:

1. Offer any tenant or prospective tenant the option of a rental agreement or lease for a term of 12 months or less which will permit such person to receive the benefits of the Mobilehome Space Rent Stabilization Program;
2. Provide the tenant or prospective tenant a copy of this Chapter if a copy has not already been provided, and;
3. Inform the tenant or prospective tenant orally and in writing that if the tenant or prospective tenant signs a lease or rental agreement with a term in excess of 12 months, that complies with Civil Code section 798.17, then the lease or rental agreement is not subject to the terms and protections of this Chapter. Such written notification shall contain the following recitation:

"UNDER THE CITY OF AMERICAN CANYON MOBILEHOME RENT STABILIZATION ORDINANCE SECTION 102, YOU ARE LEGALLY ENTITLED TO ELECT A MONTH-TO-MONTH TENANCY OVER ANY OTHER LONGER PERIODIC TENANCY. YOU MAY NOT BE ENTITLED TO RENT STABILIZATION (RENT CONTROL) PROGRAM BENEFITS IF YOU ELECT A LEASE OF MORE THAN 12 MONTHS IN DURATION IF THAT LEASE MEETS THE REQUIREMENTS OF CIVIL CODE SECTION 798.17(a) & (b) WHICH HAS BEEN ATTACHED HERETO."

Any effort to circumvent the requirements of this section shall be unlawful, as well as an unfair business practice subject to enforcement under California Business and Professions Code section 17200 and following. A lease or rental agreement in excess of 12 months, executed by a tenant or prospective tenant shall not be exempt from this Chapter unless it complies with each and every requirement of Civil Code section 798.17 (a) through (c) for such exemptions.

SECTION 103. Base Rent.

A. Initial Calculation.

1. Except as provided herein, a park owner shall not demand, accept, or retain rent for a mobilehome space exceeding the rent in effect for that space on April 2, 1994. If a previously rented mobilehome space was not rented on April 2, 1994, the park owner shall not, except as provided herein, demand, accept or retain rent for that space exceeding the rent in effect during the last month the space was rented prior to April 2, 1994.

2. If a mobilehome 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(a) and (b), and that agreement expires and is not renewed, then the base rent, until the next annual adjustment pursuant to this Chapter, shall be the space rent in effect for that space prior to the expiration of the rental agreement, excluding separately billed pass throughs for capital improvements.

3. It shall be presumed that the initial base date rent yields a fair return.

B. Adjustment.

A park owner may seek an adjustment to the initial base date rent where the park owner can clearly establish that *circumstances exist which require an adjustment to assure that the park owner is receiving a fair and reasonable return.*

1. In seeking an adjustment to the initial base rent under this section, the procedures set forth in sections 107 and 108 shall be followed.

2. The guidelines for determining an adjustment to the initial base rent are set forth in section 114.

SECTION 104. Vacancy Control -- Establishment of New Base Rent.

A. A park owner shall be permitted to charge a new base rent for a mobilehome space whenever a lawful vacancy occurs. For purposes of this Chapter, "lawful space vacancy" shall mean:

1. A vacancy occurring because of the termination of the tenancy of a mobilehome tenant in accordance with the Mobilehome Residency Law, California Civil Code sections 798.55 through 798.60; or

2. A vacancy of the mobilehome space arising from the voluntary removal of a mobilehome from the mobilehome space by the affected mobilehome tenant. A removal of the mobilehome from the space for the

purpose of performing rehabilitation or capital improvements to the space or for the purpose of upgrading the mobilehome shall not constitute a voluntary removal of the mobilehome.

B. "Lawful space vacancy" shall not include sale or other permitted assignment of a mobilehome by a mobilehome tenant where the mobilehome is not removed from its mobilehome space. However, a mobilehome park owner may increase the monthly base rent for a mobilehome space with a space rent below the median space rent for all spaces in the mobilehome park at the time of such a sale or assignment by up to \$25 per month upon such a sale or assignment. The right to increase the base rent upon a sale or assignment of a mobilehome with a below median space rent shall only be exercised by park owner with respect to any one (1) mobilehome space only once in any five-year period commencing upon the effective date of this Chapter. Both park owner and the mobilehome tenant shall advise any prospective buyer/assignee of the provisions of this subparagraph and the park owner shall provide any prospective buyer/assignee with documentation of the park median space rent.

C. When a new base rent is established following the vacancy of a mobilehome space, or a valid sale/assignment occurs, pursuant to this Section, the owner shall give written notice to the new affected mobilehome tenant of the twelve (12) month anniversary date for rent increases allowed under Section 106 and shall give written notice to such affected tenant that the space rent may be subject to stabilized rent increases pursuant to the provisions of this Chapter.

SECTION 105. Anniversary Date.

Each park owner shall, by May 15, 1994, establish an anniversary date for all rent increases in the park owner's park. Such rent increases, if any, except as specified below, shall be enacted only on the anniversary date of that park. The park owner shall post the anniversary date in the park office or office areas where it can easily be seen by the tenants and shall notify the Administrator in writing of the anniversary date on or before May 15, 1994.

SECTION 106. Rent Increase Limitations.

A. From and after the effective date of this Chapter, space rent shall not be increased within twelve (12) months of the effective date of the preceding rent increase unless otherwise determined by an arbitrator as provided elsewhere in this Chapter. The permissible annual increase shall be the lesser of:

1. one hundred percent (100%) of the percent change in the CPI; or
2. six percent (6%) of the base rent.

B. A park owner may not increase the space rent within twelve (12) months of the effective date of the preceding rent increase period, unless the park owner can clearly establish that the rental increase is necessary to cover costs of operation, maintenance, capital improvements or substantial rehabilitation not reasonably foreseeable at the time notice of the preceding rent increase was given. If a park owner seeks a rent increase pursuant to this subsection, the procedures set forth in sections 107 and 108 shall be followed.

C. If a park owner wishes to increase the space rent on the anniversary date or within a twelve (12) month period more than the amount permitted in subsection (A) and less than three hundred percent (300%) of the percent change in the CPI, the procedures set forth in sections 107 and 108 shall be followed.

D. If a park owner wishes to increase the rent payable for any mobilehome space on the anniversary date or within a twelve (12) month period in an amount equal to or more than three hundred percent (300%) of the percent change in the CPI, arbitration shall automatically be required to show good cause why such an increase is necessary.

E. The arbitrator may reduce the proposed rent increases pursuant to subsections (B), (C) or (D) to a figure determined upon the evidence submitted by the park owner or the park owner's representative to be a fair return.

F. Any notice of space rent increase given by a park owner pursuant to this section shall be given in writing at least ninety (90) days before any rent increase is to take effect.

SECTION 107. Information to be Supplied by Park Owner.

A. Within thirty (30) days after the effective date of this Chapter and upon rerenting of each mobilehome space thereafter, the park owner shall supply each affected tenant or prospective tenant with a current copy of this Chapter.

B. Whenever the park owner serves a notice of rent increase, except a notice of rent increase where the increase is calculated pursuant to section 106(A), the park owner shall at the same time and in the same manner serve the affected tenant or prospective tenant with a notice that sets forth all of the following information:

1. The amount of the rent increase both in dollars and as a percentage of existing rent and documentation supporting the level of increase desired, including at a minimum: a summary of the unavoidable increases in maintenance and operating expenses; a statement of the cost, nature, amortization, and allocation among mobilehome spaces of any substantial rehabilitation or capital improvement; a summary of the increased cost of the park owner's debt service

and the date and nature of the sale or refinancing transaction; a summary of the park owner's net operating income of the preceding twenty-four (24) months and other relevant information that supports the level of rent increase desired;

C. The identity of all other affected tenants and the spaces which they rent;

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

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

F. If applicable, notification that the proposed rent increase exceeds three hundred percent (300%) of the change in the CPI, and that arbitration is automatically required by the provisions of section 106(D) without any need to file an arbitration petition. Such notices shall bear the following language in capital letters: "ARBITRATION OF THE PROPOSED INCREASE IS AUTOMATICALLY REQUIRED IN THIS MATTER BY OPERATION OF LAW." Erroneous use of this notice shall be regarded as an irrevocable stipulation to submit to arbitration; and

G. The park owner shall, at the same time, place on file with the Administrator two copies of the statement or documentation required above.

H. A park owner failing 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 by the park owner shall be a defense in any action brought by the park owner to recover possession of a mobilehome space or to collect any rent increase from the tenant.

I. An affected tenant who is given notice of a rent increase is entitled to file a Petition for Space Rent Review as provided in section 108 regardless of whether the park owner has failed to provide the affected tenant(s) with all the information, documents and notices required by this Chapter.

SECTION 108. The Rent Dispute Resolution Process.

A. The tenant may contact the Administrator for an explanation of the provisions of this Chapter.

B. Mediation. If a rent increase is pursuant to sections 106(b) or 106(c), then after service of the rent increase notice and accompanying information required by section 107, the park owner shall set a time and place for a mediation meeting to be held on the mobilehome park premises. The meeting shall be held within ten (10) days from the service of the notice of rent increase or notice from the Administrator that

mediation is required pursuant to this section. The park owner shall give affected tenants and the Administrator at least five (5) days advance notice of this meeting. The purpose of this meeting shall be to allow and encourage the parties to mediate any differences they may have concerning the proposed rent increase. At the meeting, the park owner shall be available to meet with affected tenants to explain the reasons for the proposed rent increase. If the parties agree to a specific rent increase, the mediator shall prepare a mediation agreement setting forth the terms of the agreement between the park owner and the affected tenants. The mediation agreement shall be executed by the parties and a copy of the agreement shall be filed with the Administrator.

C. Petition.

1. If discussions between the park owner and affected tenants, either informally or pursuant to subsection (B) above, do not resolve the dispute, the tenants or their representative(s) may file with the Administrator a Petition for Space Rent Review with a copy of the notice of rent increase within thirty (30) days after receipt of the rent increase notice.

2. The Administrator shall not accept a petition for review of a rent increase unless it has been signed by at least fifty-one percent (51%) of all affected tenants.

3. As soon as possible after a petition has been filed with respect to mobilehome spaces which are within a single park, the Administrator shall, to the extent possible, consistent with the time limitations provided herein, consolidate petitions involving similarly situated affected tenants.

4. Upon the filing of a petition, the rent increase is not effective and may not be collected until and to the extent it is awarded by an arbitrator or until the petition is abandoned by the affected tenants or their representative(s). "Abandoned" as used herein shall mean a failure to actively pursue the necessary steps to prepare the tenants' case for the arbitration. An automatic arbitration based upon a three hundred percent (300%) CPI increase shall not require active tenant participation and shall not be considered abandoned due to lack of tenant participation.

D. Contents of Petition.

1. The Petition for Space Rent Review shall set forth the total number of affected rented spaces in the mobilehome park, shall identify the name of the tenant who occupies each such space, and shall state the date upon which the notice of the rent increase was received by the tenant(s).

2. After obtaining the required signature(s) of affected tenant(s), the tenant(s) shall deliver the petition or mail it by certified mail to the Administrator at the following address: Director, Napa Valley Housing

Authority, 1195 Third Street, Napa, California 94559-3301 (or successor address or agency). 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) above. The Administrator shall provide a copy of the completed petition to the park owner and the arbitrator.

E. Information Questionnaire. After the Administrator has accepted a Petition for Space Rent Review, the Administrator shall remit to the park owner and petitioning tenants or the tenant 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 mobilehome park owner, and the affected tenants or the tenant representative.

F. Assignment of Arbitrator and Hearing Date. Upon receipt of a petition, or in the event of an automatic arbitration pursuant to section 106(F), or upon an affected tenant's claim of a vacancy control rent increase violation pursuant to section 104, the Administrator shall, within fifteen (15) business days, assign an arbitrator. The Administrator shall set a date for the arbitration hearing no sooner than ten (10) nor later than thirty (30) working days after the arbitrator is assigned. The park owner and all affected tenant(s) 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.

G. Arbitration Hearing.

1. The park owner and any affected tenant(s) may appear at the hearing and offer oral and documentary evidence. Both the park owner and tenant(s) may designate a representative or representatives to appear for them at the hearing. The arbitrator may grant or order one (1) continuance to each party not to exceed ten (10) business days from the date of the hearing. A further continuance may be granted if stipulated to by all the parties. The burden of proving that the amount of rent increase is reasonable shall be on the park owner by a preponderance of the evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of evidence and manner of producing evidence shall be those rules set forth in California Government Code section 11513 for the conduct of hearings under the Administrative Procedure Act. These rules may be relaxed at the discretion of the arbitrator in the interests of justice.

2. Any party may have electronic recording equipment or a court reporter present to record and prepare a transcript of the hearing before the arbitrator. Such equipment or reporter shall be provided at that party's own expense.

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

4. The arbitrator shall, within fourteen (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 forthwith mail copies of the decision to the park owner and affected tenant(s).

5. The decision of the arbitrator, rendered in accordance with this section, shall be final and binding upon the park owner and all affected tenants. The decision of the arbitrator will be subject to the provisions of California Code of Civil Procedure section 1094.5.

6. It is the intent of the Council to have a final decision rendered within ninety (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.

SECTION 109. Subpoena Power.

Subpoenas, including subpoenas duces tecum, requiring a person to attend at a particular time and place to testify as a witness, may be issued in connection with any dispute pending before an arbitrator. Subpoenas shall be issued at the request of the Administrator, an arbitrator, the tenant(s) or a park owner. Subpoenas shall be issued and attested by the City Attorney. A subpoena duces tecum shall be issued only upon the filing with the City Attorney of an affidavit showing good cause for the production of the matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceedings, and stating that the witness has the desired matters or things in his or her possession or under his or her control. A copy of such affidavit shall be served with the subpoena. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this Chapter may be served in person or by certified mail, before the hearing for which attendance is sought. Any subpoena or subpoena duces tecum issued pursuant to the provisions of this Chapter shall be deemed issued by and in the name of the Council.

SECTION 110. Standards of Review.

A. The arbitrator shall determine whether space rent increases proposed or imposed by the park owner are reasonable based upon the circumstances and all the provisions of this Chapter. The arbitrator shall take into consideration that the purpose of this Chapter is to permit park owners a just and reasonable return, while protecting tenants from unnecessary or unreasonable rent increases.

B. The arbitrator shall not allow more than one (1) rent increase per mobilehome space per twelve (12) month period, unless a park owner can clearly establish that the rental increase is necessary to cover costs of operation, maintenance,

capital improvements or substantial rehabilitation not reasonably foreseeable at the time notice of the 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% of the increase or decrease in the CPI since the base year yields a fair return. Park owners shall be entitled to maintain and increase their net operating income in accordance with this section. The arbitrator shall make a determination of whether the park owner's net operating income yields a fair return under this standard.

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

$$\text{Fair NOI} = \text{Base Year NOI} \times (1 + .75 (\% \text{ change in CPI}),$$

1. Except as provided in section 114, it shall be presumed that the net operating income produced by the park during the base year provided a fair return.

2. Calendar year 1993 shall be established as the base year for purposes of determining whether a 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 park owner did not own the subject property in the base year and/or the 1993 operating expenses are not available, the arbitrator may take evidence of historical factors to construct a base year.

3. The base year CPI shall be the CPI level in June 1993.

4. The percentage change in the CPI shall be calculated by using the CPI as of the month prior to the noticed increase.

5. 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.

E. New Capital Improvements. A park owner may seek a rent increase based on the cost of a completed new capital improvement (as defined in section 101(E)), together with a reasonable return upon the capital improvement investment, only if the park owner has:

1. Obtained the written consent of 51% of the spaces in the park (one vote per space); and

2. 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; and

3. 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 sixty (60) months; and

4. Allocated the increase among affected tenants 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 106(A).

F. Mitigating Factors. In evaluating a space 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 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 mobilehome space or park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding twelve (12) months.

G. 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 park owner with a fair and reasonable return.

SECTION 111. Net Operating Income.

A. In evaluating a space rent increase imposed by a park owner to maintain the park owner's net operating income from a mobilehome park, "Net Operating Income" (NOI) shall mean the "Gross Income" (as defined in section 112) of the mobilehome park less the "Operating Expenses" (as defined in section 113) of the mobilehome park.

SECTION 112. Gross Income.

A. For purposes of calculating Net Operating Income pursuant to section 111, "Gross Income" shall mean the sum of the following:

1. Gross space rents, computed as gross space rental income at one hundred percent (100%) occupancy; plus
2. Other income generated as a result of the operation of the mobilehome park, including, but not limited to, fees for services actually rendered; plus
3. Revenue received by a park owner from the sale of gas and electricity to tenants where such utilities are billed individually to the tenants by the mobilehome park owner. Such revenue shall equal the total cost of the utilities to the tenants minus the amount paid by the park owner for such utilities to the utility provider; minus
4. Uncollected space rents due to vacancy and bad debts to the extent that the same are beyond a park owner's control. Uncollected space rents in excess of three percent (3%) of gross space rent shall be presumed to be unreasonable unless established otherwise and shall not be included in computing gross income. If uncollected space rents must be estimated, then the average of the preceding three (3) years experience shall be used.

SECTION 113. Operating Expenses.

A. For purposes of calculating Net Operating Income pursuant to section 111, "Operating Expenses" may include:

1. Real property taxes and assessments.
2. Utility costs to the extent that they represent costs to the park owner which are not passed through to tenants of the mobilehome park.
3. Management expenses (including the compensation of administrative personnel, including the value of any mobilehome 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 (5%) of gross income, unless established otherwise.
4. In addition to the management expenses listed above, if the park owner performs managerial or maintenance services which are uncompensated, the park owner may include the reasonable value of such services or operating expenses. Park owner performed labor shall be limited to five percent (5%) of gross income unless the arbitrator finds that such a limitation would be substantially unfair in a given case. A mobilehome park owner must devote substantially all of the park owner's time, that is, at least forty (40) hours per week, to performing such managerial or maintenance services in order to warrant

the full five percent (5%) credit as an operating expense. No credit for such services shall be authorized unless a 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 118.

9. Reserves for replacement of long term improvements or facilities, provided that accumulated reserves shall not exceed five percent (5%) of gross income.

10. Costs of necessary capital improvements or substantial rehabilitation which exceed existing reserves for replacement. A necessary capital improvement shall be an improvement required to maintain the common facilities and areas of the mobilehome park in a decent, safe, and sanitary condition or to maintain the existing level of mobilehome park amenities and services. In the event that the capital improvement or substantial rehabilitation expenditure is necessitated as the result of an accident, disaster, or other event for which the 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 park owner, shall be an allowable operating expense only if the park owner has:

a. Consulted with the affected tenants 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 the necessary capital improvement tenants 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 sixty (60) months.

d. Allocated the increase among affected tenants 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 106(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 July 1, 1993, 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 July 1, 1993.

In refinancing, increased interest shall be permitted to be considered as an operating expense only where the 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 (a) subsection (A)(11) above and (b) as permitted in connection with the computation of costs of a capital improvement or substantial rehabilitation;

2. Depreciation;

3. Any expense for which the park owner is reimbursed; or

4. Attorneys' fees and costs (except printing costs and documentation as required by section 107) 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. All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that the arbitrator finds any such expense to be unreasonable, the arbitrator shall adjust the expense to reflect the normal industry or other comparable standard.

SECTION 114. Special Base Year NOI/Base Rent Adjustments.

A. Park owners may obtain a one-time special adjustment to the base year NOI and/or base date rent(s), if the park owner rebuts the presumption that the base year NOI and/or base date rent(s) 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 park owner's operating expenses in the base year were unusually high or low in comparison to the three (3) 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 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 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) are demonstrated, the base date rent shall be adjusted to reflect the rent that would have been received if the base date rent had been set under general market conditions. In making this adjustment, the arbitrator shall utilize the median rent in effect on the base date, or a

good faith estimate of such median rent, for comparable spaces within the park or, if necessary, other comparable parks. Comparability shall be judged based the location of the park, services, amenities provided, and other relevant factors.

SECTION 115. Obligations of the Parties.

A. If, after the park owner's proposed effective date of a noticed rent increase, the arbitrator finds that the proposed increase or any portion thereof that was previously inoperative is justified, all affected tenants shall pay the amount found justified to the park owner within thirty (30) days after the decision is made.

B. If the arbitrator finds that an increase or any portion thereof is not justified, the park owner shall refund any amount found to be unjustified, but that had been paid, to all affected tenants within thirty (30) days of the arbitrator's decision. If such refund is not made within the thirty (30) day period, the tenant(s) may withhold the amount from the next space rent(s) due until the full amount of the refund has been made. Notwithstanding the foregoing, in the event that the tenancy of an affected tenant is terminated for any reason prior to full credit against rent, the balance of the credit due the tenant shall be paid by the park owner within thirty (30) days from the date of the termination of the tenancy.

C. Any sum of money that under the provisions of this section is the obligation of the park owner or tenant 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.

SECTION 116. Tenant's Right of Refusal.

An affected tenant 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 mobilehome space or to collect the rent increase.

SECTION 117. Retaliatory Acts; Tenant's Right to Organize.

No park owner may retaliate against a tenant or prospective tenant for the tenant's or prospective tenant's 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 mobilehome space; engaging in any form of harassment that causes a tenant to quit the premises; dissuading a prospective tenant from freely exercising the tenant's legal option to choose a month-to-month rental; decreasing housing services; increasing the space rent; or imposing or increasing a security deposit or any other charge payable by a tenant.

SECTION 118. Fees.

A. The costs of administration of this Chapter, including the costs of mediation and arbitration, shall be borne by the City, subject to reimbursement by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the City not otherwise exempt from the fee.

B. The Administrator shall recommend to the City from time to time the amount of such fee and the Council shall adopt such fee by resolution.

C. On or before May 15th of the fiscal year of the adoption of this Chapter, and thereafter on or before July 31st of each subsequent fiscal year, each park owner of a mobilehome park in the City shall register with the City Finance Director. The park owner shall provide in writing, the name and address of such park owner, a statement of the number of mobilehome spaces, including both occupied and unoccupied spaces, contained in that park owner's mobilehome park, and the number of recreational and commercial coach spaces, both occupied and unoccupied, in the mobilehome park. Re-registration and provision of this information must also be made upon change of ownership of the mobilehome park or an increase or a decrease in the number of spaces.

D. On or before May 15th of the fiscal year of adoption, and thereafter on or before July 31st of each and every subsequent fiscal year (July 1 through June 30), each mobilehome park owner shall pay to the City Finance Director the mobilehome park rent stabilization program administration fee then in effect for each occupied mobilehome space in the park owner's mobilehome park, except for those spaces subject to a rental agreement in full compliance with the requirements of California Civil Code section 798.17(a) and (b) or which qualify as new construction under California Civil Code section 798.45. The City Finance Director shall issue to each park owner a receipt for payment of the fees required by this section.

E. Allocation of Fee.

1. A park owner who pays the fees may allocate fifty percent (50%) of the fees assessed against a mobilehome space to the tenant pursuant to the provisions set forth below. The remaining fifty percent (50%) of the fees assessed against a mobilehome space shall not be passed on in any way to tenants.

2. The park owner shall provide to all affected tenants documentation supporting the allowable amount to be collected in order to recover a portion of rent stabilization administration fees. At a minimum, such documentation shall include (1) billing notices or other equivalent documents from the City imposing

the rent stabilization administration fee, (2) a copy of section 118, (3) the calculations used by the park owner to apportion the cost of the allowable percentage among the affected tenants, (4) the address and telephone number of the Administrator, and (5) notice to the affected tenant that such tenant is encouraged to contact the Administrator for an explanation of the provisions of this Chapter.

F. The fee allocation shall not be considered part of the base rent upon which future rent increases can be made.

G. The fee allocation shall be separately listed on any monthly or other periodic billing statement to the tenant.

H. A service fee equal to one and one-half percent (1-1/2%) per month will be charged on all late payments of administration fees under this Chapter. The service fee may not be passed on to tenants.

SECTION 119. Exemption from Fees.

A. Any park owner who believes that the park owner may be entitled to a space fee exemption pursuant to California Civil Code sections 798.17 or 798.45 or any other provision of this Chapter, shall provide the Administrator with the following documentation, as appropriate:

1. the executed lease for each exempt space claimed and any amendments thereto;
2. for a newly constructed space, proof that the space was constructed and initially held out for rent after January 1, 1990; and
3. for a recreational vehicle or commercial coach space, adequate documentation of a change in space tenancy within the preceding nine (9) months.
4. a statement of the basis for the exemption.

B. The Administrator's decision as to an exemption shall be final.

SECTION 120. When Recreational Vehicle/Commercial Coach Space Tenants are to be Treated as "Prospective Tenants."

Any recreational vehicle space that is occupied by a recreational vehicle as defined in Civil Code Section 799.24, and any commercial coach space that is occupied by a commercial coach as defined in Health and Safety Code Section 18001.8, for a

period in excess of nine (9) months on or after the effective date hereof shall be regarded as a "mobilehome space" for purposes of this Chapter, and a tenant upon such a space shall be entitled to all the rights, protections and obligations of this Chapter. Such a space tenant shall be counted as a "prospective tenant" upon the effective date of this Chapter, and said space shall be subject to the fees authorized by the City of American Canyon for mobilehome spaces. The space tenant and the park owner shall apportion the fee in the manner authorized for mobilehome spaces subject to this Chapter generally.

SECTION 121. Nonwaivable Obligations.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this Chapter is waived or modified, is against public policy and void, except with respect to any rental agreement complying with all of the terms and conditions set forth in California Civil Code section 798.17.

SECTION 122. Penalties and Remedies.

In addition to those penalties and remedies set forth elsewhere in this Chapter, any park owner who demands, accepts, receives, or retains any money as rent from a tenant to which the park owner is not entitled under the provisions of this Chapter shall be liable to the tenant for any actual damages, attorney's fees, and costs incurred by the tenant as a consequence thereof plus a penalty in the sum of three times the amount of money the park owner accepted, received, or retained in violation of the provisions of this Chapter or \$500.00, whichever is greater.

SECTION 123. Rights of Affected Tenants Reserved.

This Chapter shall not be construed to limit or curtail any other action or proceeding which may be pursued by an affected tenant against a park owner before any court or other body having jurisdiction thereof.

SECTION 124. Review by the City Council.

The Council shall review the effectiveness of this Chapter no later than two (2) years from its enactment. Notice of the time and place of the Council's review shall be published at least ten (10) days prior to the review date in a newspaper of general circulation in the City or the City of Napa.

SECTION 125. Severability.

This Chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application. To this end, the provisions of this Chapter are declared to be severable and are intended to have independent validity.

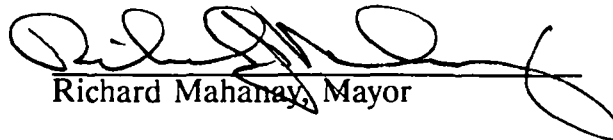
The foregoing ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 19th day of October, 1995 and was passed and adopted at a regular meeting of the City Council of the City of American Canyon, State of California held on the 19th day of October, 1995 by the following vote:

AYES: Councilmembers Cypher, Winters, Mayor Pro Tem Anderson
Mayor Mahanay

NOES: NONE

ABSTAIN: NONE

ABSENT: Councilmember Orlando


Richard Mahanay, Mayor

ATTEST:


Ralph Freedman, City Clerk

APPROVED AS TO FORM:

/s/ William D. Ross
William D. Ross, City Attorney