

ORDINANCE NO. 97-03

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

The City Council of the City of American Canyon does hereby ordain as follows:

Section 1. Section 15.04.020 of the American Canyon Municipal Code regarding Definitions is hereby amended to include the following definitions:

"Gross Income" shall have the meaning set forth in section 15.04.140.

"Net Operating Income" shall have the meaning set forth in section 15.04.130.

"Operating Expenses" shall have the meaning set forth in section 15.04.150.

"Percent Change and Consumer Price Index" shall mean the annual percent change in the Consumer Price Index (CPI), calculated to the nearest tenth published up to and including July and averaged over the preceding twelve (12) months.

Section 2. Section 15.04.040(B) of the American Canyon Municipal Code regarding Base Rent is hereby amended to read as follows:

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 15.04.090 and 15.04.100 shall be followed.

2. The guidelines for determining an adjustment to the initial base rent are set forth in section 15.04.160.

Section 3. Section 15.04.050(C) of the American Canyon Municipal Code is hereby amended to read as follows:

C. Any alleged violation of this provision shall be subject to automatic arbitration pursuant to section 109(F).

Section 4. Section 15.04.070 of the American Canyon Municipal Code regarding Space Rent Limitations is hereby amended to read as follows:

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 increases unless otherwise determined by an arbitrator as provided elsewhere in this Chapter. The permissible annual increase shall be as follows:

1. If the annual change in the CPI is three (3) percent or less, the increase shall not exceed ninety (90) percent of the CPI;

2. If the annual change in the CPI is between three (3) and four (4) percent, the increase shall not exceed eighty (80) percent of the CPI;

3. If the annual change in the CPI is between four (4) and (6) percent, the increase shall not exceed seventy (70) percent of the CPI.

Notwithstanding the foregoing, the permissible annual increase may be adjusted based on the mitigating factors set forth in section 15.04.120(E) pursuant to the procedures set forth in section 15.04.080.

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 15.04.090 and 15.04.100 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 15.04.090 and 15.04.100 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 5. Former section 15.04.080 of the American Canyon Municipal Code is hereby renumbered to section 15.04.090, and a new section 15.04.080 is added to the American Canyon Municipal Code to read as follows:

15.04.080 Protest of Annual Space Increase Based on Percentage Changes In CPI Pursuant To Section 15.04.070(A).

Mobilehome park tenants who have been served with notice of a space rent increase pursuant to section 15.04.070(A) may protest the proposed increase based on the mitigating factors in section 15.04.120(E), by serving a petition which has been signed by fifty-one (51) percent of the affected tenants on the owner within thirty (30) days of the date of the written notice of the proposed increase. A copy of the petition shall also be served on the Administrator within this time period. The protest of the proposed rent increase shall be subject to the rent dispute resolution process as set forth in section 15.04.100, including mediation and, if mediation is unsuccessful, an arbitration hearing. If the protest of the rent increase proceeds to arbitration, the arbitrator may reduce or deny the proposed rent increase based on the factors set forth in section 15.04.120(E).

Section 6. New section 15.04.090, formerly section 15.04.080 of the American Canyon Municipal Code, is hereby amended to read as follows:

15.04.090 Information to be Provided by the Park Owner.

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

B. Whenever the park owner serves a copy of a rent increase, except where the rent increase is calculated pursuant to section 15.04.070(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 improvements; 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;

2. The identity of all other affected tenants in the spaces which they rent;

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

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

5. If applicable, notification that the proposed increase exceeds three hundred (300) percent of the change in the CPI and that arbitration is automatically required by the provisions of section 15.04.070(D) without the 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 should be regarded as a irrevocable stipulation to submit to arbitration.

C. Whenever the park owner serves a notice of an increase pursuant to section 15.04.070(A), the park owner shall at the same time and in the same manner serve on the affected tenants the documents set forth in paragraphs B(2), (3) and (4) above, and if a petition for rent review is filed by the tenants, any available information regarding any cost savings resulting from reduced on-site housing services or a decrease in expenses for maintenance or repairs since the last rent increase, shall be served on the affected tenants at least ten (10) days before the mediation.

D. The park owner shall at the same time file with the Administrator two copies of the notice and summary of expenses required by paragraph (B)(1) above, along with two copies of all relevant financial records, bills or documents which substantiate the level of increase proposed. This information will be made available at the Administrator's office during normal business hours for inspections and copying by the affected homeowners.

E. Any financial information presented to the park owner pursuant to paragraph (B) above, shall be verified in writing by an auditor or certified accountant or certified in writing as true and correct under penalty of perjury by the owner.

F. 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.

G. 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 15.04.100 regardless of whether the park owner has failed to provide the affected tenants with all the information, documents, and notices required by this Chapter.

Section 7. Former section 15.04.090 of the American Canyon Municipal Code, regarding the Rent Dispute Resolution Process, is hereby renumbered to section 15.04.100, and subsection (B) regarding Mediation, is amended to read as follows:

B. Mediation. If a rent increase is pursuant to sections 15.04.070(B), (C) or (D), or if a petition has been filed to protest a rent increase pursuant to section 15.04.070(A), then after service of the rent increase notice and other information required by section 15.04.090, the park owner and the tenants shall mutually agree on a time and place for a mediation meeting to be held on the mobilehome park premises. If the rent increase is pursuant to sections 15.04.070(B), (C) or (D), the meeting shall be held within twenty (20) days from the service of the notice of rent increase or notice from the Administrator that mediation is required pursuant to this section. If a rent increase is pursuant to section 15.04.070(A), the meeting shall be held within twenty (20) days from the date of the service of the petition by tenants on the park owner and Administrator.

The park owner shall give affected tenants and the Administrator at least ten (10) days advance notice of this meeting, and both the park owner and affected tenants shall serve any additional documents to be presented at the mediation on the Administrator, the mediator, and the other party at least five (5) days before the 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 or owner-representative shall be available to meet with affected tenants to explain the reasons for the proposed rent increase. If an owner-representative attends the meeting, he or she must be vested with authority from the park owner to act on the park owner's behalf. 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.

The Administrator shall monitor the performance of the agreement. If the agreement is not implemented by either party within the applicable time period, the

Administrator shall schedule an automatic arbitration to show cause why the agreement has not been implemented.

Section 8. Section 15.04.100(C)(1), formerly section 15.04.090(C)(1) of the American Canyon Municipal Code, regarding Petition is hereby amended to read as follows:

1. If discussions between the park owner and the 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 along with a copy of the notice of the rent increase within thirty (30) days after receipt of the rent increase notice. If tenants are disputing a rent increase proposed pursuant to section 15.04.070(A), the previous filing of the Petition with the Administrator pursuant to section 15.04.080 shall meet this requirement.

Section 9. Section 15.04.100(F), formerly section 15.04.090(F) of the American Canyon Municipal Code, regarding Assignment of Arbitrator and Hearing Date/Service of Documents is hereby amended to read as follows:

F. Assignment Of Arbitrator And Hearing Date/Service Of Documents. The administrator shall assign an arbitrator within fifteen (15) business days of any of the following events: (1) receiving notice of a proposed increase for which automatic arbitration is required pursuant to section 15.04.070(D); (2) if the increase is pursuant to section 15.04.070(A), and the tenants have filed a petition pursuant to section 15.04.080, upon written notice from a representative of the tenants or park owner that the mediation was unsuccessful; or (3) in a case of increase pursuant to section 15.04.070(C), upon the filing of the petition with the administrator.

Additional documents to be presented at the hearing by either the park owner or the affected tenant(s), other than those previously submitted pursuant to section 15.04.090(B) or section 15.04.100(B), shall be served on the other party, the Administrator, and the arbitrator at least ten (10) working days before the hearing by mail or in-person delivery. All financial documents submitted must 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 park owner.

Section 10. Former section 15.04.100 of the American Canyon Municipal Code, regarding subpoenas is hereby renumbered to section 15.04.110.

Section 11. Former section 15.04.110 of the American Canyon Municipal Code regarding Standards of Review is hereby renumbered to section 15.04.120, and paragraph (E) thereof

is hereby amended to read as follows:

- E. Mitigating Factors. In evaluating a space rent increase, the arbitrator should also consider the following factors, in addition to any other factors the arbitrator deems relevant, in order to determine whether there are any circumstances which may justify a reduction or denial of 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 or since the last rent increase. In order to justify the denial or reduction of a rent increase, the arbitrator must find that there are substantial maintenance problems or code violations in the mobilehome space and/or park, and that the owner has had adequate previous notice of these problems and a reasonable opportunity to correct them. If a reduction in the proposed rent increase is justified pursuant to this section, the arbitrator shall make a reasonable effort to quantify the approximate cost of the repairs or maintenance work needed or the amount of the rent increase that would be appropriate after the completion of the repairs or maintenance work, in order to ensure that there is some proportionality between the reduction in the proposed rent increase and the condition of the premises.

Section 12. Former section 15.04.120 of the American Canyon Municipal Code regarding Net Operating Income is hereby renumbered to section 15.04.130 and is hereby amended to read as follows:

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 15.04.140) of the mobilehome park less the "Operating Expenses" (as defined in section 15.04.150) of the mobilehome park.

Section 13. Former section 15.04.130 of the American Canyon Municipal Code regarding Gross Income is hereby renumbered to section 15.04.140, and paragraph (A) thereof is hereby amended to read as follows:

A. For purposes of calculating Net Operating Income pursuant to section 15.04.130, "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 13. Former section 15.04.140 of the American Canyon Municipal Code regarding Operating Expenses is hereby renumbered to section 15.04.150, and paragraph (A) is hereby amended to read as follows:

A. For purposes of calculating Net Operating Income pursuant to section 15.04.130, "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 15.04.200.

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 15.04.070(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 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.

Section 14. The following paragraphs shall be renumbered as follows:

Former section 15.04.150 is hereby renumbered to section 15.04.160.

Former section 15.04.160 is hereby renumbered to section 15.04.170.

Former section 15.04.170 is hereby renumbered to section 15.04.180.

Former section 15.04.180 is hereby renumbered to section 15.04.190.

Section 15. Former section 15.04.190 of the American Canyon Municipal Code regarding fees is hereby renumbered to section 15.04.200, and subsection (E)(2) is hereby amended to read as follows:

2. The park owner all 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 15.04.200, (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.

Section 16. The remaining paragraphs of this ordinance shall be renumbered as follows:

Former section 15.04.200 shall be renumbered to section 15.04.210.

Former section 15.04.210 shall be renumbered to section 15.04.220.

Former section 15.04.220 shall be renumbered to section 15.04.230.

Former section 15.04.230 shall be renumbered to section 15.04.240.

Former section 15.04.240 shall be renumbered to section 15.04.250.

Former section 15.04.250 shall be renumbered to section 15.04.260.

Former section 15.04.260 shall be renumbered to section 15.04.270.

Section 17. This ordinance shall take effect thirty (30) days after its adoption.

Section 18. Severability.

This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance 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 17th day of July, 1997, 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 7th day of August, 1997 by the following vote:

AYES: Mayor Anderson, Vice Mayor Cypher, Councilwoman Maples, Councilmembers
Colcleaser and Winters

NOES: None

ABSTAIN: None

ABSENT: None

Benj Anderson
Benjamin Anderson, Mayor

ATTEST:
Mark Joseph
Mark Joseph, City Clerk

APPROVED AS TO FORM:
William D. Ross
William D. Ross, City Attorney