

Chapter 5.28

CONTROL OF RENTS IN MOBILEHOME PARKS AND ADDING FEES FOR REGISTRATION TO CHAPTER 3.40.010

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5.28.010 Findings and purpose.

A. After reviewing the evidence presented to the Board of supervisors, the supervisors find and declare it necessary, in the public interest, to protect mobilehome owners from unreasonable rent increases.

B. At the same time, the Board of Supervisors finds it necessary to permit rents which will enable park owners to obtain a fair return on their investment.

C. Because of the high cost and impracticability of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes including permits, building requirements, landscaping and site preparation, the lack of alternative homesites, for mobilehome residents and the substantial investment of mobilehome owners in such homes, it is necessary to protect the owners and occupiers of mobilehomes from unreasonable rent increases, while at the same time recognizing the need of park owners to receive a suitable profit on their property with rental income sufficient to cover increases in the costs of repair, insurance, park management costs, maintenance, utilities, employee services, additional amenities, and other costs of operation, and to receive a fair return on their property.

D. Compared to conventional home ownership, mobilehome ownership is a lower cost form of home ownership which offers considerable benefits to mobilehome owners and to the community in the form of moderate cost housing.

E. The ordinance is consistent with the State's policies relative to expanding housing opportunities and accommodating the housing needs of Californians of all economic levels.

F. When the mobilehome owner's rental agreement (lease) expires and a new agreement or lease must be negotiated, the mobilehome owner is at a distinct disadvantage in bargaining power.

G. The amount of rent charged has a direct correlation to the sellability of the home. If rents are unreasonably high in the market place, or will become unreasonably high, home owners will be unable to find a buyer for their home. Home owners could be in an awkward situation of simultaneously (1) being unable to afford the rent; (2) being unable to move their home; and (3) being unable to sell their home.

H. A substantial portion of the residents in mobilehome parks in this county are senior citizens of low or moderate income. These households would experience significant hardships if their rents were allowed to increase uncontrolled.

I. The ordinance is consistent with the Tuolumne County General Plan.

J. The ordinance is not subject to review under the California Environmental Quality Act pursuant to Section 15061 (b) (3) of the State and County Guidelines for the implementation of CEQA. (Ord. 2584 §1, 2004; Ord. 2118 § 1, 1995)

5.28.020 Definitions.

A. BOARD. Shall mean the Board of Supervisors of Tuolumne County, California.

B. CHANGE IN OCCUPANCY. The transfer of an occupancy in a mobilehome to another person. A change in occupancy shall not include the transfer of the occupancy in a mobilehome to a family member.

C. COST OF LIVING ADJUSTMENT (COLA). The Cost of Living Adjustment allowed

under this ordinance shall be the percentage increase granted to all Social Security recipients by the United States Federal Government.

D. FAIR RATE OF RETURN. The profit that an investor can reasonably expect to earn from an investment in a business other than a mobilehome park subject to regulation presenting investment risks comparable to the risks presented by mobilehome parks subject thereto.

E. HOMEOWNER. A person who owns his/her own mobilehome, but is renting a Adirt space@ in a mobilehome park which is occupied with his/her mobilehome. The renting of Adirt space@ may include the use of services of the park and other amenities.

F. LANDLORD. Any owner, lessor, operator or manager of mobilehome park spaces which are rented.

G. MOBILEHOME. A structure designed for human habitation and for being moved on a street or highway as defined in Health and Safety Code Section 18008. Mobilehome includes a manufactured home, as defined in Section 18007 of the Health and Safety Code, but does not include a recreational vehicle as defined in Section 18010 of the Health and Safety Code, or a commercial coach as defined in Section 18001.8 of the Health and Safety Code.

H. MOBILEHOME PARK. As used herein, shall mean an area of land within Tuolumne County where two (2) or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

I. OCCUPIED SPACE. A space in a mobilehome park that has a person, other than the park=s owner, entitled to use, possession and/or control of that space. A space subject to a tenancy as herein defined.

J. PARK. A manufactured housing community as defined in sections 18214.1 and 18801 of the Health and Safety Code, or a Mobilehome Park.

K. RECREATIONAL VEHICLE PARK. As defined in the California Health and Safety Code Section 18010.

L. RENT. The consideration demanded or received for and in connection with the use or occupancy of a mobilehome space within a mobilehome park as defined in Health and Safety Code Section 18216.

M. RENTAL AGREEMENT. An agreement between the landlord and the homeowner establishing the terms and conditions of park tenancy. A lease is a rental agreement.

N. RENT INCREASE. Any additional space rent demanded of or paid by a mobilehome resident for a mobilehome space.

O. RESIDENT. A mobilehome owner who lawfully occupies a mobilehome in a mobilehome park.

P. SUBPOENA. As defined in the California Code of Civil Procedure Section 1985, a subpoena is the process by which the attendance of a witness is required. It is a writ or order directed to a person and requiring the person=s attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, or other things under the witness=s control which the witness is bound by law to produce as evidence.

Q. TENANCY. The right of a homeowner to use a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the Park.

R. TENANT. Any person who rents or otherwise occupies a mobilehome belonging to a resident of the mobilehome park. (Ord. 2925 § 1, 2008; Ord. 2862 § 1, 2007; Ord. 2584 §2, 2004; Ord. 2311 § 5, 1999; Ord. 2165 § 1, 1996; Ord. 2118 § 1, 1995)

5.28.030 Exemptions. All Mobilehome park spaces within the county shall be subject to regulations contained in this ordinance, except those exempted as follows:

A. Mobilehome spaces that are in Mobilehome parks that have less than two (2) spaces.

B. Newly constructed Mobilehome spaces which were initially held out for rent after January 1, 1990, as per Section 798.45 of the California Civil Code.

C. Spaces on which rent is subsidized by any government agency.

D. Spaces owned, managed, or operated by a governmental agency.

E. Spaces on which rents are exempted from rent regulation because they are covered by a rental agreement that is in excess of twelve (12) months in duration and which meets all the requirements of Section 798.17 of the California Civil Code or are otherwise exempted from rent regulation by either state or federal law. However, all of the provisions of this ordinance, other than the rent regulations, shall be applicable to such spaces, including but not limited to the registration requirement, unless specifically exempted by a provision of this Ordinance or state law.

F. Fees, assessments or other charges assessed by the County only insofar as authorized under Section 5.28.090 of this Chapter.

G. Spaces in recreational vehicle parks and recreational vehicle spaces within or adjoining a mobilehome park as described in Section 798.22 of the California Civil Code.

H. Spaces in resident owned parks.

I. Vacant Spaces. All spaces that are not an occupied space as defined herein. (Ord. 2925 § 2, 2008; Ord. 2584 §3, 2004; Ord. 2165 § 2, 1996; Ord. 2118 § 1, 1995)

5.28.040 Increases in rent must be authorized by this ordinance. No rent increases for Mobilehome parks, as covered by this ordinance, shall be permitted after the adoption of this ordinance, except as authorized by this Ordinance. The right to institute rent increases is subject to compliance with the provisions of the California Civil Code, Section 798.30. No rent increase shall be instituted in a park at any time where a park is delinquent in registration payments required pursuant to the Ordinance. (Ord. 2118 § 1, 1995)

5.28.045 Vacancy Rent Control.

A. Provided that no increase in rent pursuant to this Section has occurred in the preceding twelve (12) months, a park owner may raise space rent upon a change in ownership or occupancy of a mobilehome in an amount not to exceed ten percent (10%) more than the space rent being charged immediately preceding the change in ownership or occupancy.

B. Management shall notify, within five (5) days of being informed of a pending change in ownership or occupancy, the seller and prospective homeowner of a mobilehome that the rent may be increased by a specified amount pursuant to paragraph A, and when any such rent increase shall become effective. (Ord 2584 §4, 2004; Ord. 2311 §1, 1999; Ord. 2165 §3, 1996)

5.28.050 Base rent.

A. Base rents are the rents in effect on a Mobilehome space on the dates defined below.

B. Except as hereinafter provided, a park owner shall not demand, accept, or retain rent for said space exceeding the rent in effect for said space on December 31, 1995, or the residents annual rent anniversary date during the calendar year 1995. Unless constitutionally allowed, rent rollbacks shall not be implemented. (Ord. 2118 § 1, 1995)

5.28.060 Across-the-board rent increases.

A. One (1) across-the-board rent increase per occupied space is allowed per calendar year whether based on the increase in the

Social Security Administration's Cost of Living Adjustment (COLA) or by application made in accordance with Section 5.28.070 for a rent increase greater than that authorized by the COLA. The date of a resident's annual rent increase would be the anniversary date of the previous rent increase. A park owner may reschedule a resident's anniversary date by delaying the regularly scheduled COLA adjustment until the newly desired anniversary date.

B. Rent increase using the Cost of Living Adjustment (COLA) shall be limited to the most recent COLA issued by the Community Development Department prior to the notice of rent increase required by the California Civil Code. The COLA used by the Community Development Department shall be issued once a year, following publication of the Federal Social Security COLA. (Ord. 3118 §1, 2010; Ord. 2584 § 5, 2004; Ord. 2330, § 1, 2000; Ord. 2311 § 6, 1999; Ord. 2210 § 1, 1997; Ord. 2165 §§ 4 and 5, 1996; Ord. 2118 § 1, 1995)

5.28.070 Fair rate of return increases and procedures.

A. It shall be rebuttably presumed that the net operating income produced by the property using the base rents provided a fair rate of return on the landlords investment.

B. Landlords may obtain rent adjustments for individual Mobilehome parks by application to the Board of Supervisors. The Board may consider any factors in order to ensure that the rent permitted yields a fair rate of return.

C. Procedures

1. Landlords applying to the Board of Supervisors for a fair rate of return increase must do so on the application provided by the Community Development Department's Office. The written application must contain the specific requested increase. It must also contain copies of any supporting documents (e.g., tax returns, financial statements, receipts, etc.). Tax returns of the park owner and documents identifying residents and the amount of rent being paid by the resident shall be kept confidential and not released to the public unless the County is required to release such information under any applicable statute, regulation, or rule or by subpoena or by order of a court of competent jurisdiction. Capital improvement expenses that were not allowed under 5.28.090(B) & (C) will be permitted provided that they are amortized under the applicable IRS rules. The burden of proof of the necessity of a fair rate of return increase is on the landlord.

2. The landlord shall file the application with the Community Development

Department. Concurrently, the landlord shall serve each affected resident with a notice of application. The landlord must make a completed application with all supporting documents, reasonably available to each affected park resident, which may be copied at the resident's expense.

3. All applications shall be signed under penalty of perjury.

4. At any time before or during a hearing, the Community Development Department or the Board of Supervisors may make additional requests for documentation.

5. No application for a fair rate of return increase will be placed on the Board of Supervisor's agenda, without first obtaining the consent of the Community Development Department and the County Counsel.

D. The Board may adopt as its fair rate of return standard any lawful formula, including but not limited to, one based on average net income, investment or net operating income.

E. Landlords may have the assistance of an attorney and/or an accountant at the fair rate of return hearing. However, attorney's fees, accountant's fees and costs for proceedings under this section are not allowable as operating expenses.

F. Evidence that the landlord reduces services and/or maintenance, whether offered by the County or the tenants, can be used to offset rent increases otherwise allowed under Section 5.28.070 of this Code. (Ord. 3118 § 2, 2010; Ord. 2708 § 1, 2006; Ord 2584 § 6, 2004; Ord. 2118 § 1, 1995)

5.28.080 Civil Code Sections 798.18, 798.19 & 798.77 Apply.

A. A Resident shall be offered a rental agreement for (1) a term of 12 months, or (2) a lesser period as the Resident may request, or (3) a longer period as mutually agreed upon by both the Resident and the mobilehome park management.

B. No rental agreement shall contain any terms or conditions with respect to charges for rent, utilities, or incidental reasonable service charges that would be different during the first 12 months of the rental agreement from the corresponding terms or conditions that would be offered to the Residents on a month-to-month basis.

C. No rental agreement for a term of 12 months or less shall include any provision which authorizes automatic extension or renewal of, or automatically extends or renews, the rental agreement beyond the initial term for a term longer than 12 months at the sole option of either the management or the Resident.

D. No rental agreement for a mobilehome shall contain a provision by which the Resident waives his or her rights under the provisions of the Mobilehome Residency Law. Any such waiver shall be deemed contrary to public policy and void.

E. No rental or sale agreement shall contain a provision by which the purchaser or Resident waives his or her rights under the Mobilehome Residency Law. Any such waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(Ord. 2925 § 3, 2008; Ord 2584 § 6, 2004; Ord. 2330 § 2, 2000; Ord. 2314 § 24, 1999; Ord. 2118 § 1, 1995)

5.28.090 Pass-throughs.

A. Government Assessments -- Separate charges authorized by California Civil Code Section 798.49(a) shall not be considered part of the rent and shall be governed by the provisions of that Code Section. All other provisions of Section 798.49 shall apply and shall be governed by this Ordinance.

B. Costs of Correcting a Violation Cited by any Code Enforcement Official - If a park owner is cited for violating any provisions of state laws, regulations or County ordinances including, but not limited to, Title 25 of the California Code of Regulations, the costs to correct said violations may be passed through to the residents on a per space basis, provided that the violation is not the result of the park owner's failure to properly maintain the systems of the park. Such costs shall be charged to a capital account to be depreciated over the useful life of the correction in a manner similar to an item charged to an expense account under Internal Revenue Service Rules and Regulations; provided, however, that at the end of the amortization period for the capital improvement correction, the pass through amount shall cease and shall no longer appear on the tenant's monthly invoice. At no time shall the aggregate correction pass-through of costs exceed ten percent (10%) of the average monthly rent of the park (excluding any portion of the rent attributable to capital improvement pass-throughs allowed under 5.28.090(C)) unless approved in advance by the residents of fifty percent (50%) plus one (1) of the mobile home spaces of the park. Said election shall be conducted in compliance with Section 5.28.090(C)(7).

C. Cost of Capital Improvements - Capital improvement costs to the park owner for construction of capital improvements to the park may be passed through to the residents on a per space basis, provided that such pass-throughs are approved in advance by the residents of fifty

percent (50%) plus one (1) of the mobile home spaces of the park. Said election shall be conducted in compliance with Section 5.28.090(C)(7).

Such costs shall be charged to a capital account to be depreciated over the useful life of the asset in a manner similar to an item charged to an expense account under Internal Revenue Service Rules and Regulations; provided, however, that at the end of the amortization period for the capital improvement correction, the pass through amount shall cease and shall no longer appear on the tenant's monthly invoice. Pass-throughs of capital improvement costs shall be subject to the following limitations:

1. The improvement shall primarily benefit the majority of park residents rather than the park owner(s) and be a functional improvement serving primarily the park residents.

2. The improvement shall have a life expectancy of five (5) years or more and must be treated as a capital improvement for Federal and State income tax purposes and may not be deducted for such tax purposes as expenses.

3. Normal routine maintenance and repair do not constitute a capital improvement.

4. The owner has the responsibility to provide and maintain physical improvements in the common facilities in good working order and condition pursuant to California Civil Code Section 798.15. Costs of maintenance and repair (as opposed to replacement) of such improvement shall not be passed-through to residents, nor shall costs of replacement be passed-through if the replacement was necessary because of owners failure to carry out said maintenance responsibilities.

5. Insured repairs and replacements do not constitute a capital improvement.

6. The improvement shall be permanently fixed in place or relatively immobile.

7. For the purpose of obtaining the approvals required by 5.28.090, elections shall be conducted by the park owner on whether to approve or reject a proposed capital improvement cost pass-through prior to the time the capital improvement becomes operational and available for use by the park residents. Residents shall be entitled to one (1) written ballot vote per affected mobile home space in said park. Each ballot shall specify the proposed capital improvement to be voted upon and the amount and dates of commencement and expiration of the monthly pass-through resulting from said capital improvement. Each ballot shall be delivered by first class mail to the park residents and the deadline and park location for casting such ballot shall be set forth clearly thereon. Such deadline shall be no less

than twenty days (20) from the postmark date of ballot mailing to the resident.

8. Capital improvements shall meet all of the eligibility criteria contained in this section and may include (without limitation) construction, installation, or replacement of a clubhouse, laundry facility or other common area facility, swimming pools, sauna or hot tub, or other recreational amenity, street and driveway, security gate, outdoor or common area lighting, retaining wall, sewer, electrical, plumbing (unless associated with a non-eligible capital improvement), water, or television reception system, sprinkler system, or any similar improvement which represents an addition to or an upgrading of existing improvements which primarily benefits the park residents. Routine maintenance or repair, including, but not limited to routine maintenance or repair of a street or driveway by means of patching, a seal coat or slurry seal, shall not qualify as a capital improvement.

9. An owner shall separately bill the cost pass-through for each capital improvement only during the period the park owner amortizes such capital improvement.

10. Capital improvement costs otherwise eligible for pass-through are not eligible to the extent that the park owner recovers such costs through charges of a use fee such as where the park resident must deposit coins to use a park-owned washer and dryer.

11. Where a park owner receives a discount or rate differential (including, but not limited to, a "readiness to Serve Charge") that is intended to subsidize or offset the cost of owning, operating, maintaining, and replacing the park's utility distribution system, the repair, maintenance, or replacement of such utility distribution system shall not qualify as a capital improvement.

12. The park owner's responsibility for the cost of owning, operating, maintaining or replacing a utility distribution system as established by 5.28.090(C)(11), shall transfer to and become the responsibility of any subsequent purchaser of the park, or successor in interest to the park owner.

D. For purposes of this section, the owner shall make available for examination within 10 business days of the written request of any resident copies of bills for property taxes, government required service charges, copies of insurance policies and records of insurance payments, the books and records of the owner which relate to the original and depreciated cost of capital improvements, and all relevant portions of Federal and State Income Tax Returns relating to capital improvements to verify any increases or decreases sought by the owner under this section. The owner has the option of providing income tax

information either in a declaration filled out under penalty of perjury, or by producing copies of the relevant portions of the actual Federal and State Income Tax Return themselves.

E. For purposes of this section, "costs" shall include, but are not limited to, materials and labor, permit and inspection fees, and financing charges.

F. This Section shall not apply to any capital improvements that were begun prior to this Section becoming operative. (Ord 2584 § 8, 2004; Ord. 2118 § 1, 1995)

5.28.100 Registration.

A. Each year, the park owners shall be required to register all mobilehome spaces which are rented or available for rent with the County, including those spaces exempt under Section 5.28.030.

1. Registration shall be completed on or before June 30 of each year for the following year. If the park owner fails to complete registration as required by this Section by June 30 of each year, the park owner shall be assessed a One Dollar (\$1.00) per space failure to complete registration fee. Said failure to complete registration fee shall be paid by the park owner to the County and shall not be passed on to the residents of the park.

2. Registration shall be completed on a form provided by the County.

3. The Tuolumne County Community Development Department shall be responsible for accepting annual registration and subsequent changes thereto.

B. Registration shall also be required within thirty (30) calendar days after the date any mobilehome park or mobilehome space initially becomes subject to the provisions of this ordinance or is no longer subject to this Ordinance.

C. Registration shall include, but shall not be limited to, the following information:

1. Rent for each occupied space in the park and its annual anniversary date.

2. The name(s), business addresses, business telephone number(s) of each person or legal entity possessing any ownership interest in the park and the nature of such interest.

3. The number of mobilehome spaces in the park.

4. The name and address to which all required notices will be sent.

5. A map of the park.

6. The name and mailing address of each park resident.

D. A registration fee shall be paid by the park owner to the County for each space in the park, except those exempt under Section 5.28.030

herein. The amount of said fee shall be determined by the Board of Supervisors and be sufficient to pay operating costs for this ordinance, including but not limited to administrative time and costs, legal fees and costs, and any other expense incurred in administering or defending this ordinance. The fee can be paid at the time of registration; or paid semi-annually with one-half due at registration and the balance due December 30 of each year.

E. The park owner may pass through fifty-percent (50%) of said fee to the affected residents on a pro-rata monthly basis. Said fee shall be shown separately on the monthly rent statement. If a resident fails to pay for more than ninety (90) days the passed through fee provided for in this section, the resident shall be assessed a one time per annum twenty-five dollars (\$25.00) failure to pay penalty. The failure to pay penalty shall be kept by the park owner. (Ord 2584 § 8, 2004)

F. A landlord may not increase the rents if not in substantial compliance with this section.

G. The registration requirements provided for in this section shall apply to all mobilehome parks and park spaces within the County, including those exempt from space rent ceilings based on Civil Code Section 798.17 or any other law.

H. The County shall prepare an annual financial statement which will be available to the public regarding the status of registration fees collected, expended, and listing the remaining balance or deficit. The financial statement will be prepared at the time of the adoption of the annual County budget.

I. Within one (1) year after this section becomes operative and every five (5) years thereafter, the Community Development Department's Director or his/her designee shall conduct a survey of all mobilehome park residents to determine which mobilehome spaces are covered by the provisions of Chapter 5.28 of the Tuolumne County Ordinance Code. The Community Development Department shall compare the results of the survey with the last annual report from the park owners. If the survey results are different, the Community Development Department Director or his/her designee shall meet with the affected park owner to review the discrepancies. If the Community Development Department Director or his/her designee and park owner are unable to reconcile the discrepancies, the park owner shall pay any increased registration fees due to the County and shall not be allowed to pass any portion of the increased registration fees due to the residents. (Ord. 3118 § 3, 2010; Ord

2584 § 8, 2004; Ord. 2314 § 25, 1999; Ord. 2311 §2, 1999; Ord. 2165 § 6, 1996; Ord. 2118 § 1, 1995)

5.28.110 Remedies.

A. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor.

B. In the event a homeowner or former homeowner of a park, or any public agency or entity, is the prevailing party in a civil action against the management or owners of a mobilehome park to enforce any provisions of this chapter, said prevailing party, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed \$2,000.00 (Two Thousand Dollars) for each willful violation of this chapter.

C. The remedies provided by this section are nonexclusive and nothing in this section shall be construed to preclude or limit any rights a public agency or entity or a mobilehome owner or former homeowner may have. (Ord. 2311 § 3, 1999; Ord. 2210 § 2, 1997; Ord. 2118 § 1, 1995)

5.28.120 Enforcement.

A. In any action arising out of the provisions of this chapter, the prevailing party shall be entitled to reasonable attorney=s fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

B. The County Counsel of the County of Tuolumne is empowered to enforce this ordinance. This is in addition to the civil and criminal enforcement powers and authorities already vested in the district attorney.

C. The County Counsel of the County of Tuolumne shall have the powers prescribed by the laws of the state of California relating to subpoenas to compel the presence of witnesses, or to compel the production of books, documents or other evidence, in the enforcement of this ordinance. (Ord. 2862 § 2, 2007; Ord. 2210 § 3, 1997; Ord. 2118 § 1, 1995)

5.28.130 Notice to prospective mobilehome buyer/tenants.

A. The landlord shall provide to every prospective buyer and/or prospective tenant prior to

1. Chapter 5.28 of the Tuolumne County Ordinance Code, as then currently in effect;
2. Notice of the next scheduled rent increase (anniversary date) if less than 12 months

after establishing the tenancy, and in compliance with state law;

3. Park rules and regulations;
4. Mobile Home Residency Law (Chapter 2.5 of the California Civil Code); and
5. Tuolumne County Mobilehome Park Rent Control Ordinance Tenant Acknowledgement Form.

B. Buyer(s) or tenant(s) who sign a lease, and the landlord shall sign and date the "Tuolumne County Mobilehome Park Rent Control Ordinance Tenant Acknowledgement Form" to verify receipt of the information required in Section 5.28.130(A). The landlord shall provide an executed copy to the buyer(s) or tenant(s) and shall maintain an executed copy for the duration of that particular buyer(s) or tenant(s) ownership or tenancy. The landlord shall provide an executed copy of the form to the County upon request (Ord. 3168 § 1, 2011; Ord. 2311 § 4, 1999)

establishing the tenancy, the following: