

ORDINANCE NO. 1126

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING A NEW CHAPTER 8, ENTITLED: "MOBILEHOME RENT STABILIZATION," TO DIVISION 1 OF THE UKIAH CITY CODE.

SECTION ONE.

The City Council of the City of Ukiah hereby ordains that a new Chapter 8, entitled "Mobilehome Rent Stabilization" is hereby added to Division 1 of the Ukiah City Code to read as follows.

DIVISION 1 BUILDING

CHAPTER 8 MOBILEHOME RENT STABILIZATION

2700: FINDINGS AND PURPOSE.

(A) The State of California has recognized, by the adoption of special legislation regulating tenancies of mobilehome owners in mobilehome parks, that there is a significant distinction between homeowners in mobilehome parks and other dwelling units, and the State likewise has recognized that homeowners in mobilehome parks, unlike apartment tenants or residents of other rental stock, are in the unique position of having made a substantial investment in a residence, the space for which is rented or leased as distinguished from owned.

The physical removal and relocation of a mobilehome from a rented or leased space within a mobilehome park can be accomplished only at substantial cost and inconvenience with a limited concurrent ability to find another location and, in many instances, the removal requires a separation of the mobilehome unit from appurtenances which have been made permanent, thus creating severe damage and depreciation in value to the mobilehome.

Because of the limited availability of vacant spaces in mobilehome parks, the age and condition of some mobilehomes and the cost of moving mobilehomes, it is extremely difficult, if not impossible, to move a mobilehome from one park to another within the City.

(B) There is presently within the City and the surrounding areas a shortage of sites for the placement of mobilehomes.

(C) According to the Ukiah General Plan Housing Element, mobilehomes presently constitute an important source of housing for persons of extremely low,

very low, low, and moderate income levels, who as a group are unable to afford unreasonably large rent increases.

(D) A large number of persons living in mobilehomes are elderly, some of whom live on small fixed incomes. These persons may expend a substantial portion of their income on rent and may not be able to afford other housing within the City.

(E) Rents for sites within mobilehome parks in the City have, prior to the adoption of this chapter, increased substantially, with recent increases in one park exceeding by a substantial amount the annual increase in the cost of living.

(F) Space rent increases at the time of sale or other transfer of a mobilehome within a park have been shown to be substantially over the pre-transfer rent. Such large rent increases at the time of sale of a mobilehome may unfairly depress the sales price of the mobilehome and work an economic hardship on the mobilehome owner. The annual rent increases and vacancy control provisions of this chapter prevent this economic hardship while protecting the property rights of owners.

(G) Because of the space shortage and potential for rapidly rising rents, regulation is necessary to assure that economic hardship to a substantial number of mobilehome owners in the City, many of whom are senior citizens on low fixed incomes, does not occur.

(H) It is the purpose of this chapter to establish a speedy and efficient method of reviewing certain requested mobilehome space rent increases in mobilehome parks to protect mobilehome owners from arbitrary, capricious or unreasonable site rent adjustments while insuring owners and/or operators and investors a fair and reasonable return on their investment in their mobilehome park.

§2701: DEFINITIONS.

For the purpose of this chapter, the following words, terms and phrases shall be defined as follows:

(A) "Affected mobilehome owners" means those mobilehome owners whose space is not covered by a valid lease meeting the requirements of section 798.17(b) of the California Civil Code or otherwise legally exempt from local rent control regulation.

(B) "Arbitrator" means a person who is neither a mobilehome owner nor has an interest in a mobilehome park of a nature that would require disqualification under the provisions of the Political Reform Act if the person were a designated City employee, has experience in analysis of financial records, and meets one of the following criteria:

(1) Licensed attorney or CPA who is qualified by experience or training to conduct the arbitrations authorized by this chapter.

(2) Membership in the American Arbitration Association with expertise in rental dispute arbitration; or

(3) Service as a judge in a state or federal court.

(C) "Capital improvement" means those improvements which directly and primarily benefit and serve the existing mobilehome owners by materially adding to the value of the park or adapting it to new uses, and which are required to be amortized over the useful life of the improvements pursuant to the provisions of the Internal Revenue Code. "Capital improvement costs" means all costs reasonably and necessarily related to the planning, engineering and construction of capital improvements and shall include debt service costs, if any, incurred as a direct result of the capital improvement. Capital improvement does not include ordinary maintenance or repairs or Capital replacements.

(D) "Capital replacement" means a capital expenditure as defined by the Internal Revenue Code which replaces, upgrades or repairs an existing improvement, such as, but not limited to, an on-site water or electrical distribution or sewage collection system, a street, a parking area, or common facility, such as a laundry, community kitchen or meeting room. If the expenditure qualifies for treatment as a capital expenditure which must be depreciated under the Internal Revenue Code, it is a capital replacement. If it can be fully deducted in one year as a business expense, it does not qualify as a capital replacement.

(E) "City" means the City of Ukiah, California.

(F) "Clerk" means Clerk of the Ukiah Mobilehome Rent Stabilization Program, who shall be an employee or independent contractor designated by the City Manager as the Clerk and assigned the Clerk's duties as prescribed by this chapter or as needed for the proper implementation of this chapter.

(G) "Consumer Price Index" or "CPI" means the Consumer Price Index for all urban consumers in the San Francisco/Oakland/San Jose area published by the United States Bureau of Labor Statistics.

(H) "Department" means the Department of Community Development of the City of Ukiah.

(I) "MRL" means the California Mobilehome Residency Law.

(J) "Mobilehome" means

(1) a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code, including a manufactured home, as defined in Section 18007 of the Health and Safety Code, and a mobilehome, as defined in Section 18008 of the Health and Safety Code, but, except as provided in subdivision (2), does not include a recreational vehicle, as defined in Section 799.29 of the Civil Code and Section 18010 of the Health and Safety Code or a commercial coach as defined in Section 18001.8 of the Health and Safety Code.

(2) "Mobilehome," for purposes of this chapter, also includes trailers and other recreational vehicles of all types defined in Section 18010 of the Health and Safety Code, other than motor homes, truck campers, and camping trailers, which are used for human habitation, if the occupancy criteria of either paragraph (i) or (ii), as follows, are met:

(i) The trailer or other recreational vehicle occupies a mobilehome site in the park, on November 15, 1992, under a rental agreement with a term of one month or longer, and the trailer or other recreational vehicle occupied a mobilehome site in the park prior to January 1, 1991.

(ii) The trailer or other recreational vehicle occupies a mobilehome site in the park for nine or more continuous months commencing on or after November 15, 1992.

"Mobilehome" does not include a trailer or other recreational vehicle located in a recreational vehicle park subject to Chapter 2.6 (commencing with Section 799.20) of the Civil Code.

(K) "Mobilehome park" or "park" means any area of land within the City of Ukiah where two or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

(L) "Mobilehome space" means the site within a mobilehome park intended, designed or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith.

(M) "Mobilehome owner" means a person who is the owner of a mobilehome and legally occupies the mobilehome within a mobilehome park. Unless otherwise indicated, mobilehome owner includes tenants.

(N) "Owner" means the owner or operator of a mobilehome park or an agent or representative authorized to act on said owner's or operator's behalf in connection with the maintenance or operation of such park.

(O) "Party" as used in this chapter refers to any affected mobilehome owner and/or owner involved in proceedings under this chapter.

(P) "Prospective mobilehome owner" means a person who is in the process of negotiating a tenancy in a mobilehome park.

(Q) "Rent" means the consideration paid for the use or occupancy of a mobilehome space.

(R) "Rent stabilization administration fee" means the fee established from time to time by resolution of the City Council in accordance with the provisions of the chapter.

(S) "Rent increase" means any increase in base rent charged by an owner to a mobilehome owner or offered to a prospective mobilehome owner.

(T) "Tenant" means the person or persons who have signed a lease of a mobilehome park space as the lessee of the space.

2702: BASE RENT.

Except as provided in this chapter, an owner shall not demand, accept or retain rent for a mobilehome space exceeding the base rent which shall be the rent in effect for that space on the date this section becomes effective (the "Effective Date"). If a previously rented mobilehome space was not rented on the Effective Date, the base rent shall not exceed the rent in effect during the last month the space was rented prior to that date, except as provided in this chapter. For a mobilehome space first rented after the Effective Date, the owner shall establish the base rent. For parks annexed into the City after the Effective Date, the base rent shall be the rent charged on the effective date of a park's annexation into the City.

§2703: CONSUMER PRICE INDEX, UTILITIES AND OTHER PASS THROUGHs.

(A) Consumer Price Index. An owner, once in any 12-month period, may impose a rent increase for a mobilehome space by 100 percent of the percentage increase, if any, in the Consumer Price Index (CPI) during the most recent 12-month period ending in October; provided, however, the rental increase shall not exceed five percent of the previous rent charged for the space. If an owner has obtained a rent increase under subsection 2704(B), the owner may calculate the rent increase allowed by this subsection based upon the approved comparable rent as allowed in subsection 2704(B) instead of upon the actual rent in effect at the time of the increase.

(B) If the change in the CPI exceeds five percent for two consecutive years, the Clerk shall review the maximum rent increase and recommend an ordinance amendment if appropriate.

(C) Government Mandated Expense Pass Through. An owner may pass through to affected mobilehome owners any new or increase in government mandated capital expenditures and operating expenses including taxes (other than the two percent annual increase authorized by California Constitution Article XIII A, section 2(b)) and assessments, fees and mandated expenses due to code changes subject to the following procedure:

(1) Upon a petition signed by one adult mobilehome owner for each of 50 percent of the spaces subject to rent control in a mobilehome park or 50 spaces, whichever is less, and filed with the Clerk within 30 days of the date the owner gives notice of a government mandated expense pass through to every affected mobilehome owner, the Arbitrator, in accordance with the meet and confer and arbitration procedures provided in this chapter, may disallow or decrease the proposed pass through based upon substantial evidence in the record that the pass through is not legally proper, or is excessive, or that during the pass through period the owner is including an unreasonably high financing cost and/or return on the expense being passed through.

(D) Utilities. If not billed by the utility directly to the mobilehome owner, an owner may separately pass through to a mobilehome owner charges for all utilities, including, but not limited to, sewer, water, garbage, cable T.V., gas and electricity, and any increases in such charges, subject to compliance with Sections 3960-3963. Notwithstanding any provision to the contrary in this section, the owner shall not pass through any charge or expense for gas or electric service to the extent prohibited by section 739.5 of the California Public Utilities Code.

(E) Capital Improvement Pass Through. An owner may charge to the affected mobilehome owner as additional rent the pro rata share of new service and capital improvement costs including reasonable financing costs if, prior to initiating the service or incurring the capital improvement cost, the owner has:

(1) Consulted with the mobilehome owners prior to initiating construction of the improvements or initiating the new service regarding the nature and purpose of the improvements or services and the estimated cost of the improvements or services;

(2) Obtained the prior written consent of at least one adult mobilehome owner in each of a majority of the mobilehome spaces which are occupied by the mobilehome owner to the proposed service or capital improvement. Each space shall have only one vote.

(F) Capital Replacement Pass Through. Notwithstanding the provision of subsection E of this section, an owner may charge to the mobilehome owner as additional rent the pro rata share of capital replacement costs including reasonable financing costs, if not otherwise prohibited by law, subject to the following procedure:

(1) The owner may seek advance approval for the proposed pass through, before undertaking the capital project, by following the procedures set forth in Sections 2709 to 2711. If the increase is approved by the Arbitrator, it shall not be effective until the next regularly scheduled annual rent increase date, provided that the 90-day notice is issued, the expense is actually incurred and that proper verification is submitted. This verification shall include, at a minimum, proof of actual costs and payment to vendors or contractors. In the event that the actual cost of the capital expense is less than the approved amount, the increase shall be adjusted to reflect this decreased amount;

(2) The owner shall give notice of the proposed pass through to each affected mobilehome owner no later than 12 months after completion of the capital replacement work;

(3) Upon a petition signed by one adult mobilehome owner of each of 50 percent of the spaces subject to rent control in a park or 50 spaces subject to rent control, whichever is less, and filed with the Clerk within 30 days of the date the owner gives notice of the pass through to every affected mobilehome owner, the Arbitrator, in accordance with the arbitration procedure provided in this chapter, may disallow or decrease the pass through for capital replacements based upon substantial evidence in the record that the capital replacement was not necessary, or that the cost of the capital replacement was excessive, or that during the pass through period, the owner is including an unreasonably high financing cost and/or return on the expense being passed through. The owner shall have the burden of proving the necessity for and reasonable cost of the capital replacements. In determining whether the owner has met its burden of proving the necessity for and reasonable cost of the capital replacement, the Arbitrator may consider, among other factors, the reasonableness of the owner's history of maintenance of the property or improvement to be replaced. The Arbitrator's review will include, but not necessarily be limited to, the records reflecting past maintenance work and the cost.

(G) All charges passed through by the owner to the mobilehome owners pursuant to subsection C and D of this section and additional rent charged pursuant to subsections E and F of this section must be separate from the base rent and listed separately. All billings used to calculate a pass through or additional rent to mobilehome owners must be disclosed within a reasonable time upon request by a mobilehome owner.

(H) Notice. A written notice of each rent increase or new or increased capital improvement or capital replacement pass through charge made under the provisions of this section shall be filed by the owner with the Clerk, and provided to each affected mobilehome owner, at least 90 days before the rent increase goes into effect or as required by the MRL. The notice shall identify the park and shall specify the dollar amount of the increase, the percentage of the increase, an itemization of all new or increased pass throughs and additional rent charges, the specific space affected, the date the increase will go into effect, how each increase was calculated, and the date the rent on each affected space was last increased. The notice shall also advise each affected mobilehome owner of any right to petition for review of a proposed rent increase and that a petition form may be requested from the Clerk.

(I) Whenever a time period is prescribed for filing an application or petition, the application or petition shall be deemed filed when it is first filed with the Clerk, even if the Clerk determines that the application or petition is not complete, provided that the Clerk determines that application or petition is complete, as a result of additional submissions by the applicant or petitioner, within thirty days of the initial filing.

§2704: IN-PLACE TRANSFER RENT INCREASES—ESTABLISHMENT OF NEW BASE RENT.

(A) Whenever either of the following events occurs, an owner shall be permitted to charge a new base rent for the mobilehome space as provided in this section:

(1) The termination of the tenancy of the affected mobilehome owner in accordance with the MRL (California Civil Code sections 798.55 through 798.60, as amended, excepting section 798.59); or

(2) The voluntary permanent removal of a mobilehome by a mobilehome owner. A removal of the mobilehome from the space for the purpose of performing rehabilitation or capital improvements to the space or for the purpose of upgrading the mobilehome shall not constitute a voluntary removal of the mobilehome.

(B) Upon the sale of a mobilehome in-place, an owner may implement an increase of the base rent for that space in an amount equal to 10% of the rent for that space then in effect.

(C) Except as provided in subsections (A) and (B), an owner may not condition an in-place transfer of a mobilehome or condition assignment of an existing lease to a prospective mobilehome owner, upon agreement to an increased rent in anticipation of the in-place transfer. This subsection shall not apply to specific conditions included in a lease exempt from rent control which

allows an owner to condition assignment in a manner prohibited by this section. For purposes of this subsection, "a lease exempt from rent control" means a lease meeting, in all respects, the criteria of Civil Code section 798.17(b), as such criteria are presently enacted or may hereafter be amended.

§2705: FAIR RETURN RENT INCREASES.

If an owner presents evidence to the Arbitrator, including any financial records requested by the Arbitrator, which proves that the owner is denied a fair return by the rent control provisions of this chapter, the Arbitrator may authorize an increase in rents as deemed appropriate by the Arbitrator to provide a fair return to the owner. The Arbitrator shall use the method set forth in subsection 2711(C) to determine the fair return.

§2706: RENT FREEZE OR RENT ROLLBACK.

(A) Upon the petition signed by one adult mobilehome owner of 50 percent of the spaces subject to rent control in a park or 50 spaces subject to rent control, whichever is less, the Arbitrator may prohibit future rent increases for spaces governed by this chapter, upon its determination that maintenance by the owner has been substantially reduced and is insufficient to adequately maintain the park in a habitable condition. The determination shall be based upon substantial evidence in the record. The prohibition may be continued until the Arbitrator determines that maintenance by the owner has been restored to a reasonable level.

(B) Upon petition by one or more affected mobilehome owners, an Arbitrator may prohibit future rent increases, or order a rollback of the existing rent as to those petitioners, upon its determination that after the Effective Date, an owner instituted a rent increase inconsistent with the criteria established by this chapter. The determination shall be based upon substantial evidence in the record. The prohibition may be continued until the Arbitrator determines that the rent has become consistent with this chapter.

§2707: TIME OF ALLOWED RENT INCREASE/ADJUSTMENT.

(A) Once within a 12-month period, the owner may implement a CPI rent adjustment (subsection 2703(A)), if any, or a fair return increase (Section 2703), but not both.

(B) A capital replacement pass through under subsection 2703(F) may only be implemented on the effective date of the CPI or fair return rent adjustment.

(C) The following increases or adjustments may be implemented at any time during the year:

- (1) Government mandated expense pass through (subsection 2703(C));
- (2) Utility pass throughs (subsection 2703(D));
- (3) Capital improvements (subsection 2703(E));
- (4) In-place transfer rent increases (Section 2704).

Any increases subject to arbitration shall be implemented after the final ruling of the Arbitrator.

(D) Rent freeze and rent rollbacks shall be implemented at the time they are ordered (Section 2706).

§2708: ARBITRATION.

(A) Matters Subject to Arbitration.

(1) An owner shall file with the Clerk:

(a) An application seeking to increase space rents beyond 100 percent of the CPI to provide a fair return to the owner as allowed by Section 2705.

(2) Affected mobilehome owners may file with the Clerk:

(a) A petition objecting to a government mandated expense pass through as allowed by subsection 2703(C);

(b) A petition objecting to a capital replacement pass through as allowed by subsection 2703(F);

(c) A petition for rent freeze as allowed by subsection 2706(A);

(d) A petition for rent rollback as allowed by subsection 2706(B).

(B) These petitions and applications shall be decided by the Arbitrator.

(C) Cost of Arbitration. The cost of arbitration shall be paid by the Clerk out of revenue from the rent stabilization administration fee. The Arbitrator may reimburse the City by assessing the cost of the arbitration to either party if the Arbitrator determines that the position taken by the party is frivolous.

§2709: PROCEDURES FOR FAIR RETURN NOTICE AND APPLICATION AND PETITION FORMS.

(A) Notice. At least 10 days prior to submission of a fair return application or a petition to the Clerk, the applicant or petitioner shall mail or deliver a notice and a copy of the application or petition to the owner and each affected mobilehome owner in the park. The notice shall be on a form specified by the Clerk. The supporting documents for the application or petition shall be available for review at the park's office and shall be posted on the City's website. One copy of the supporting documents shall be provided by the applicant or petitioner at no cost to the other party. All fair return notices shall include the following information:

(1) The amount of the rent increase both in dollars and as a percentage of the existing rent, how it was calculated, an itemization of all pass throughs and additional rent charges, information that explains and supports the level of increase proposed including, at a minimum, a summary of the owner's net operating income for the base year and the preceding 24 months and other relevant information that supports the level of rent increase desired, the effective date of the increase and that copies of the supporting documents shall be provided by the owner at no cost to the mobilehome owners' representative and be available to the mobilehome owners at the park's office for inspection and on the City's website;

(2) The name, address and telephone number of the Clerk or designee, a statement to inform the mobilehome owners to contact the Clerk or designee for an explanation of the provisions of this chapter, and that a roster of affected mobilehome owners can be requested from the Clerk; and

(3) A copy of the official petition form which is to be used for the process established by this chapter.

(B) Application/Petition Forms. The application or petition shall be filed with the Clerk on the form prescribed by the Clerk and must be accompanied by all supporting material necessary to support the request. The application and petition shall contain the following declaration: "I declare under penalty of perjury that the foregoing is true and correct." The application shall be dated and subscribed by the applicant(s) and shall state the place of execution.

(1) Within five working days of receipt, the Clerk shall complete a preliminary review of the application or petition. Applications or petitions which are incomplete will not be considered properly filed.

(2) No further action shall take place on applications or petitions which are not properly filed, and the Clerk may decline to accept such application and/or return them to the petitioner immediately after the preliminary review with a notice of the defects.

(3) When the Clerk determines that the application or petition is complete, the Clerk shall send a written notice of confirmation of receipt of a completed application or petition to the parties.

(4) In capital replacement proceedings and in government mandated capital expenditure and operating expense proceedings, affected mobilehome owners shall have 30 calendar days after receipt of the confirmation of the completed application to file with the Clerk a petition objecting to the rent increase signed by one adult tenant in at least 50 percent of the mobilehome spaces subject to rent control.

(C) Insufficient Objection—Capital Replacement or Government-Mandated Pass Through Proceeding—Clerk Action. If less than the required number of affected mobilehome owners object to a proposed capital replacement or government-mandated pass through, or if objection is withdrawn, including any amendments, before or after the meet and confer process, the Clerk shall approve the requested pass through.

§2710: PROCEDURE FOR MEET AND CONFER.

Within 10 working days of the date of the Clerk's notice of a completed application or petition and prior to assignment of an Arbitrator, affected mobilehome owners and owners shall meet and confer with each other's representatives. The time, place and date of the meeting shall be agreed to by the parties or, if the parties cannot agree, determined by the Clerk. Written notice of the scheduled meeting shall be given by the applicant or petitioner. At the meeting, representatives of the parties shall exchange documentary evidence that the parties, in good faith then know, will be used to support their respective positions in an arbitration and discuss the issues in dispute. In the case of an owner, all financial data upon which any proposed increase is claimed shall be supplied to affected mobilehome owner representatives at the time of the meet and confer meeting. The parties may request that the Clerk provide a mediator, at no cost to the parties, to assist with the meet and confer process. The Arbitrator may deny an application based on the applicant's failure to participate in good faith in the meet and confer process.

§2711: PROCEDURES FOR ARBITRATION.

(A) The Clerk shall give written notice to the applicant or petitioners and mobilehome owner representative that the application/petition has been referred to arbitration.

(1) An Arbitrator shall be appointed in the following manner:

(a) The Clerk shall maintain a list of qualified arbitrators.

(b) Assignment of Arbitrator and Hearing Date. The Clerk shall choose three possible Arbitrators and present them to the residents' representative and the owner. Within five days each party may challenge one candidate. The one remaining shall be the selected Arbitrator. If both parties challenge the same candidate, the Clerk shall choose between the two remaining candidates. The Clerk shall set a date for the arbitration hearing no sooner than 30 or no later than 40 days after the Arbitrator is assigned. The owner and affected mobilehome owners shall be notified immediately in writing by the Clerk of the date, time and place of the hearing and this notice shall be served either in person or by ordinary mail. The parties may agree, in writing, to extend these times. The Arbitrator may extend the date for the arbitration hearing upon a showing of good cause.

(2) The Arbitrator shall conduct a hearing with the parties and/or their representatives. During this hearing process, the concerns of each party shall be discussed and the Arbitrator shall indicate the amount and nature of information needed from any party in order to reach a determination. In fair return proceedings in Section 2705, this shall include four years of the income and expense portion of the general ledgers for the park. All information submitted shall be in writing and shall be certified in the same manner as set forth in subsection 2709(B). The applicant or petitioner shall have the burden of proof unless other sections of this chapter specify otherwise. Each party shall comply with the Arbitrator's request for information within seven days of the request. Additional information provided to the Arbitrator shall be immediately available to the owner or affected mobilehome owner representative which will have seven days to give written comment to the Arbitrator. The Arbitrator may proceed under this part regardless of whether any party defaults in providing any of the requested information.

(B) Arbitration Determination.

(1) Within 21 days of the hearing, but no later than 90 days from the date of the owner's rent increase notice, the Arbitrator shall deliver his or her decision on the application or petition and a bill for services to the Clerk.

(2) The rent increase in a fair return proceeding shall not exceed the increase requested in the application.

(3) The Clerk shall provide the result of the Arbitrator's decision to the affected parties.

(4) The Arbitrator's decisions are final and not appealable to the City Council.

(C) Method to Determine a Fair Return.

(1) The base year for the purpose of this section shall be the last full fiscal year prior to the park becoming subject to this chapter. The Arbitrator may establish an alternative base year if the owner is unable to produce records of the last full fiscal year prior to the park becoming subject to rent control.

(2) It shall be presumed that the net operating income produced by the property during the base year provided a fair return. An owner shall be entitled to rents to earn a just and reasonable return and to maintain and increase their base year net operating income in accordance with subsection (C)(4) of this section. This method is called maintenance of net operating income (MNOI) and shall be included in all applications.

(3) The applicant or the affected mobilehome owners may present evidence to rebut the presumption of fair and reasonable return based upon the base year net operating income. To make such a determination and in order to adjust to the base year net operating income, the Arbitrator must make the following finding:

(a) The owner's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so that the base year operating expenses reflect average expenses for the property over a reasonable period of time. In considering whether the base year net operating income yielded more or less than a fair net operating income, the Arbitrator shall consider the following factors:

(i) Substantial repairs were made due to damage caused by uninsured disaster or vandalism;

(ii) Maintenance and repairs were below accepted standards so as to cause significant deterioration of housing services;

(iii) Other expenses were unreasonably high or low notwithstanding prudent business practice; and

(iv) The rent in the base year was disproportionately low due to the fact that it was not established in an arms-length transaction or other peculiar circumstances.

(4) Fair Net Operating Income. The Arbitrator shall submit a determination based on rental income which will provide the owner a net operating income which shall be increased by 100 percent of the percentage increase in the CPI over the base year's CPI index. The base year CPI shall be the CPI for the first day of June. For purposes of this section, the current CPI shall be the CPI last reported as of the date of the completed application.

(5) Net operating income of a mobilehome park means the gross income of the park less the operating expenses of the park.

(6) Gross income means the sum of the following:

(a) Gross space rents computed as gross space rental income at 100 percent occupancy (but excluding rent attributed to a space occupied by a park employee who receives the space rent free as part of the employee's compensation); plus

(b) Other income generated as a result of the operation of the park, including, but not limited to, fees for services actually rendered; plus

(c) All other pass through revenue received from mobilehome owners except capital pass throughs and gas and electric; minus

(d) Uncollected space rents due to vacancy and bad debts to the extent that the same are beyond the owner's control. There is a rebuttable presumption that uncollected space rents in excess of the average of the current and past three years uncollected rents (each year's rent shall be adjusted by the change in the CPI between that year and the final year of the four-year period) are excessive and shall not be deducted from gross income.

(7) Operating expenses means:

(a) Real property taxes and assessment;

(b) Advertising costs;

(c) Management and administrative expenses including the compensation of administrative personnel;

(d) Repair and maintenance expenses for the grounds and common facilities including, but not limited to, landscaping, cleaning and repair of equipment and facilities;

(e) In addition to the management expenses listed above, where the owner performs onsite managerial or maintenance services which are uncompensated, the owner may include the reasonable value of such services. Owner-performed labor shall be limited to five percent of gross income unless the Arbitrator finds that such a limitation would be substantially unfair in a given case. No credit for such services shall be authorized unless an owner documents the hours utilized in performing such services and the nature of the services provided;

(f) Operating supplies such as janitorial supplies, gardening supplies, stationery and so forth;

(g) Insurance premiums related to operation of the park prorated over the life of the policy;

(h) Payroll taxes, business, utility, license and permit fees;

(i) Dues;

(j) Consultant services for park operation and maintenance;

(k) All operating expenses must be reasonable and necessary. Whenever a particular expense exceeds the normal industry or other comparable standard, the owner shall bear the burden of proving the reasonableness of the expense. To the extent that an Arbitrator finds any expense to be unreasonable, the Arbitrator shall adjust the expense to reflect the normal industry or other comparable standard;

(l) There is a rebuttable presumption that expenditures in the current year are unreasonable to the extent that they substantially exceed the average of the current and past three years (each year's expenses shall be adjusted by the change in the CPI between that year and the final year of the four-year period);

(m) Operating expenses shall not include the following:

(i) Mortgage debt service expenses;

(ii) Land-lease expenses;

(iii) Depreciation;

(iv) Income taxes;

(v) Electric and gas expenses included in Section 739.5 of the California Public Utility Codes;

(vi) The cost of government mandated expenses (subsection 2703(C)), capital improvements (subsection 2703(D)), or capital replacements (subsection 6-66.040(F)).

(8) Notwithstanding any other provisions of the ordinance codified in this chapter, the Arbitrator is authorized to approve any rent increase that is constitutionally required by law to yield a fair return.

(E) Subpoenas. The parties may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at the arbitration hearing. Subpoenas shall be issued and attested by the Clerk.

Issuance of the subpoena must be obtained upon the filing with the Clerk of the City of an affidavit or declaration, under oath, setting forth the name and address of the proposed witness; specifying the exact things to be produced and the relevancy to the issues involved; and stating that the witness as the desired things in his/her possession or under his/her control.

Service of the subpoena on a witness to attend arbitration must be at least five working days before the hearing. Service of a subpoena duces tecum must be at least 21 days before the hearing. Any party served with a subpoena duces tecum must produce copies of the requested items to the subpoenaing party no later than 10 days before the hearing.

A subpoena need not be issued when the affidavit or declaration is defective in any particular. No arbitration hearing may be continued due to the failure to file a timely request, or to timely serve a subpoena. Any person who refuses, without lawful excuse, to attend the arbitration or to produce relevant evidence as required by a subpoena served upon that person shall be guilty of a misdemeanor.

No subpoena shall issue until after the parties have met and conferred as required in Section 2710.

(F) Increases for Capital Expense. Increases attributed to a capital expense, as approved by the Arbitrator to provide a park with a fair return, shall not be included in base rent. These increases must be separately itemized on the monthly rent invoice and terminate at the end of the approved amortized period. Advance approval and effective date of the increase shall be as allowed in subsection 2703(F)(1).

(G) Rent Increase Effective Date. Rent increases approved by the Arbitrator, as determined necessary to provide an owner with a fair return, shall be allowed upon the effective date given by the applicant in the notice to the affected mobilehome owners, required in section 798.30 of the California Civil Code.

§2712: REFUSAL OF MOBILEHOME OWNER TO PAY ILLEGAL RENT.

An affected mobilehome owner may refuse to pay any rent in excess of the maximum rent permitted by this chapter. The fact that such unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobilehome space for nonpayment of rent or to collect the illegal rent.

§2713: DISCLOSURES.

An owner shall disclose to each prospective tenant the current and proposed base rent for the mobilehome space and the rental agreement options required

by this section and Section 2714, provide each prospective tenant with a copy of this chapter, and disclose to the prospective tenant that if the prospective tenant signs a lease with a term of more than one year, that lease will be exempt from rent control. The owner shall give the required disclosure and provide a copy of this chapter to the prospective tenant at the time that the owner, or owner's representative, receives the prospective tenant's application for tenancy. The required disclosures shall be made in a form approved by the Clerk, and the owner shall obtain a signature of the prospective tenant on the disclosure form acknowledging receipt of the disclosures. An owner must retain the signed disclosure form throughout the entire tenancy of the tenant. This signed form shall be made available to the Clerk upon reasonable written notice.

§2714: PROSPECTIVE MOBILEHOME OWNER—TENANCY 12 MONTHS OR LESS.

All prospective tenants shall be offered the option of a tenancy of 12 months or less upon terms consistent with the provisions of the ordinance codified in this chapter. This section shall not apply to prevent a mutually agreed upon assignment between an owner and an existing mobilehome owner of an existing lease, provided any such assignment does not violate subsection 2704(C).

§2715: RENT STABILIZATION ADMINISTRATION FEES.

All or any portion of the costs to administer this chapter may be collected by the imposition of an annual rent stabilization administration fee established by resolution of the City Council. The fee shall be chargeable against the total number of mobilehome spaces in the City subject to rent control determined on a date certain each year to be established by the City Council. The owner who pays these fees may pass through to the mobilehome owners, subject to rent control on the date established by the City Council, 50 percent of the fees assessed against a mobilehome space. The fee shall be due on a date established by the City Council but may be paid in quarterly installments by the owners. Owners of parks annexed to the City after the Effective Date, shall be charged the fee established by resolution beginning on the effective date of the annexation.

§2716: AMENDMENT.

Any amendment to this chapter shall require a prior public hearing before the City Council with notice thereof published in a newspaper of general circulation in the City at least 10 days prior to the hearing.

§2717: VIOLATION.

Every person who violates any provision of this chapter is guilty of a misdemeanor. This section shall not apply to the Arbitrator or officers or employees of the City.

SECTION TWO

1. **COMPLIANCE WITH CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment.)

2. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Ordinance and any section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3. **EFFECTIVE DATE.** This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption.

4. **MANDATORY REVIEW.** The City Council shall review this ordinance at the next regular City Council meeting occurring after the first anniversary of the Effective Date of this ordinance. The review shall consider whether the ordinance should be amended or repealed based on the City's experience of the implementation of the ordinance over that one year period.

Introduced by title only on October 6, 2010, by the following roll call vote:

AYES:	Councilmembers Landis, Rodin, Baldwin, and Mayor Thomas
NOES:	Councilmember Crane
ABSENT:	None
ABSTAIN:	None

Adopted on October 20, 2010, by the following roll call vote:

AYES:	Councilmembers Landis, Rodin, Baldwin, and Mayor Thomas
NOES:	Councilmember Crane
ABSENT:	None
ABSTAIN:	None

/s/ Benj Thomas, Mayor

ATTEST:

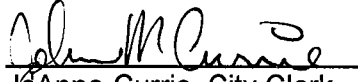
/s/JoAnne M. Currie, City Clerk

Re-adopted on January 5, 2011, by the following roll call vote:

AYES: Councilmembers Landis, Thomas, Baldwin, and Mayor Rodin
NOES: Councilmember Crane
ABSENT: None
ABSTAIN: None


Mari Rodin, Mayor

ATTEST:


JoAnne Currie, City Clerk