

ORDINANCE NO. 0-97-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
PISMO BEACH, CALIFORNIA, AMENDING TITLE 5 OF THE  
PISMO BEACH MUNICIPAL CODE

WHEREAS, the City Council of the City of Pismo Beach has found that certain inequitable mobilehome space rental rates may exist in the mobilehome parks of the City of Pismo Beach, and that such rental rates may have been imposed in response to or in anticipation of the City's mobilehome rent control regulation (Pismo Beach Municipal Code section 5.20 et seq.) and overall rent control scheme; and

WHEREAS, the City Council of the City of Pismo Beach recognizes the need to protect owners and occupiers of mobilehomes from unreasonable and inequitable space rents, while at the same time recognizing the need of the mobilehome park owners to make a "just and reasonable" rate of return; and

WHEREAS, the City Council makes the findings below which indicate that space rents in mobilehome parks in the City may be arbitrary and excessive as a result of responses to the City's rent control regulations; and

WHEREAS, eliminating these inequitable rental rates is in the public interest in that it will assure fair and proper implementation of the rent control ordinance, and will not result in preventing a mobilehome park owner from receiving a "just and reasonable" rate of return;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PISMO BEACH  
DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Pismo Beach hereby makes the following findings.

- a. It has been brought to the City Council's attention that certain mobilehome spaces within the City are potentially being charged an arbitrary and excessive rent in light of the City's rent control scheme.
- b. The City Council desires to assure all mobilehome space tenants are treated equitably, especially in light of the fact that it is impractical for mobilehome tenants to move their mobilehomes when inequity occurs; and, the City Council understands the need to balance protection of the mobilehome tenant's substantial investment interest while at the same time assuring that the mobilehome park owners receive a just and reasonable rate of return.
- c. In November 1982, the City Council adopted Ordinance No. 305, a "mobilehome rent stabilization ordinance...providing a formula for maximum annual rent increases."
- d. On August 27, 1990, the City Council passed and adopted rent control ordinance (O-90-15) that allowed the establishment of use of the current fair market rent upon the change of ownership of a mobilehome, i.e., vacancy decontrol. The vacancy decontrol ordinance was adopted very reluctantly by the City Council, but the City Council passed the ordinance

due to pressures of threatened litigation as a result of the decision in the case of *Hall v. City of Santa Barbara*, 833 F.2d 1270.<sup>1</sup>

e. Except for this interim period when vacancy decontrol was in effect, the City's overall rent control scheme had formal provisions to prevent excessive rent hikes upon vacancies. Allowing arbitrary rent hikes can seriously diminish a tenants investment and ability to sell a mobilehome, resulting in substantial losses to a tenant.

f. On October 8, 1991, the City Council held a rent control hearing on the application of Hacienda Del Pismo Mobilehome Park for a \$50 per space per month increase. Evidence and arguments were received by the City Council. The City Council made findings with respect to the proper "fair return" basis for the park within the rent control scheme.

g. Regardless of whether vacancy decontrol is in effect, by increasing rents to a levels outside of the envisioned rent control scheme, a mobilehome park owner could effectively usurp a city's rent control authority with respect to determinations of proper rent levels and fair profit.

h. Mobilehome tenants purchasing mobilehomes during this interim period when vacancy decontrol<sup>2</sup> was in effect may have been required to pay an arbitrary and excessive rent in light of the rent control scheme. There are also indications that some of these tenants were given assurances from the mobilehome park owner that their rents would be reduced to levels within the rent control scheme after formal repeal of vacancy decontrol by the City.

i. A city can impose a rollback of rents in order to counteract a mobilehome park owner's charging of arbitrary and excessive rent in light of the current rent control scheme, and in anticipation of rent control. (*Adamson Companies v. City of Malibu* (1994) 854 F.Supp. 1476, 1491.) A rollback provision aimed at relieving arbitrary levels of rent has a rational relationship to a legitimate governmental purpose. And, roll back provisions that do not remove all economically viable use of a property do not result in a taking.

j. Adequate due process provisions exist within the current rent control ordinance (City of Pismo Beach Municipal Code, Chapter 5.20, which allow the mobilehome park owner to present evidence that a just and reasonable rate of return can or cannot be obtained, and adjusted accordingly. (Pismo Beach Municipal Code, §5.20.031.)

k. The information necessary for an adequate determination of a just and reasonable rate of return is solely in the hands of the mobilehome park owner. Thus it would be appropriate to place the burden on an owner to show that a just and reasonable rate of return is not being received.

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<sup>1</sup> Vacancy decontrol gives complete freedom to a mobilehome park owner to charge rent to a new tenant based on whatever he thinks the market will bear. The *Hall* decision effectively made vacancy control unconstitutional when embodied in a rent control ordinance. However, the subsequent decision in *Yee v. City of Escondido* (1992) 112 S.Ct. 1522 has been interpreted to overrule *Hall*, reinstating vacancy control as an appropriate provision for controlling mobilehome rents.

<sup>2</sup> It has now been established that vacancy control with respect to mobilehomes does not constitute a physical or regulatory taking. *Yee v. City of Escondido*, 112 S.Ct. 1522 (1992).

Section 2. Chapter 5.20 of Title 5 of the Pismo Beach Municipal Code shall be amended to add the following section 5.20.100 to read as follows:

5.20.100 Rent Rollback.

A. The City Council has made findings that certain mobilehome spaces in mobilehome parks within the City of Pismo Beach are possibly being charged an inequitable rental rate for mobilehome spaces, and that inequitable rates may have been imposed on spaces transferred just prior to and in anticipation of enactment of these rent control regulations, and in derogation to the City's overall rent control scheme.

B. A mobilehome owner within the City of Pismo Beach may petition for a roll back of rent pursuant to the standards and procedure as set forth in this section. In order to be considered for a rent rollback, a petitioner for a rent roll back must submit a formal written petition to the City Manager (or designee) requesting consideration of a roll back of rent. The City Council may set by resolution a fee to be paid by the petitioner. In order to be considered by the City Council, the petition must provide evidence that, 1) the rate was imposed in response to or in anticipation of the City's regulation of mobilehome rent, and 2) the rate is arbitrary and excessive in light of the rent control scheme.<sup>3</sup>

C. If the petition meets the criteria established above, pursuant to review by the City Manager, the City Clerk shall set the matter for hearing before the City Council within 45 days of receiving the petition. The affected mobilehome park owner shall be provided notice of the public hearing at least 30 days prior to the public hearing. The mobilehome park owner can submit a formal written protest against a roll back of rent. The protest and supporting documents must be submitted to the City Manager no later than 10 days prior to the scheduled hearing date. The City Council shall make written findings and determinations supporting its decision based upon the testimony and documents presented to it at the hearing, and shall adopt its written findings and determinations within 14 days of the close of the hearing on the matter.

D. A rolled back equitable space rental rate will be determined by adding 10 percent to the rent as paid by the prior tenant, or in excess of 10 percent as determined to be equitable by the City Council. The rent will then be adjusted to account for increases up to the current year. Unless otherwise determined, tenants shall not be reimbursed for rents paid to date as an allowance for any possible transfer of value for a mobilehome at the time of purchase.

E. All decisions of the City Council shall be conclusive and final. Enforcement actions can be instituted by the City, or any affected mobilehome tenant, or the mobilehome park owner. A tenant may refuse to pay any rent in

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<sup>3</sup> Under the City's rent control scheme with vacancy control, a mobilehome park owner can only increase the rent to a new tenant by 10% over the prior tenant's rent.

excess of the determinations of the City Council, and this shall be a defense in any action brought to recover possession of a space or to collect the unlawful rent.

F. A homeowner must petition the City Council for a rent roll back by January 1, 1998, or within three (3) years from the date of the initially imposed arbitrary and excessive rent.

Section 3. This ordinance shall go into effect and be in full force and operation 30 days after its final passage and adoption.

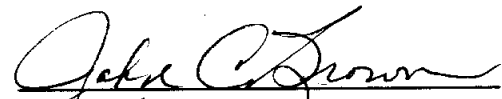
Section 4. The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of the City; and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted. Before the expiration of 15 days after the passage of this Ordinance, it shall be posted with the names of members voting for or against the same in three public places within the City of Pismo Beach, to wit, 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office substation Price Street, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

INTRODUCED at a regular meeting of the City Council held this 19th day of August, 1997 on motion of Councilmember Halldin, seconded by Councilmember Reiss, and on the following roll call vote, to wit:

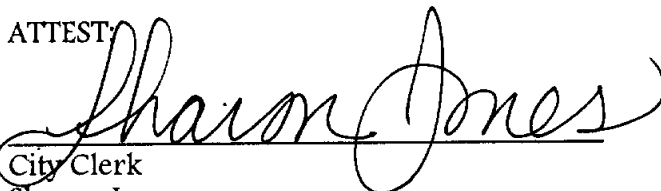
AYES: Councilmembers Halldin, Reiss, Rabenaltd  
NOES: Mayor Brown  
ABSENT: Councilmember Mellow  
ABSTAIN: none

PASSED AND ADOPTED at a regular meeting of the City Council held this 2nd day of September, 1997 on motion of Councilmember Rabenaltd, seconded by Councilmember Halldin, and on the following roll call vote, to wit:


AYES: Councilmembers Rabenaltd, Halldin, Mellow, Reiss and Mayor Brown  
NOES: none  
ABSENT: none  
ABSTAIN: none

  
Mayor John Brown

ATTEST:

  
City Clerk  
Sharon Jones

APPROVED AS TO FORM:

  
City Attorney  
David R. Hunt

*drh/pbcty.rda/rollback.ord*