From: Anna Marie Morales
To: City Council; , City Clerk; Matichak, Lisa; Abe-Koga, Margaret; Kamei, Ellen; Showalter, Pat; Hicks, Alison; Lieber, Sally; Ramirez, Lucas; , Neighborhoods; Hellman-Tincher, Micaela
Subject: Comment on Agenda Item 7.1, 9/14/21, Mobile Home Ordinance
Date: Tuesday, September 14, 2021 3:08:36 PM

Dear Council Members & City staff,

I'd like to thank each member of the Mountain View City Council for taking action and protecting the vulnerable mobile home community that includes both owners and renters.

In Sahara Mobile Village, where my mother and I have lived since 2014 there are 20 vacant units. It is disheartening each time we see our neighbors forced to move away because they can no longer afford to live in Mountain View or the surrounding area. I have lived in Mountain View for 40 years and my mom close to 50 years. We moved to Sahara Mobile after my dad passed from a long health battle. We specifically chose Sahara because we needed affordable housing that would accommodate a senior with disabilities. Our family and support systems are here, and with both of our health conditions and limitations we need the support more than ever, and the thought of having to move away is troubling.

As I have mentioned during previous council meetings, I was in a bad car accident in February of 2020 that left me with cognitive and physical disabilities. I am no longer able to care for my mother, and I struggle with the simplest of tasks. The pandemic made it harder to access the care we need, and we are still waitlisted for many medical services.

During this pandemic, many people have experienced anxiety and depression, and those that already have mental illness have struggled even more so. My mother and I, both have mental illness, and having to worry about being displaced has negatively impacted our health. Each time we receive one of the many threatening letters from our landlord we are incredibly triggered. My doctors have told me to rest, and not stress which is utterly impossible if you are a Sahara Mobile resident. We do not feel a sense of community or safety, and we feel we have experienced personal retaliation from our landlord. Much of the mobile home community are afraid of speaking out, attending meetings, or even writing a letter to the council for fear of retaliation. These are residents that have lived here for many years, as well as newer residents. We are afraid for good reason. It is critical that there are also strong displacement protections, especially for seniors and the disabled.

In the latest letter from our landlord, there are a number of threats, the greatest of which is to the 200 renters in his parks. One point that stands out to me is the fact that the landlord has the audacity to say that the city did not want to work with him, when in fact he ignored

the cities request for information for years. It is clear the landlord only wants to negotiate on his terms and is not willing to reciprocate. The landlord is making good money and is profitable and would continue to be incredibly profitable even with rent stabilization and a base year of 2019 or before. My rent is $2,920, up $25 from 2020. My rent in 2019 was $2,795, how is this affordable for most people? Especially seniors on a fixed income like my mother and many others. Veterans, seniors, people with disabilities, and low-income families deserve the protections that city council can give. All mobile home residents deserve to feel safe. The base year really should be 2015. I hope council members really consider this, even the few members that have historically not been in favor of rent stabilization.

Fyodor Dostoyevsky said, “To live without hope is to cease to live.” This has been the hardest couple of years for my mom and me, and through it all, hope is what kept us going, even when it felt like we couldn’t go on. My hope is that city council passes a strong ordinance tonight that includes displacement protections.

-- An **emergency displacement protection clause** in the ordinance prohibiting the removal or conversion of rental homes from the market as threatened by the landlord until appropriate protections can be researched and developed

-- A **mechanism** to allow the City to step in and **buy the 200+ rental homes** (the landlord states that he is entertaining offers)

-- A requirement that any rental homes that are removed and allowed by law, be offered **for sale to the current resident**, with the park providing financing and/or a rent to own option and/or the City providing financing ...

-- A minimum of **1 year advance notice** in the event a senior or a disabled person is displaced

-- **Relocation expenses and assistance** for **anyone** displaced, **irrespective of income ...**current law "means tests" the requirement to provide relocation assistance)

-- **Immediate release from tenant lease agreements** and a **freezing of rents** once the landlord files intent to remove a unit from the market

-- Because of the largely senior and disabled population of our mobile home parks, we would like to see annual increases tied to a portion of the CPI instead of equal to CPI. Most of the other mobile home park ordinances in California follow that guideline. Ideally, we’d like to see rents limited to 50% of CPI or 5%, whichever is lower.

Thank you city council members and staff for the hard work you do, it does not go

unnoticed and it is greatly appreciated.

Thank you,
Anna Marie & Susan Morales

From:	Anthony Rodriguez
To:	City Council; van Deursen, Anky; , City Attorney
Cc:	"Doug Johnson"; [redacted]
Subject:	RE: AGENDA ITEM # 7.1 - Alternatives to Rent Control and Sale of Park Owned Homes to City
Date:	Tuesday, September 14, 2021 4:29:03 PM
Attachments:	De Anza - Sahara Village - Memo to Tenants Re Alternatives to Rent Control - January 28 2021 FINAL.pdf De Anza - Santiago Villa - Memo to Tenants Re Alternatives to Rent Control - January 28 2021 FINAL.pdf De Anza - Sahara Village - Memo to Tenants Re Future Plans if Rent Control Adopted - September 8 2021.pdf De Anza - Santiago Villa - Memo to Tenants Re Future Plans if Rent Control Adopted - September 8 2021.pdf De Anza - Mountain View - Letter to City Attorney Chopra Re Proposed MHP Rent Control Ordinance - September 1, 2021.pdf De Anza - Mountain View - Letter to City Attorney Chopra Re Potential Sale of Park Owned Homes - September 9 2021.pdf

Mayor and City Council Members:

This office represents the owner of two of the six mobilehome parks in the City of Mountain View. On behalf of my client, attached please find its proposed alternatives to rent control, its objections regarding portions of the proposed ordinance, and its inquiry regarding the City's interest in purchasing the almost 200 "park owned" mobilehomes at its parks. Although each of the attached documents have previously been provided to City officials, it is unclear if those officials have provided them to the Council, as they did not appear to be in the agenda packet that I saw on-line.

1. January 28, 2021 memos to all tenants at both parks regarding alternatives to rent control, including a rent credit program for low income tenants and a commitment to leave the parks open for at least 10 years;
2. September 8, 2021 memos to all tenants at both parks rescinding January 28, 2021 ten year plan and questions regarding the tenants' interest in purchasing the park owned homes they live in;
3. Letter to City Attorney regarding constitutional issues and unintended consequences of rent controls on park owned homes; and
4. Letter to City Attorney to determine whether City has interest in purchasing my client's almost 200 park owned homes.

Anthony C. Rodriguez

Law Office of Anthony C. Rodriguez
1425 Leimert Boulevard, Suite 101
Oakland, California 94602
Telephone: (510) 336-1536
Facsimile: (510) 336-1537
Email: arodesq@pacbell.net

From: Doug Johnson [redacted]
Sent: Tuesday, September 14, 2021 9:44 AM
To: city.council@mountainview.gov
Subject: AGENDA ITEM # 7.1

September 14, 2021

The Honorable Mayor and City Council
City of Mountain View
500 Castro Street, 3rd Floor
Mountain View, CA 94041-2010

city.council@mountainview.gov

RE: OPPOSITION TO MHP RENT CONTROL (Agenda Item # 7.1)

Dear Mayor Kamei & Councilmembers:

The Western Manufactured Housing Communities Association (WMA) is a nonprofit trade association representing the owners and operators of mobilehome communities throughout the state of California. Having been founded in 1945, WMA is one of the oldest, largest and most respected trade associations of its kind in the United States. WMA is firmly opposed to rent control. We believe it tears communities apart, diminishes affordable housing stocks, invites costly litigation and can rapidly deplete precious city resources during a time when COVID-19 is already wreaking havoc on municipal budgets throughout the state.

A better, fairer and more cost-effective alternative to rent control is a MOU. The Sunnyvale City Council unanimously approved a comprehensive MOU for ten of its mobilehome parks in July. An entire community — councilmembers, parkowners, park residents, city staff and professional consultants — worked together on this groundbreaking agreement that will protect mobilehome park affordability and sustainability for decades.

MOU stakeholder meetings were facilitated by the managing partner of BAE, an award-winning urban economics consulting group that has completed thousands of projects for

local governments across the country. BAE provided services to the city of Mountain View on the San Antonio Precise Plan in 2014. The well-known law firm of Goldfarb & Lipman provided legal services to the stakeholder group and drafted the language of the Sunnyvale MOU agreement.

WMA and our member parkowners expressed our collective support for a MOU to a Mountain View City Council study session back in January 2020 and we also met with city staff in February 2020 to discuss this option in more depth. It is important to note that a MOU can be tailor-made for the unique and specific needs of Mountain View's six mobilehome communities.

The MOU work just completed in Sunnyvale could be easily and quickly replicated in Mountain View. The cities of Rancho Cucamonga and San Dimas also administer two highly successful, decades-long MOUs that were both recently renewed by their city councils. WMA respectfully urges the Mountain View City Council to authorize the development of a MOU and its collaborative approach, rather than impose a one-sided rent control ordinance.

Sincerely yours,

DOUG JOHNSON
Senior Regional Representative
Local Government & Public Affairs

WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION
Northern California & Bay Area Regional Office
1667 Columbus Road
West Sacramento, CA 95691-4902
(916) 374-2702 Office
rdj2003@sbcglobal.net Email
www.wma.org Website

SAHARA VILLAGE MHP

191 El Camino Real
Mountain View, California 94040
Telephone: (650) 968-7891

MEMORANDUM RE: LIMITS ON RENT INCREASES

TO: Homeowners, Residents and Tenants at Sahara Village MHP
FROM: Management
SUBJECT: Alternatives to Rent Control / Parkowner's Ten Year Plan
DATE: January 28, 2021

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On December 22, 2020, the Court of Appeal ruled the Mountain View rent control ordinance does *not* apply to mobilehomes, or mobilehome parks. Rather than continuing to fight over rent control, the parkowner is implementing its own program, to keep future rent increases reasonable, to assist qualifying low income tenants, and to keep the park open. Provided rent control is not implemented by the City of Mountain View, the State of California, or any other governmental entity, the parkowner intends to do the following:

1. Annual CPI Increase for Existing Tenants: Under the Mountain View Ordinance for Apartments, annual rent increases are limited to 100% of the increase in the Consumer Price Index. The parkowner will impose the exact same limitation on mobilehomes and mobilehome spaces, limiting inflationary adjustments for existing tenants to one per year, not to exceed 100% of the increase in the Consumer Price Index.

2. Limits on Space Rent Increases for New Tenants: Under the Mountain View Ordinance for Apartments, there is no limit on the amount apartment owners can increase rents when a new tenant moves in. The parkowner will limit space rent increases to the lesser of $200, or 20%, when an existing tenant transfers ownership of their mobilehome to a new tenant.

3. Rent Subsidy Program for Low Income Tenants: The Mountain View Ordinance for Apartments does not provide subsidies for low income tenants. The parkowner will establish a rent credit program for qualifying households with total income at or below $34,480, which is the minimum income currently required to qualify for PG&E's CARE program. Under the parkowner's rent credit program, qualifying households will receive a rent credit each month, up to the full amount of their annual rent increase, to the extent their annual rent increase causes their new rent to be more than one third of their household income. In order to participate, the household must submit an application verifying income and assets at or below qualifying levels.

4. No Park Closure: Under California law, the parkowner has the right to close the park and go out of business, if certain conditions are met. The parkowner will not close the park while this program is in place, unless required to do so by an earthquake, fire, or other unanticipated occurrence that results in a substantial loss of income and/or destruction of the infrastructure.

5. Review After Ten Years: The parkowner intends to implement the above policies for at least ten years, which would be January 28, 2031, provided rent control or other restrictions on rent are not placed on the property by any public entity, including the federal, state or local government. At the end of the ten year period, the parkowner will reevaluate the above policies, to determine whether they should continue.

SANTIAGO VILLA MHP

1075 Space Park Way
Mountain View, California 94043
Telephone: (650) 969-0102

MEMORANDUM RE: LIMITS ON RENT INCREASES

TO: Homeowners, Residents and Tenants at Santiago Villa
FROM: Management
SUBJECT: Alternatives to Rent Control / Parkowner's Ten Year Plan
DATE: January 28, 2021

==========

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SAHARA VILLAGE MHP

191 El Camino Real
Mountain View, California 94040
Telephone: (650) 968-7891

MEMORANDUM RE: TERMINATION OF 10 YEAR PLAN

TO: Homeowners, Residents and Tenants at Sahara Village MHP
FROM: Management
SUBJECT: Future Plans if Rent Control Ordinance is Adopted
DATE: September 8, 2021

==========

On August 26, 2021, the parkowner withdrew its ten-year commitment regarding rent increases, park closure and rental assistance for low income residents, because the parkowner's ten year commitment had been offered as an alternative to rent control. Although the parkowner has reached out to the City of Mountain View in an attempt to negotiate a new plan, the City has not responded to that offer.

As it would appear the City has no interest in exploring a negotiated settlement prior to adopting a rent control ordinance, the parkowner is continuing to explore all of its options, including (1) applying for whatever rent increases it may be entitled to under local, state and federal law, and (2) selling its park owned mobilehomes and/or removing them from the rental housing market. A number of residents have asked for clarification regarding those options.

With respect to applying for additional rent increases, there is a line of cases under California law that allows landlords to apply for something called a "*Vega* adjustment." Under those cases, landlords may be entitled to have rents that were below market at the time rent control was enacted increased to reflect general market conditions. As the parkowner has kept the rents of long term tenants below market for many years, a *Vega* adjustment could enable the parkowner to increase the rent at all such spaces to at least $1,500 per month, which was the market rate in 2018.

With respect to the park owned homes, the parkowner has invested between $30 million and $50 million in park owned homes in Mountain View. However, the parkowner has little interest in renting those homes, if they are subject to rent control. Accordingly, the parkowner it considering selling those homes and/or removing them from the rental housing market.

One option would be to sell all of those homes in a package to one buyer, who would then become the landlord with respect to those homes. Another option is to sell those homes on an individual basis, to be occupied by the new owner of each home. If you currently reside in a park owned home, please advise whether you would have any interest in purchasing that home at its current fair market value, should the parkowner decide to pursue that option.

SANTIAGO VILLA MHP

1075 Space Park Way
Mountain View, California 94043
Telephone: (650) 969-0102

MEMORANDUM RE: TERMINATION OF 10 YEAR PLAN

TO: Homeowners, Residents and Tenants at Santiago Villa
FROM: Management
SUBJECT: Future Plans if Rent Control Adopted
DATE: September 8, 2021

==========

On August 26, 2021, the parkowner withdrew its ten-year commitment regarding rent increases, park closure and rental assistance for low income residents, because the parkowner's ten year commitment had been offered as an alternative to rent control. Although the parkowner has reached out to the City of Mountain View in an attempt to negotiate a new plan, the City has not responded to that offer.

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With respect to applying for additional rent increases, there is a line of cases under California law that allows landlords to apply for something called a "*Vega* adjustment." Under those cases, landlords may be entitled to have rents that were below market at the time rent control was enacted increased to reflect general market conditions. As the parkowner has kept the rents of long term tenants below market for many years, a *Vega* adjustment could enable the parkowner to increase the rent at all such spaces to at least $2,000 per month, which was the market rate in 2018.

With respect to the park owned homes, the parkowner has invested between $30 million and $50 million in park owned homes in Mountain View. However, the parkowner has little interest in renting those homes, if they are subject to rent control. Accordingly, the parkowner it considering selling those homes and/or removing them from the rental housing market.

One option would be to sell all of those homes in a package to one buyer, who would then become the landlord with respect to those homes. Another option is to sell those homes on an individual basis, to be occupied by the new owner of each home. If you currently reside in a park owned home, please advise whether you would have any interest in purchasing that home at its current fair market value, should the parkowner decide to pursue that option.

ANTHONY C. RODRIGUEZ
ATTORNEY AT LAW
1425 LEIMERT BOULEVARD
SUITE 101
OAKLAND, CALIFORNIA 94602-1808

TELEPHONE (510) 336-1536
FACSIMILE (510) 336-1537

September 1, 2021

VIA EMAIL AND U.S. MAIL

Krishan Chopra, City Attorney
City of Mountain View
500 Castro Street, Suite 300
Mountain View, California 94041-2010

Re: Proposed Mobilehome Rent Stabilization Ordinance

Dear Mr. Chopra:

This office represents the owners of the Sahara Village and Santiago Villa mobilehome parks, both of which are located in the City of Mountain View. I am writing regarding the proposed rent stabilization ordinance for mobilehome parks.

More specifically, I am writing to object to the inclusion of "park owned" mobilehomes under the proposed ordinance. During the City's June 23, 2021 meeting with the parkowners, the City advised that "park owned" homes would ***not*** be subject to the proposed ordinance. However, on July 26, 2021, the City Attorney changed course, advising for the first time that "park owned" homes would be included under the proposed ordinance.

Because the parkowners were not allowed to comment on this subject, it would appear there are several factors the City Attorney has not considered, which could have been raised if rent control for "park owned" homes had been on the agenda for the June 23, 2021 meeting between the City and the parkowners.

First, although exact figures are not available at this time, it is estimated my client has invested between $30 million and $50 million to purchase mobilehomes at Sahara Village and Santiago Villa. If those "park owned" homes are subject to the proposed ordinance, my client will be entitled to a fair return on its investment in those homes. Thus, by including park owned homes, the City Attorney may have doubled or tripled my client's "investment base" for rent control purposes, which is likely to result in higher rents, and lower sales prices, for those tenants who own their own mobilehomes.

Second, my client has little interest in renting its "park owned" homes, if they are subject to rent control. Accordingly, there is a significant chance my client will either sell those homes, or remove them from the rental housing market. As a result, some or all of the people currently residing in those mobilehomes may have to come up with a down payment and qualify for a mortgage in order to purchase those homes, or lose their tenancies all together.

In addition to reversing the City's position on "park owned" homes, City Staff apparently advised the tenants the City has no interest in an MOU, unless the allowable rent increases are the same as the non-discretionary increases allowed under the proposed rent control ordinance. Once again, the City may not have fully considered the consequences of such a position.

More specifically, under an MOU, my client would temporarily waive its rights to seek "fair return" and *Vega* adjustments, which could prevent space rents from being increased by $300 to $900 per month at many of the spaces at Sahara Village and Santiago Villa. Again, the parkowners could have discussed these issues in detail with City Staff, had they known the City would advise the tenants it would not accept an MOU that provided for rent increases greater than the non-discretionary increases allowed under the proposed ordinance.

Third, on January 28, 2021, my client pledged to limit annual space rent increases to the same levels allowed under the rent control ordinance for apartments, provided rent controls were not adopted at its properties. At that same time, my client established a rent credit program for low income tenants, and promised to keep Sahara Village and Santiago Villa open for at least ten years, so long as the parks remained free from price controls. As the California Legislature has already adopted a state wide rent control scheme, and as the City is considering even stricter controls, my client had no choice other than to withdraw those pledges, which it did last Thursday. (See Enclosures).

My client believes the City acted in bad faith by changing its position on "park owned" homes without warning. Accordingly, my client must reserve all of its rights, including its constitutional rights to (1) seek "fair return" and *Vega* adjustments, (2) to take park owned homes off the rental market, and/or (3) to close all or part of both parks. Nevertheless, my client remains willing to negotiate with the City in good faith, to arrive at a solution that keeps the parks open, with space rent increases limited to those set forth in its January 28, 2021 pledge. Below is a more detailed analysis of some of these issues.

I. Parkowners are Entitled to a Fair Return on Park Owned Homes: The owners of rent controlled properties have a constitutional right to a "fair return on investment." *Cacho v. Boudreau* (2007) 40 Cal. 4th 341, 350. That right is so fundamental that if it is not specifically included in an ordinance, it "will be implied therein." *152 Valparaiso Associates v. City of Cotati* (1997) 56 Cal. App. 4th 378, 383.

Although the courts have not mandated any specific formula for determining whether a property is generating a fair return, the United States Supreme Court has found the rate should be "commensurate with returns on investments in other enterprises having corresponding risks." *Power Comm'n v. Hope Gas Co.*, (1943) 320 U.S. 591, 603.

By way of example, assume an investor purchases a 100-space mobilehome park for $20 million, and a fair rate of return for such a mobilehome park is 8%. In that case, the parkowner would require a net operating income of $1.6 million per year, in order to receive a fair return. ($20,000,000 x .08 = $1,600,000).

Assume further that the parkowner purchases 50 mobilehomes for rental purposes, for $12.5 million, and that a fair rate of return for mobilehome rentals is 10%. In that case, the parkowner's "investment base" would be increased to $32.5 million, while the blended rate of return would be 9%. As a result, the net operating income required to provide a fair return on investment would increase from $1.6 million to $2.925 million, requiring a rent increase of $1,104.16 per space per month. ($1,325,000 ÷ 12 months ÷ 100 spaces = $1,104.16 per space per month).

In this case, my client has purchased approximately 200 mobilehomes at Sahara Village and Santiago Villa, at a cost that is estimated to be between $30 million and $50 million, or more. If those mobilehomes are subject to rent control, my client's "investment base" must also be increased by $30 million to $50 million, or more. As a result, expanding the "investment base" to include park owned homes will almost certainly increase the rent my client requires in order to receive a fair return on investment. Again, if the City had advised the parkowners that "park owned" homes would be included under the ordinance, my client could have raised these issues with the City during the June 23, 2021 conference call.

II. My Client is Entitled to Significant Vega Adjustments: Totally apart from whether a property is generating a fair return on investment, property owners may be entitled to a rent increase if their "base year" rents are significantly below market. The first case to

recognize the right to adjust "base year" rents was the California Supreme Court's decision in *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 165.

The *Birkenfeld* Court began its discussion of "base year" rents by noting that "[r]ent control enactments typically use the rent charged on a prior date as a starting point . . . . on the theory that it approximates the rent that would be charged in an open market without the upward pressures that the imposition of rent control is intended to counteract." *Id.* at 166. The *Birkenfeld* Court noted also that the then existing Berkeley rent control ordinance had been criticized because it did not contain a provision allowing consideration "of factors that might have prevented the base rent from reflecting general market conditions." *Id.* at 168.

In finding that the Berkeley ordinance was unconstitutional the *Birkenfeld* Court wrote as follows:

> "Here the charter amendment drastically and unnecessarily restricts the rent control board's power to adjust rents, thereby making inevitable the arbitrary imposition of unreasonably low rent ceilings. . . . For such rent ceilings of indefinite duration ***an adjustment mechanism is constitutionally necessary to provide for changes in circumstances and also to provide for the previously mentioned situations in which the base rent cannot reasonably be deemed to reflect general market conditions."*** *Id.* at 169. (Emphasis added).

Although a few published decisions mentioned "base year" rents in passing following the Supreme Court's decision in *Birkenfeld*, no court actually analyzed the adjustment of "base year" rents until the Second District Court of Appeal's decision some fourteen years later, in *Vega v. City of West Hollywood* (1990) 223 Cal. App. 3d 1342. Because the *Vega* Court was the first to actually order an increase in "base year" rents, such increases are now commonly referred to as *Vega* adjustments.

The *Vega* Court gave a detailed account of the facts supporting the right to an adjustment of "base year" rents in that case, including that the landlord was an elderly woman who had not raised rents for many years at most of her units. *Id.* at 1344. However, the *Vega* Court did ***not*** hold that an adjustment in "base year" rents could only be obtained under the same or similar fact patterns.

To the contrary, the *Vega* Court stated that "[w]hen base date rents can be adjusted to reflect prevailing rents for comparable units, everyone within the ambit of the rent control scheme participates on an equal footing." *Id.* at 1349. In finding that "base year" rents had to be increased to reflect general market conditions, the *Vega* Court wrote as follows:

> "Most significantly, the critical questions are not whether the base date rents establish a 'fair and reasonable' return and whether base date rents, even if low, are within the range that can be charged. . . . Rather, the critical question is whether the base date rents can reasonably be deemed to reflect general market conditions." *Id.* at 1351.

The next significant published opinion concerning the adjustment of "base year" rents was the First District Court of Appeal's decision in *Concord Communities, L.P. v. City of Concord* (2001) 91 Cal. App. 4th 1407. In that case, a recent purchaser of two mobilehome parks requested a *Vega* adjustment, in part because the previous owner had been able to keep his rents significantly below market due to his extraordinarily low operating expenses, including no debt service and pre-Proposition 13 property taxes. *Id.* at 1417-1418.

The City of Concord argued that a *Vega* adjustment was not warranted because the fact pattern was not the same as those in *Vega* or *Birkenfeld*. The *Concord Communities* Court rejected that argument, writing as follows:

> "City's argument that 'unique or extraordinary circumstances' must conform exactly to those factual scenarios set forth in *Birkenfeld* and *Vega* fails to recognize that those situations served merely as indicia of the type of circumstance that could rise to a level that could be labeled 'unique or extraordinary,' and did not purport to be exhaustive lists . . .
>
> ***When base date rents can be adjusted to reflect prevailing rents for comparable units, everyone within the ambit of the rent control scheme participates on equal footing***. . . . However, when base date rents are significantly below market value due to 'unique or extraordinary circumstances,' the balance tips and tenants become beneficiaries of a windfall in perpetuity." *Id.* at 1419. (Emphasis added).

As you may know, my client retained David Beccaria to perform market rent surveys with respect to Sahara Village and Santiago Villa in December of 2018. Mr. Beccaria is one of the most respected mobilehome park appraisers in California, having worked for cities and tenant organizations many times over the years, in disputes involving rent control.

Mr. Beccaria concluded that the fair market rent for spaces at Sahara Village was $1,500 per month, while the fair market rent for Santiago Villa was $2,000 per month. Although my client was willing to keep space rents for current tenants at below market levels for up to ten years if rent controls were not adopted, it would appear the City does not fully appreciate that offer, or the law regarding *Vega* adjustments.

Again, my client remains willing to negotiate an MOU that would enable long term tenants to keep below market space rents for at least ten years. On the other hand, should the City proceed with rent control, including rent control for "park owned" homes, my client will seek *Vega* adjustments at both parks. In many cases, those *Vega* adjustments will require rent increases for current tenants ranging from $300 to $900 per space per month, or more.

III. My Client Reserves the Right to Close All or Part of Both Parks: One of the most important rights of any property owner is the power to "exclude" others. In fact, the denial of that right requires the payment of just compensation. As stated by the United States Supreme Court in *Kaiser Aetna v. United States* (1979) 444 U.S. 164:

> "In this case, we hold that the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that ***the Government cannot take without compensation.***" (*Id.* at 179-180) (Emphasis added).

In *F.C.C. v. Florida Power Corp.,* (1987) 480 U.S. 245, 250-253, the Supreme Court ruled there was no physical taking, where a power company "invited" a utility company to use its property at a below market rent. However, the Court emphasized in a footnote that it was not deciding whether there would be a taking if the power company had been forced to "renew, or refrain from terminating" its lease with the utility company. *Id.* at fn. 6.

Similarly, in *Yee v. City of Escondido* (1992) 504 U.S. 519, 528, the Supreme Court found that "vacancy control" did not result in a physical taking of property, in part because the parkowner had "invited" the tenants to rent spaces in his park. Again, however, the *Yee*

Court stated that the result might be different if the parkowner was forced to continue renting spaces against his will, in perpetuity. The *Yee* Court addressed this issue as follows:

> "A different case would be presented were the statute, on its face or as applied, ***to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.***" (*Id.* at 528). (Emphasis added).

Just two months ago, the United States Supreme Court held in unmistakable terms that property owners have a constitutional right to exclude others. *Cedar Point Nursery v. Hassid* 141 S. Ct. 2063, 2072-2074 (2021). More important, the Supreme Court rejected all attempts to classify the denial of that right as the mere "regulation" of property. *Id.* at 2077-2078 Accordingly, my client reserves the right to close all or part of both parks, as well as the right to challenge any attempt by the City to condition the exercise of that right on the purchase of the tenants' mobilehomes. Should the City attempt to prevent the closure of Sahara Village and Santiago Villa, it is the City that must pay just compensation to the parkowner, not the other way around.

IV. My Client Will Not Accept an MOU that Leaves it Worse Off. Again, on January 28, 2021, my client committed to keep both of its parks open for at least ten years, while at the same time allowing virtually all homeowners to enjoy below market space rents. At that same time, my client created a "rent credit program," that could allow tenants earning less than $34,480 per year to avoid paying any rent increases at all. Again, however, those commitments were contingent upon the City not adopting rent controls.

The City has not only rejected my client's ten year program, City staff has unilaterally expanded the scope of the proposed rent control ordinance to include "park owned" homes. Unfortunately, it is my understanding City staff has also advised the tenants the City will not negotiate an MOU, unless the rent increases are the same or less than the non-discretionary increases allowed under the proposed ordinance.

Despite the City's apparent bad faith with respect to park owned homes, the parkowner remains willing to negotiate an MOU, whereby it temporarily waives its constitutional rights to close the parks and/or apply for *Vega* and "fair return" adjustments. However, the parkowner has no interest in waiving those valuable constitutional rights for nothing.

If the City has an interest in negotiating an MOU that is fair to all sides, please advise as soon as possible. If the City insists on proceeding with its current proposal, including controls for "park owned" homes, the parkowner will have no alternative, other than to exercise one or more of the above described constitutional rights.

After you have had an opportunity to review this letter please advise whether the City has any interest in negotiating an MOU, or any other form of compromise, so as to avoid years of litigation regarding some or all of my client's constitutional rights. Thank you.

Very truly yours,

Anthony C. Rodriguez

cc: Mayor and City Council
Doug Johnson, WMA
Client

(all w/enclosures)

ANTHONY C. RODRIGUEZ
ATTORNEY AT LAW
1425 LEIMERT BOULEVARD
SUITE 101
OAKLAND, CALIFORNIA 94602-1808

TELEPHONE (510) 336-1536
FACSIMILE (510) 336-1537

September 9, 2021

CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION

VIA EMAIL AND U.S. MAIL

Krishan Chopra, City Attorney
City of Mountain View
500 Castro Street, Suite 300
Mountain View, California 94041-2010

Re: Potential Sale and/or Removal of Park Owned Mobilehomes

Dear Mr. Chopra:

As you know, this office represents the owner of the Sahara Village and Santiago Villa mobilehome parks, both of which are located in the City of Mountain View. I am assuming you received my September 1, 2021 letter, objecting to the City's decision to include "park-owned" mobilehomes in its proposed rent control ordinance. As you have not responded to my letter, I am also assuming the City Attorney's office intends to present such a provision to the City Council, if it has not already done so.

As I advised previously, my client has little interest in renting its "park-owned" homes, if they are subject to rent control. As a result, my client is exploring its options with respect to those homes. Those options include, but are not limited to selling them, either as a package, or individually. Although my client is still in the process of determining the fair market value of the almost 200 mobilehomes it owns, it is estimated to be somewhere between $45 million and $50 million.

It is my understanding that one of the City's goals is to maintain the supply of mobilehomes at or near the current level. Again, although my client has not made a final decision as to what to do with the almost 200 mobilehomes it owns, if it does decide to sell

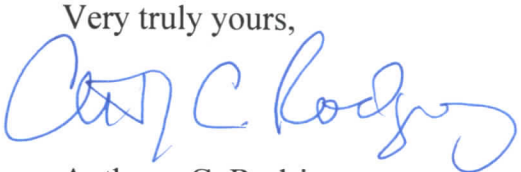
them as a package, the asking price is likely to be between $45 million and $50 million, although I want to make clear that it could be more than $50 million.

If my client decides to sell its mobilehomes as a package, please advise whether the City of Mountain View has any interest in purchasing them, in which case the City could be "the lessor" with respect to those units. Of course, my client would continue to be "the lessor" with respect to the underlying spaces, and the common area amenities.

If the City has such an interest, my client may be willing to enter into negotiations to explore such a transaction, before listing those homes on the open market. As I am sure you will agree, such a transaction could be beneficial for all concerned, as it would enable both the City and my client to avoid years of litigation over this issue, while at the same allowing the current residents to continue residing in those mobilehomes. By contrast, if the park owned homes are sold individually, or are simply removed from the rental market, some or all of the current residents will be required to find alternative living arrangements.

Pursuant to Evidence Code Section 1152, this letter is intended for settlement purposes only and may not be used for any other purpose. If you have any questions or comments regarding such a transaction, please do not hesitate to contact me. Thank you for your attention to this issue.

Very truly yours,



Anthony C. Rodriguez

cc: Client